

Interlocal Agreement

Regarding

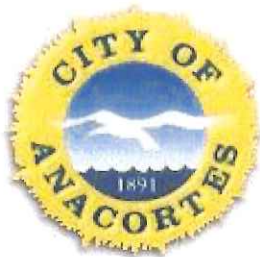
Process Water from Pier 2



Between

The Port of Anacortes
A municipal corporation of the State of Washington

And



The City of Anacortes
A Washington City

THIS AGREEMENT (the "*Agreement*"), dated this 7th day of April, 2011, is made pursuant to Ch. 39.34 RCW, by and between the PORT OF ANACORTES, a Washington municipal corporation (the "*Port*") and the CITY OF ANACORTES, a Washington city (the "*City*"). The Port and the City are collectively known as the "*Parties*").

WHEREAS, the Port operates and for the past 80 years has operated one of only eight deep water marine terminals in Puget Sound known as "*Pier 2*".

WHEREAS, over the years a wide variety of cargo has been shipped across Pier 2, including logs, petroleum coke, and sulfur. These historical uses have varied in intensity over the years and in recent years have declined with the cessation of log shipments.

WHEREAS, in 1983 the City issued a shoreline substantial development permit for the construction of a mechanized conveyor loading system at Pier 2 which is designed to provide increased efficiencies for loading bulk cargos such as petroleum coke and prilled sulfur.

WHEREAS, the City operates and maintains the Waste Water Treatment Facility for the City of Anacortes.

WHEREAS, the Port proposes to discharge process water from Pier 2 to the City of Anacortes Waste Water Treatment Facility.

WHEREAS, the City currently has an easement in the location of the proposed storm water management facility, and this easement is for the purpose of constructing, maintaining, replacing or repairing the sole effluent discharge line for the Waste Water Treatment Facility.

NOW THEREFORE, for and in consideration of the mutual terms and conditions contained herein, the City and the Port hereby agree as follows:

Storm and Process Water from Pier 2. In order to preserve and enhance the economic viability of Pier 2, the City agrees to allow the Port to discharge its storm water and process water from Pier 2 to the City's Waste Water Treatment Facility.

1.1. The Port will pay the City a General Facilities Charge of \$639,349.00, payable in equal annual installments over a 10 year period, consistent with Anacortes Municipal Code Section 13.12.010, at 6% interest computed annually on the unpaid balance; payable by June 1 of each year, and can be paid off at any payment date. The General Facility Charge payment shall be due at the time of system start up after construction of the enlarged detention pond and connection to the Waste Water Treatment Facility.

1.2. The General Facilities Charge is based on the Port's proposed purchase of 100.8 ERU for the drainage area and a credit for the 2005 purchase of 10.7 ERU for the drainage area. Therefore the GFC is based on an ERU of 90.1.

1.3. The General Facilities Charge is based on best available information regarding area, approximate rainfall in inches, and an average daily discharge flow of 19,438 gallons. If volume monitoring by the City indicates quantities greater than those described, the City will automatically impose the following discharge penalties.

1.4. Penalties for exceeding the limit on volume shall be based on the total volume of process water generated per calendar year. If the total volume of process water generated during a calendar year exceeds the annual limit, a fifty percent surcharge on the sewer rate shall apply. The surcharge shall apply only to the quantity of process water that exceeded the limit. The surcharge shall not apply to the entire annual volume of process water generated.

1.5. At any time after the calendar year 2017 the volume of the Port's process water waste stream increases to more than 15% greater than the limits described in this agreement, the Port shall purchase additional ERU as require by Anacortes Municipal Code Section 13.08.020 F 15 or any amendment thereto.

1.6. The Port will pay the City the volume-based monthly discharge fee normally charged to similar dischargers in the City consistent with Anacortes Municipal Code Section 13.08.020 based upon SIC #1. The City shall test waste strength of the discharge water to verify the SIC #1 strength and the Port shall pay the appropriate monthly charge based upon established City rates.

1.7. The Port agrees that this facility is constructed at its own risk due to the existing location of the sole Waste Water Treatment Facility effluent outfall.

1.8. Timing. The Port shall move diligently to design and construct the necessary storage, pumping, metering and piping systems necessary to discharge the Pier 2 water to the City's Waste Water Treatment Facility. Telemetry and controls required by the City shall be designed by a registered engineer, reviewed and approved by the City, installed by the Port and inspected by the City for acceptance. The City shall have direct control of the discharge pumping rate at the Waste Water Treatment Facility. Ownership and maintenance of the process water facility and appurtenances shall be the responsibility of the Port. The City shall have access to the pump facility for periodic inspection and monitoring. Upon Department of Ecology approval, system start-up, and connection to the Waste Water Treatment Facility, the Port will terminate its Pier 2 Industrial Stormwater General Permits and will discharge process water to the City of Anacortes under a separate Stormwater Permit.

1.9. Quality of Water. The water shall meet the standards set forth by the City and the Washington State Department of Ecology for acceptance of water to its Waste Water Treatment Facility. Prior to the addition of any new bulk cargo for shipment across Pier 2 the Port shall initiate a meeting with the City to discuss impacts, if any, to water quality and the appropriate means and methods to mitigate those impacts.

1.10. Temporary Discontinuance of Discharge to City Waste Water Treatment Facility. The City may, during a significant storm event, or during an emergency operation that

2. **Dispute Resolution.** The Parties shall attempt to resolve all claims, disputes, and other matters in question, arising out of or related to this Agreement, first through informal discussions and then through formal written notification and cure, before resorting to mediation or arbitration.
3. **Severability.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect the enforceability of other terms, conditions or applications of this Agreement and the parties will reasonable cooperate to modify this Agreement to achieve the purposes set froth herein.
4. **Term.** This Agreement shall be effective when signed and notarized by the duly authorized governing bodies of the Port and the City and remain in full force and effect until modified or terminated by mutual agreement of the Parties.
5. **Modifications.** This Agreement may be amended and modified by a written agreement signed by the Parties, in the same manner as the signing of the original Agreement.
6. **Waiver.** No failure by the parties to insist upon the strict performance of any term or condition of this Agreement, or to exercise any right or remedy upon a breach thereof, shall constitute a waiver or breach of any other term or condition of this Agreement.
7. **Governing Laws.** This Agreement and the rights of the Parties hereto shall be governed by and construed in accordance with the laws of the State of Washington.
8. **No Third Party Beneficiaries.** This Agreement is intended to be enforceable only by the Port and the City. There are no third-party beneficiaries to this Agreement.
9. **Entire Agreement.** This Agreement contains all terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto.
10. **City Indemnification.** To the extent permitted by law, the City shall save, defend and hold the Port, its elected officials, employees and agents harmless from any claims, demands, fines or losses arising from any act or omission by the City, its elected officials, employees or agents related to the Pier 2 Stormwater Project. Without limiting the foregoing, the City shall save, defend, and hold the Port harmless from any claims, demands, damages or losses arising from a default by the City. In the case where the claim, demand, damage or loss of the Port is caused by the concurrent or joint negligence or intentional conduct of the City, its elected officials, employees or agents and the concurrent or joint negligence or intentional conduct of the Port, is elected officials, employees or agents then the responsibility for such claim, demand, damage or loss shall be apportioned on the basis of fault.
11. **Port Indemnification.** To the extent permitted by law, the Port shall save, defend and hold the City, its elected officials, employees and agents harmless from any claims, demands, fines or losses arising from any act or omission by the Port, its elected officials, employees or agents related to the Pier 2 Stormwater Project. Without limiting the foregoing, the Port shall

save, defend, and hold the City harmless from any claims, demands, damages or losses arising from a default by the Port. In the case where the claim, demand, damage or loss of the City is caused by the concurrent or joint negligence or intentional conduct of the City, its elected officials, employees or agents and the concurrent or joint negligence or intentional conduct of the Port, its elected officials, employees or agents then the responsibility for such claim, demand, damage or loss shall be apportioned on the basis of fault.

12. Execution. The persons signing below represent and warrant that they have the requisite authority to bind the Party on whose behalf they are signing.

IN WITNESS HEREOF, the Port and the City have caused this Agreement to be executed in their names and to be attested by their duly authorized officers this 7th day of April, 2011.

PORT OF ANACORTES

By: 

R. W. Hyde, Executive Director

Date: April 7, 2011

State of Washington)
)
County of Skagit)

Signed and attested to before me on April 7th, 2011 by R.W. Hyde.



Notary Public
Julianne M. Lindsey
Julianne M. Lindsey

Print or type name
My appointment expires 07-24-12

CITY OF ANACORTES

By: H. Dean Maxwell
H. Dean Maxwell, Mayor

Date: 4/11/11

State of Washington)
)
County of Skagit)

Signed and attested to before me on April, 2011 by H. Dean Maxwell.



Notary Public

Cherril L. Kahns

Print or type name

My appointment expires 10-19-14

- Attachments: A. Effluent Discharge Line Easement
 B. Pier 2 Site Plan