

AGREEMENT FOR CONSULTANT DATA SHARING

THIS AGREEMENT FOR CONSULTANT DATA SHARING (the “Agreement”) is entered into by and between the Port of Anacortes, a Washington municipal corporation (the “Port”) and the City of Anacortes, a Washington city (the “City”).

WHEREAS, the Port has been conducting work at an environmental site identified as the Log Yard Site by the Washington State Department of Ecology (“Ecology”). The current Log Yard Site boundary is depicted in **Exhibit “A”** attached hereto.

WHEREAS, the Port’s environmental consultant and its subconsultants have been conducting investigation work at the Log Yard Site. The environmental consultant incorporates the resulting data from this work into reports and other deliverables to be transmitted to the Port and/or to Ecology. The Port has also contracted with other consultants to conduct bathymetric and/or surveying work in the area near the Log Yard Site.

WHEREAS, the City owns and operates a wastewater collection and treatment system, which conveys both sanitary sewage and stormwater (the “WWTS”).

WHEREAS, during wet weather, stormwater can cause wastewater flow to increase beyond the WWTS’s capacity, including the capacity of an untreated combined sewage overflow (“CSO”) outfall. Discharges that exceed the CSO outfall capacity are classified as sanitary sewer overflows (“SSOs”).

WHEREAS, the City is in the process of identifying feasible alternatives for eliminating SSOs, including the possibility of increasing the CSO outfall capacity.

WHEREAS, the alternatives for increasing the CSO outfall capacity might involve modifying the location of the existing CSO system. In order to confirm the preliminary proposed layouts for the modified CSO system, the City needs to verify the geotechnical feasibility of the potential future location(s) of the CSO system and outfall that the City is evaluating.

WHEREAS, one of the proposed locations for the modified CSO system and outfall overlaps the Port’s Log Yard Site.

WHEREAS, the parties recognize that the City’s CSO project is in the interest of the community of Anacortes and can be achieved through the Port sharing certain technical information with the City.

WHEREAS, for the most part, the Data (as defined herein) is not within the Port’s possession, nor has it been relied upon or used by the Port.

WHEREAS, as a service to the City, the Port desires to make certain data associated with the Log Yard Site investigation that is in the possession of its consultants’ project files available to the City’s CSO project consultants.

WHEREAS, the parties desire to outline the process, terms, and conditions for the Port’s consultants to share data regarding the Log Yard Site with the City’s consultants for the City’s use in its CSO project.

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

1. **Description of Data**. The “Data” is defined to include the following information within the Port’s consultants’ project files for the Log Yard Site and nearby areas, in existence as of the Effective Date of this Agreement:
 - Bathymetric electronic files;
 - Onshore geotechnical data;
 - Offshore geotechnical data;
 - Onshore survey electronic data;
 - Environmental sampling and Log Yard Site characterization information relied upon in GeoEngineers, Inc’s Draft Final Remedial Investigation Report.

The parties may alter the definition of Data from time to time through a written modification of this Agreement, signed by both parties.

2. **Direction to Consultants**. Upon full execution of this Agreement, the Port grants permission to its consultants to share the Data described herein with the City’s consultants. The Port will provide a copy of this Agreement to its relevant consultants, along with instructions that the Data is to be transmitted to the City’s designated consultants.
3. **Limited Agreement**. The Port’s agreement to share Data with the City shall not be viewed or interpreted as anything beyond what is contained in this Agreement. The Port has not agreed to allow the City to utilize any of the Port’s property for the proposed modified CSO system, outfall, or any other purpose. The existence of this Agreement and the Data sharing described herein shall not be relied upon by the City or any third-party as evidence of the Port’s agreement or acquiescence in the alternatives the City has or may considered for the CSO system or outfall.
4. **Data Remains Port Property**. The Data shall remain the property of the Port and/or its consultants. The City and its consultants’ use of the Data shall be in compliance with all applicable laws, regulations, and policies.
5. **Costs for Data Transmission**. The Port shall not be responsible for any costs or fees charged by its consultants, subconsultants, or any other party for the sharing or transmission of the Data described herein. Any such costs or fees charged shall be borne solely and exclusively by the City.
6. **No Guarantees or Warranties**. The Port does not guarantee the accuracy of the Data and shall not be liable for inaccuracies contained in the Data. There are no warranties, express or implied, for the Data, including, without limitation, merchantability or fitness for a particular purpose. The City hereby expressly releases the Port from any and all claims arising out of or related to the City’s use of or reliance on the Data.
7. **City’s Disclosure of Data**. The City shall protect against the unauthorized use, disclosure, or loss of the Data. The City shall not disclose any of the Data unless required pursuant to: (i) RCW 42.56; (ii) court order from civil or criminal

proceedings; (iii) an order resulting from administrative proceedings; or (iv) otherwise required by law. For records requested pursuant to RCW 42.56, City shall advise Port that such Data has been requested at least five (5) business days prior to City disclosing the Data.

8. **Effective Date.** The Effective Date of this Agreement is the date it has been signed by both parties, as indicated below.
9. **Duration.** This Agreement shall remain in full force and effect until the earlier of: (i) final completion of the City's CSO project ; or (ii) upon thirty (30) days written notice by either party in accordance with the Notice section herein. Regardless, the commitments and terms of paragraphs 3, 4, 5, 6, 7, 9, 10, 11, and 22 shall survive the duration of this Agreement.
10. **No Agency Relationship.** This Agreement shall not be construed to create, either expressly or by implication, the relationship of agency or partnership between the parties. Neither party, including without limitation such party's agents, employees, Commissioners, contractors, or attorneys, is authorized to act on behalf of the other party in any manner related to the subject of this Agreement. Neither party shall be liable for the acts, errors, or omissions of the agents, employees, Commissioners, contractors, or attorneys of the other party entered into, committed, or performed with respect to or in the performance of this Agreement.
11. **Use of Agreement.** This Agreement shall not be admissible evidence in any proceeding without the written consent of the other party, except to enforce the terms of this Agreement or as required by law or court order.
12. **Governing Law, Jurisdiction, and Venue.** This Agreement shall be construed under and in accordance with the laws of the State of Washington. The parties agree that in any such action, jurisdiction and venue shall lie solely and exclusively in Skagit County, Washington.
13. **Limitation on Waiver.** No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, shall be deemed or construed to be a further continuing waiver of any such term, provision, or condition of any other term, provision, or condition of this Agreement.
14. **Notice.** All notices hereunder may be delivered or mailed. If delivered by messenger or courier (including overnight courier), notice shall be deemed delivered when received at the street address listed below. All notices mailed, whether sent by regular post or by certified mail, shall be deemed to have been given on the third business day following the date of mailing, if properly mailed with postage prepaid to the mailing address provided below. A party may designate new or additional addresses for delivery or mail by providing written notice to the other party as provided in this section.

To the Port: Brenda Treadwell
Director of Planning, Properties, & Environmental
Port of Anacortes
100 Commercial Ave.
Anacortes, WA 98221

To the City: City of Anacortes
Tiffany Matson, Contract Specialist
PO Box 547
904 6th St
Anacortes, WA 98221

15. **Modification**. No alteration, modification, amendment, or wavier of this Agreement shall be valid unless it is in writing and signed by both parties hereto.
16. **No Third-Party Beneficiaries**. This Agreement is for the sole and exclusive use of the parties hereto, and none of the provisions of this Agreement shall be deemed to be for the benefit of any other person or entity.
17. **Successors and Assigns**. This Agreement shall be binding on the successors and assigns of the parties. No assignment or delegation of the obligation to make payment or reimbursement hereunder shall release the assigning party without the prior written consent of the other party.
18. **Severability**. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
19. **Headings**. The headings of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.
20. **Authority**. Each person represents and warrants that they have all of the requisite power to enter into and be bound by the terms and conditions of this Agreement and to carry out its respective obligations hereunder. The execution by such party of this Agreement and the performance of such party's obligations hereunder have been duly authorized by all necessary action of such party.
21. **Neutral Authorship**. Each of the provisions of this Agreement has been reviewed and negotiated and represents the combined work product of both parties hereto. No presumption or other rules of construction that would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.
22. **Attorneys' Fees**. Should any dispute arise between the parties concerning the rights and duties arising out of this Agreement, the substantially prevailing party in such dispute, whether the dispute be resolved by litigation or other proceeding, shall be entitled to its attorneys' fees, costs, and expenses, in addition to such other relief as may be granted to it.
23. **Counterparts**. This Agreement may be signed in any number of identical counterparts, each of which shall be an original, and all of which shall constitute one and the same Agreement. Either party may execute and deliver this Agreement by transmitting an authorized signature via email transmission, and copies of this

Agreement executed and delivered by means of emailed signatures shall have the same effect as copies executed and delivered with original signatures.

24. **Entire Agreement.** This Agreement constitutes the entire understanding of the parties with respect to its subject matter.

IN WITNESS WHEREOF, the Port and City have caused this Agreement to be executed in their names and to be attested by their duly authorized officers as of the date written below.

PORT OF ANACORTES

CITY OF ANACORTES

Daniel Worra
Daniel Worra, Executive Director

Laurie Gere
Laurie Gere, Mayor

Date: 6/10/2020

Date: 6/12/2020

EXHIBIT "A"

FIGURE OF LOG YARD SITE BOUNDARY

