

**INTERLOCAL AGREEMENT #23-184-IDS-001**

Regarding

**RECIPROCAL PROPERTY ACCESS FOR PURPOSES OF  
CONDUCTING PUBLIC WORKS, INFRASTRUCTURE, AND UTILITY WORK**

Between



**THE PORT OF ANACORTES,**  
A municipal corporation of the State of Washington

and



**THE CITY OF ANACORTES,**  
A municipal corporation of the State of Washington.

**INTERLOCAL AGREEMENT #23-184-IDS-001  
REGARDING  
RECIPROCAL PROPERTY ACCESS FOR PURPOSES OF  
CONDUCTING PUBLIC WORKS, INFRASTRUCTURE, AND UTILITY WORK**

**THIS AGREEMENT** (the “**Agreement**”), dated this 8/8/2023, 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 municipal corporation (the “**City**”). The Port and the City are collectively known as the “**Parties**”.

**WHEREAS**, within the jurisdiction of the City of Anacortes, the Port owns certain real property and has been granted easements and use agreements for exclusive and non-exclusive use of real property. Collectively, the real property owned by the Port and the property rights granted to the Port through easements and use agreements is the “**Port-Owned Property**”;

**WHEREAS**, the Port manages certain Washington State-owned aquatic lands under Port Management Agreement No. 20-080024 entered into with the Washington State Department of Natural Resources. This is the “**Port-Managed Property**”;

**WHEREAS**, within the jurisdiction of the Port, the City owns certain real property and has been granted easements and use agreements for the exclusive and non-exclusive use of real property. Collectively, the real property owned by the City and the property rights granted to the City through easements and use agreements is the “**City-Owned Property**”;

**WHEREAS**, from time to time, the City desires access to Port-Owned Property or Port-Managed Property and the Port desires access to City-Owned Property for purposes of conducting public work projects; constructing, installing, maintaining, repairing, replacing, or removing utility infrastructure that serves the citizens of Anacortes. This is known as “**Infrastructure Work**”;

**WHEREAS**, it is in the interest of both Parties and the citizens of Anacortes that each Party provide reasonable access to their property to the other Party for Infrastructure Work in a timely and cost-effective manner without the imposition of any liability, claims, costs, charges, or additional obligations on the other Party;

**WHEREAS**, from time to time, the City desires to engage the Port in conducting Infrastructure Work on City-Owned Property and the Port desires to engage the City in conducting Infrastructure Work on Port-Owned or Port-Managed Property; and

**WHEREAS**, the City and Port desire to enter into this Interlocal Agreement to memorialize their agreement concerning mutual access and engagement for purposes of conducting Infrastructure Work.

**THEREFORE**, for and in consideration of the mutual terms and conditions contained herein, the Parties hereby agree as follows:

1. **Purpose.** This Agreement memorializes the Parties’ agreement concerning (i) the City’s access to Port-Owned Property and Port-Managed Property for purposes of Infrastructure Work conducted on the City’s behalf; (ii) the Port’s access to City-Owned Property for purposes of Infrastructure Work conducted on the Port’s behalf; (iii) limitation of liability for the Party upon whose property such Infrastructure Work is conducted; and (iv) the Parties’ engagement of one another to conduct Infrastructure Work on behalf of one another.

2. **Commencement and Term.** This Agreement shall be effective and in force when signed by the duly authorized governing bodies of the Port and the City (the “**Effective Date**”) and shall remain in full force and effect until modified or terminated by mutual agreement of the Parties, unless terminated by either Party, with or without cause, on at least sixty (60) days’ written notice to the other Party of its election to terminate. If this Agreement is so terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.
3. **Scope.** The City may, upon request and approval by the Port, have non-exclusive access to certain identified Port-Owned Property or Port-Managed Property for the purpose of the performance of Infrastructure Work on the City’s behalf, subject to this Agreement. The Port may, upon request and approval by the City, have non-exclusive access to certain identified City-Owned Property for the purpose of performance of Utility Work on the Port’s behalf, subject to this Agreement. The Infrastructure Work shall be conducted in accordance with the submittals provided as described herein. Additionally, one Party may, but shall not be required to, request that the other Party conduct Infrastructure Work on behalf of the first Party, in accordance with the terms of this Agreement.
4. **Mechanism for Requests.**
  - 4.1 Property Access. A Party may request access provided for under this Agreement for the purposes of conducting Infrastructure Work on that Parties’ behalf (the “**Party Requesting Access**”) by submitting to the other Party (the “**Property Owner**”), at least sixty (60) days prior to the anticipated start date of the Infrastructure Work, the Infrastructure Work’s: (i) plans and specifications; (ii) anticipated start date of access; (iii) anticipated end date of access; and (iv) figure depicting the Property Owner’s area to be impacted (the “**Project Access Area**”). This is a “**Request for Access**.” The Property Owner may accept or reject the Request for Access in its sole discretion. A Party’s Request for Access for Infrastructure Work shall be deemed accepted unless rejected in writing within fifteen (15) days of receipt of the request, in accordance with the Notice section herein.
  - 4.2 Request to Conduct Work. A Party may request that the other Party provide assistance related to the construction, installation, maintenance, repair, replacement, or removal of utility infrastructure on behalf of the first Party (the “**Requesting Party**”) by submitting to the other Party (the “**Performing Party**”) a completed request for Infrastructure Work substantially similar to the form attached hereto as **Exhibit “A”**, which shall list the specific services requested and the estimated costs (“**Request for Work**”). Such Request for Work must be approved by the Performing Party in writing prior to the initiation of the Infrastructure Work on behalf of the Requesting Party. The physical area where this Infrastructure Work will be performed is the “**Project Area**.”
  - 4.3 Additional Definitions.
    - 4.3.1 “**Working Party**” means either a Party Requesting Access or a Performing Party, as the case may be.
    - 4.3.2 “**Property**” means either the Project Access Area or Project Area, as the case may be.
    - 4.3.3 “**Non-Working Party**” means either the Property Owner or Requesting Party, as the case may be.

4.4 Delegation of Authority. Upon the Effective Date of this Agreement, the Parties delegate authority for approval or rejection of a Request for Access or Request for Work under this Agreement to the Port's Director of Planning, Properties, and Environmental and to the City's Director of Public Works, respectively. Any disagreements about the exercise of that delegation of authority shall be handled in accordance with the Dispute Resolution section herein.

4.4.1 Notwithstanding the above, an Individual Request for Work or a proposed change to a Request for Work that exceeds an estimated cost of Forty-Five Thousand Dollars (\$45,000) must be approved by the Performing Party's Port Commission or City Council, as the case may be. The Parties may from time to time make changes to the Request for Work in writing. These changes must be approved by the Port's Director of Planning, Properties, and Environmental and the City's Director of Public Works, respectively, prior to the initiation of the changes.

4.5 Declined Request. In any particular instance, a Party may decline a Request for Access or Request for Work in its sole discretion.

5. **Restrictions on Infrastructure Work.**

5.1 Noise or Disruption. Infrastructure Work conducted pursuant to a Request for Access that could create a noise or physical disruption with the Project Access Area must be conducted during periods agreed to by the Parties in order to minimize disruption to the Property Owner's respective tenants and/or any vessels with an accepted berth reservation near the Project Access Area.

5.2 Subject to Environmental Agreements. A Project Access Area may be subject to (i) an agreed order, consent decree, or other binding document describing environmental remedial actions to be performed or being performed at the Project Access Area ("**Environmental Agreement**"); or (ii) an environmental covenant restricting use or access to property in conjunction with environmental remedial actions ("**Environmental Covenant**"). The Party Requesting Access shall not permit any use or activity that is inconsistent with such Environmental Agreement or Environmental Covenant, or that will interfere with the remedial actions described in such Environmental Agreement or Environmental Covenant.

6. **Compensation for Request for Work**. The Requesting Party shall reimburse the Performing Party for the services performed after an approved Request for Work for the actual costs incurred by the Performing Party for said work, materials, use of Performing Party's equipment, wages for Performing Party's employees, and in addition thereto, ten percent (10%) of the total costs shall be added for overhead costs for account, billing, and administrative services, provided the Performing Party shall submit to the Requesting Party an itemized, signed statement of the costs (the "Reimbursement Detail"). Within ninety (90) days after the Performing Party sends the Reimbursement Detail to the Requesting Party in accordance with the Notice provision herein, the Requesting Party shall pay the amount of the Reimbursement Detail to the Performing Party. Upon request of the Requesting Party, the Performing Party shall provide additional support documentation for any and all amounts billed by the Performing Party pursuant to this Agreement.

7. **Government Authorizations.**

- 7.1 Permits for Party Requesting Access. The Party Requesting Access shall be responsible for and shall obtain and maintain all necessary permits from the relevant governing bodies and agencies, and comply with all current laws, ordinances, orders, rules, regulations, and permits with respect to the performance of the Infrastructure Work within the Project Access Area during the duration of the Infrastructure Work, including without limitation any authorizations as may be required by DNR for Infrastructure Work on Port-Managed Property. The Party Requesting Access shall provide the Property Owner with copies of all applicable permits and approval prior to conducting Infrastructure Work within the Project Access Area.
- 7.2 Requesting Party Shall Obtain Permits. The Requesting Party shall be responsible for and shall obtain and maintain all necessary permits from the relevant governing bodies and agencies, and comply with all current laws, ordinances, orders, rules, regulations, and permits with respect to the performance of the Infrastructure Work within the Project Area during the duration of the Infrastructure Work, including without limitation any authorizations as may be required by DNR for Infrastructure Work on Port-Managed Property. The Requesting Party shall provide the Performing Party with copies of all applicable permits and approval prior to conducting Infrastructure Work within the Project Area.
- 7.3 Representation and Warranty. By issuing a Request for Work, a Requesting Party represents and warrants that it has full legal right to access and conduct the Infrastructure Work on the Project Area.
- 7.4 No Waiver of Permitting Requirements. This Agreement does not constitute a waiver by the City of any permitting requirements for the Infrastructure Work, including without limitation building permits, land use permits, or stormwater requirements.
- 7.5 No Waiver of Environmental Covenant Requirements. This Agreement does not constitute a waiver of an Environmental Covenant impacting the Project Access Area.

8. **Performance of Work.** A Working Party shall ensure that Infrastructure Work conducted on its behalf shall not damage the Property, except as may otherwise be required to perform the Infrastructure Work. Except as otherwise provided in this Section, the Party Requesting Access shall, at its sole cost and expense, repair, as soon as is reasonably practicable, any damage caused to the Project Access Area resulting from the performance of its Infrastructure Work. The Party Requesting Access shall take all reasonable and necessary safety and security precautions and maintain a neat and orderly workplace at the Project Access Area in connection with the performance of the Infrastructure Work under this Agreement and shall return the Project Access Area to the same condition as it was in prior to the Infrastructure Work.

- 8.1 No Interference. In exercising its rights granted by this Agreement, each Party shall not unreasonably interfere with the other Party's (or that other Party's tenants or those with accepted berth registrations) use, occupation, or enjoyment of the Project Access Area.

## 9. Indemnification.

9.1 Indemnification for Access. To the extent permitted by law, the Party Requesting Access shall release, protect, indemnify, defend, and hold harmless the Property Owner, its elected officials, and employees from and against any and all claims, costs, damages, demands, disputes, expenses, liabilities, losses, obligations, actions, judgments, assessments, penalties, or causes of action (collectively, "**Claims**") arising or resulting from the access provided for under this Agreement, except to the extent caused by the negligent acts or omissions or willful misconduct of the Property Owner, its council members, commissioners, elected officials, executives, or employees. The scope of this indemnification includes, but is not limited to, Claims: (i) for damage caused to any structure, fixture, or improvement in the Project Access Area; (ii) for bodily or personal injury, including without limitation, death; and (iii) made by third-parties alleging disruptions to such third-parties' business operations due to the performance of the Infrastructure Work at the Project Access Area, including, without limitation, staging, mobilization, and demobilization.

9.2 Indemnification for Conducting Work. To the extent permitted by law, the Performing Party shall release, protect, indemnify, defend, and hold harmless the Requesting Party, its elected officials, and employees from and against any and all Claims arising or resulting from the Performing Party's conduct of the Infrastructure Work pursuant to a Request for Work under this Agreement, except to the extent caused by the negligent acts or omissions or willful misconduct of the Requesting Party, its council members, commissioners, elected officials, executives, or employees. The scope of this indemnification includes, but is not limited to, Claims: (i) for damage caused to any structure, fixture, or improvement in the Project Area; (ii) for bodily or personal injury, including without limitation, death; (iii) made by third-parties alleging disruptions to such third-parties' business operations due to the performance of the Infrastructure Work at the Project Area, including, without limitation, staging, mobilization, and demobilization; and (iv) arising or resulting from a false representation as set forth in Section 7.3.

10. LIMITED WAIVER OF IMMUNITY UNDER WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW AND OTHER SIMILAR INDUSTRIAL INSURANCE SCHEMES: For purposes of the foregoing indemnification provisions, and only to the extent of claims by one Party against another Party under such indemnification provisions, the indemnifying Party specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW, the United States Longshore and Harbor Workers Compensation Act, 33 USC §901-950, or any other similar workers' compensation schemes. The indemnification obligations under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The foregoing provision was specifically negotiated and agreed upon by the Parties hereto.

## 11. Hazardous Substances.

11.1 Definitions. "**Hazardous Substance**" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup, including without limitation Ch. 70A.305 RCW, (collectively, "**Environmental Laws**").

- 11.2 Use of Hazardous Substances. A Working Party shall not use, store, generate, process, transport, handle, release, arrange for disposal, or dispose of Hazardous Substances within the Property, except in accordance with all applicable laws and regulations.
- 11.3 Remediation. If a Working Party or their agent's use of Hazardous Substances results in a violation of law or exceedance of applicable cleanup levels at, on, in, or under the Property, the Working Party shall be liable at its sole cost and expense for remedying the violation or exceedance to meet remediation standards set forth in the applicable Environmental Laws for unrestricted land use.
- 11.4 Waste Generator. The Working Party shall be the designated generator of any waste produced in conducting the Infrastructure Work and shall be fully responsible for preparation and execution of any manifests required for the management of such waste and for the disposal of such waste, including without limitation the costs and expenses for the same.
- 11.5 Discovery of Hazardous Substances. In the event that a release of Hazardous Substances is encountered at, on, in, or under the Property during the Infrastructure Work, the Working Party shall notify the Non-Working Party of the discovery within twenty-four (24) hours of such discovery. Those conducting Infrastructure Work on behalf of a Working Party shall exercise due care and professional judgment to prevent the spread, migration, or movement of Hazardous Substances, should any be encountered.
12. **Insurance.** Anyone conducting (a) a Party Requesting Access's Infrastructure Work within a Project Access Area; or (b) a Performing Party's Infrastructure Work within a Project Area, shall maintain during the period of the Infrastructure Work (i) commercial general liability ("**CGL**") insurance with coverage for bodily injury, including without limitation death, and property damage, with not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate; (ii) auto liability insurance with a combined single limit of One Million Dollars (\$1,000,000) for bodily injury, including, without limitation, death, and property damage; and (iii) workers' compensation insurance with statutory limits.
- 12.1 Contractor Insurance. Either Party using hired contractors to perform (i) a Party Requesting Access's Infrastructure Work within a Project Access Area; or (ii) a Performing Party's Infrastructure Work within a Project Area, shall cause each and every such contractor to provide insurance coverage that complies with all applicable requirements of the insurance requirements as set forth herein, except the Working Party shall have sole responsibility for determining the limits of coverage required to be obtained by its contractors. The Working Party shall ensure that the Non-Working Party is an additional insured ("**Additional Insured**") on each and every contractor's CGL insurance policy using an endorsement at least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations, for the full available limits, irrespective of whether such limits are greater than those required under this Agreement or whether any certificate of insurance furnished to the Additional Insured evidences the lower limits of liability as set forth herein. Furthermore, the policy of such insurance shall: (i) be written as a primary policy; (ii) contain a cross-liability provision such that the policy will be construed as if separate policies were issued to the entity performing the Infrastructure Work and Additional Insured; (iii) expressly provide that such insurance may not be materially changed, amended, or canceled except upon forty-five (45) days' prior written notice from the insurance company to the

Additional Insured; (iv) contain an express waiver of any right of subrogation by the insurance company against the Additional Insured and its elected officials and employees; (v) expressly provide that the defense and indemnification of the Additional Insured will not be affected by any act or omission of the entity conducting the Infrastructure Work which might otherwise result in a forfeiture of such insurance; (vi) contain a separation of insureds provision such that the policy applies separately to each insured that is the subject of a claim or suit; (vii) not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another; and (viii) provide coverage for damage to the Additional Insured's property caused by the entity conducting the Infrastructure Work. Failure of the Working Party to have its contractors comply with the insurance requirements contained herein does not limit the Working Party's liability or responsibility.

13. **No Partnership or Joint Venture.** No partnership and/or joint venture exist between the Parties, and no partnership and/or joint venture is created by and between the Parties by virtue of this Agreement. No agent, employee, contractor, subcontractor, consultant, volunteer, and/or other representative of the Parties shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer, or other representative of the other Party.
14. **Agreement Administration.** This Agreement shall be administered by the Port's Director of Planning, Properties & Environment, and the City's Director of Public Works.
15. **Notices.** Any notice, demand, request, consent, or approval that either Party desires or is required to give to the other Party shall be in writing addressed to the other Party and may be hand delivered or mailed via U.S. postal services. If delivered by messenger or courier (including overnight air courier), they shall be deemed delivered when received at the street addresses listed below. All notices whether sent by regular post or by certified or registered mail, shall be deemed to have been given on the second business day following the date of mailing, if properly mailed to the mailing addresses provided below, and shall be conclusive evidence of the date of mailing. Notices shall be addressed to the Parties as follows:

**To Port:** Port of Anacortes  
Director of Planning, Properties, and Environmental  
100 Commercial Avenue  
Anacortes, WA 98221

Copy to: CSD Attorneys at Law P.S.  
Attn: Holly Stafford  
1500 Railroad Avenue  
Bellingham, WA 98225

**To City:** City of Anacortes  
Attn: Director of Public Works  
904 6<sup>th</sup> St  
P.O. Box 547  
Anacortes, WA 98221

Copy to: Darcy Swetnam  
City Attorney  
904 6<sup>th</sup> St  
P.O. Box 547  
Anacortes, WA 98221




The Parties may designate new or additional addresses for mail or delivery by providing notice to the other party as provided in this section.

16. **Treatment of Assets and Property.** No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.
17. **Mechanics Lien.** A Working Party shall keep the Property free from any mechanic's or other liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of that Party. If such a lien is placed or recorded, the Working Party shall cause it to be discharged of record, at its own expense, within ten (10) days of the Non-Working Party's demand.
18. **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 litigation. The first step of the dispute resolution process is that the Port's Director of Planning, Properties, and Environmental and the City's Director of Public Works directors shall meet to attempt to resolve the dispute within thirty (30) days from receipt of notice of a dispute. If they are unable to resolve the dispute within forty-five (45) days from receipt of notice, the Port's Executive Director and the City's Mayor shall meet to attempt to resolve the dispute within sixty (60) days from the original notice of dispute. If they are unable to resolve the dispute within ninety (90) days from the original notice of dispute, the Parties are free to litigate the matter.
19. **Attorneys' Fees.** Should any dispute commence between the Parties concerning the rights and duties arising out of this Agreement, the prevailing party in such dispute, whether the dispute be resolved by litigation or other proceeding, shall be entitled, in addition to such other relief as may be granted to it, its reasonable attorneys' fees and costs.
20. **Waiver.** No failure by a Party 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.
21. **Limitation of Waiver.** No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed to be a further continuing waiver of, any such term, provision, or condition or any other term, provision, or condition of this Agreement.
22. **Choice of Law.** This Agreement and the rights of the Parties shall be governed by and construed in accordance with the laws of the State of Washington, and the Parties agree that in any such action, venue shall lie exclusively in Skagit County, Washington.
23. **Severability.** In the event any term or condition contained in this Agreement or application thereof to any person or circumstances is held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other term or condition hereof, and the Parties will reasonably cooperate to modify this Agreement to achieve the purposes set forth herein.
24. **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.

- 25. **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.
- 26. **Headings and Titles.** The captions of the paragraphs of this Agreement are only to assist the Parties in reading and understanding this Agreement and shall have no effect upon the construction or interpretation of any part thereof.
- 27. **Successors and Assigns.** This Agreement shall benefit and bind the Parties and their respective successors and assigns.
- 28. **Time of the Essence.** Time is of the essence of this Agreement and all of the terms, provisions, covenants, and conditions thereof.
- 29. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be an original, and all of which shall constitute one and the same Agreement.
- 30. **Entire Agreement.** This Agreement contains all terms and conditions agreed upon by the Parties on the issues covered by it, except as supplemented by subsequent written agreements the Parties make. All prior negotiations and draft written agreements are merged into and superseded by this Agreement. 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.
- 31. **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 8/8/2023.

**PORT OF ANACORTES**

  
\_\_\_\_\_  
By: Dan Worra  
Its: Executive Director  
Date: 8/7/2023

**CITY OF ANACORTES**

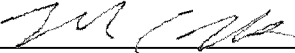
  
\_\_\_\_\_  
By: Matt Miller  
Its: Mayor  
Date: 8/8/2023

EXHIBIT "A"

REQUEST FOR INFRASTRUCTURE WORK

Requesting Party:

City of Anacortes

Port of Anacortes

Performing Party:

City of Anacortes

Port of Anacortes

Description of Requested Infrastructure Work: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Estimated Date of Project Completion: \_\_\_\_\_

Estimated Cost of Services: \_\_\_\_\_

Approved By:

CITY OF ANACORTES

PORT OF ANACORTES

By: \_\_\_\_\_

Its: Director of Public Works

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: Director of Planning,  
Properties, and Environmental

Date: \_\_\_\_\_

If requested Infrastructure Work to be performed is estimated to cost Forty-Five  
Thousand Dollars (\$45,000):

Approved By:

CITY OF ANACORTES

PORT OF ANACORTES

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_