

**INTERLOCAL COOPERATION AGREEMENT
USE OF STORMWATER TRANSMISSION FACILITIES**

THIS AGREEMENT is made and entered into between the City of Edmonds, Washington, an alternative code municipality organized pursuant to Title 35A of the Revised Code of Washington, and the Port of Edmonds, a municipal corporation of the State of Washington pursuant to the provisions of the Interlocal Cooperation Act of 1967, Chapter 39.34 RCW.

1. Definitions. For the purpose of this Interlocal Cooperation Agreement and any contract, addenda, document or other understanding executed, adopted and/or approved pursuant to this Agreement, the following terms have the meanings prescribed to them in this section unless the context or their use dictates otherwise:

1.1 "*Stormwater Transmission Facilities*" shall mean those stormwater facilities of the Port shown on the attached Exhibit A, legally described on Exhibit B and utilized by the City to transport stormwater runoff from its stormwater utility facilities through the property of the Port of Edmonds to Puget Sound, in accordance with their design, use and existence at the date of execution of this Agreement.

1.2 "*Enhanced Facility*" shall mean an increase in the size of the Stormwater Transmission Facilities due to an increase in stormwater flow beyond the design capacity of the current facilities occasioned by the receipt of such enhanced flows from the stormwater utility of the City or other technological improvements or required enhancements to the Stormwater Transmission Facilities required or occasioned by the provisions of State or Federal regulation relating to the treatment and/or transmission of stormwater facilities.

1.3 "*City*" shall mean the City of Edmonds, Washington. Any notice or action required or permitted under the terms of this Agreement shall be exercised by the Office of Mayor or her designee.

1.4 "*Port*" shall mean the Port of Edmonds. Any notice or action required or permitted under the terms of this Agreement shall be exercised by the Executive Director of the Port, or his designee.

2. Recitals.

2.1 The City operates a stormwater utility which accepts, collects, transmits and discharges stormwater runoff from within the City to and through the property of the Port.

2.2 The City charges a stormwater utility fee to all patrons of such utility.

2.3 The Port has permitted the utilization of certain stormwater transmission lines on its property for which the City has no ownership interest.

2.4 The City wishes to pay a reasonable use fee for the stormwater facilities from the Port.

2.5 The parties agree that it is in their best interest for the Port to continue to own, operate and maintain its stormwater system on its property, maintaining and repairing it at and to its current state and condition and that the City pay a reasonable fee for the use of such facilities thereby offsetting a portion of the City's stormwater utility charges.

2.6 The parties agree that the relative ratio of stormwater facility fee to use fee shall be on a basis of four to three and remain so until such time as enhanced stormwater facilities are required to be built or use of the Stormwater Transmission Facilities ends.

2.7 The parties wish to agree to a process for handling any future increases in utility charges or required improvements to the stormwater facilities.

In consideration of the benefits to be derived and the terms and conditions set forth herein, the City and Port agree as follows:

3. Use and Lease Agreement. In consideration of the payments and mutual promises provided for herein, the Port does hereby permit use by the City of the existing Stormwater Transmission Facilities shown on Exhibit A and legally described on Exhibit B.

4. Term. This Agreement shall extend from year to year, until such time as the facilities shall cease to be used for the transmission of stormwater by the City or until such time as the City ceases to charge the Port a stormwater utility charge, whichever shall first occur. This Agreement may also be terminated by the express agreement of both parties hereto.

5. Use Fee. The parties acknowledge that as of the date this Agreement is entered into, the City charges the Port an annual stormwater utility fee of \$8,000. The parties agree that the annual stormwater transmission use fee charged pursuant to this Agreement shall be initially set at \$6,000. The current ratio of stormwater utility fees to use transmission fees of four to three shall be maintained for so long as the transmission lines of the Port are utilized by the City in their current configuration and flow capacity. In the event that the City Council of the City, at its sole discretion, shall amend the stormwater utility fee (up or down), the use payments made pursuant to this Agreement shall be accordingly adjusted for the same term to maintain the four to three ratio established herein.

6. Repair. In the event that the Port requests that the City utilize its forces or facilities to perform any maintenance, cleaning or other action with respect to the Stormwater Transmission Facilities or enhanced facilities, the Port agrees to provide a construction license to do so and to credit the fair and reasonable cost of such services against the amount then being

paid as a use fee pursuant to this Agreement.

7. Provisions Noted Pursuant to the Interlocal Cooperation Act. Nothing contained in this agreement shall result in or be deemed to be the creation of a new separate or legal administrative entity. During the course of this Agreement:

7.1 The real and personal property of each entity shall continue to own and operate in the same manner as at the time this Agreement commences; and

7.2 The City and Port may, at their sole individual and respective discretion, exercise their separate legislative and administrative functions.

8. Indemnity. Nothing herein shall be interpreted to create indemnity or cross indemnity agreements between the parties. In the event of claim loss or liability alleged to have arisen out of the ownership or operation of the City's stormwater utility system or the Port's Stormwater Transmission Facilities, the parties agree that their liability shall be borne in accordance with and as determined under the provisions of Washington State law. Nothing herein shall be interpreted to create any third-party rights and/or liability of any kind or nature.

9. Port's Obligations. The Port shall at its sole expense maintain, repair, retrofit, and/or reconstruct the stormwater utility lines in their current configuration and capacity in order to accept the stormwater flows which they were designed to carry at maximum capacity.

9.1 In the event of a change in the stormwater utility system of the City, or the provisions of state or federal law require repair, reconstruction, retrofit, enlargement or technological change to the system of any kind or nature which would require enhanced facilities of a greater size or technological complexity than those currently in existence, the City shall, in order to continue to use such enhanced transmission facilities, pay for all costs associated with the enhanced facilities necessary to carry the increased flow or to deliver the technological advancement, provided, however, that the parties shall then, in good faith, enter into negotiations to adjust the stormwater fee use charge ratio.

9.2 In the event that after reasonable opportunity for negotiations in good faith, the parties cannot reach agreement, the parties agree to submit the calculation of the charge and any other adjustments to this Agreement to mediation. If the mediation is not successful, to binding arbitration. The parties expressly agree that in no event shall the enforcement or amendment of this Agreement result in a remedy which would halt the flow of stormwater across the Port's property at the current alignment and configuration absent the express written agreement of both parties.

10. General Provisions.

10.1 Entire Agreement. This Agreement constitutes the entire written agreement and understanding between the parties and any prior agreement, written or oral, shall be deemed merged with its provision. This Agreement may be amended only in writing with the express written consent of both parties.

10.2 Severability. If a court of competent jurisdiction rules invalid or unenforceable any of the provisions of this Agreement, such provision shall be disregarded, but the rest of this instrument shall nevertheless be given full force and effect.

10.3 Applicable Law and Venue. This Agreement is made with reference to, and shall be construed in accordance with the provisions of Washington state law. In the event of any action or proceeding between the parties which pertains to this transaction, jurisdiction and venue shall lie in Snohomish County Superior Court. This provision is expressly subject to the required mediation and arbitration provisions of paragraph 6.2 above.

10.4 Notices. All notices to be given by the parties under this Agreement shall be delivered personally or by deposit in the U.S. Mail, postage paid, addressed as follows:

CITY

Sandra S. Chase, City Clerk
City of Edmonds
121 - 5th Avenue North
Edmonds, WA 98020

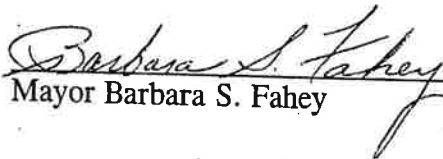
PORT

Bill Toskey, Exec. Dir.
Port of Edmonds
336 Admiral Way
Edmonds, WA 98020

11. A copy of this Agreement shall be filed of record with the Snohomish County auditor following its execution.


CITY OF EDMONDS

By:



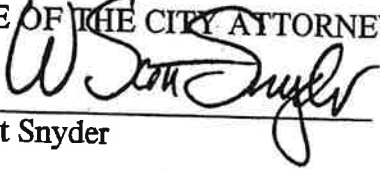
Mayor Barbara S. Fahey

ATTEST/AUTHENTICATED:



Sandra S. Chase, City Clerk

APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY

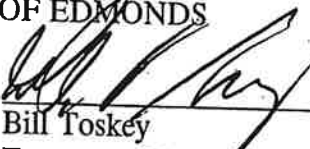


W. Scott Snyder

WSS233067.1AGR/F0006.900000/B0006.

PORT OF EDMONDS

By:




Bill Toskey

Its:

Executive Director

APPROVED AS TO FORM



Walter C. Sellers
Attorney for Port of Edmonds

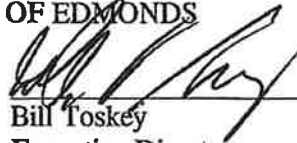
APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY



W. Scott Snyder

PORT OF EDMONDS

By:




Bill Foskey

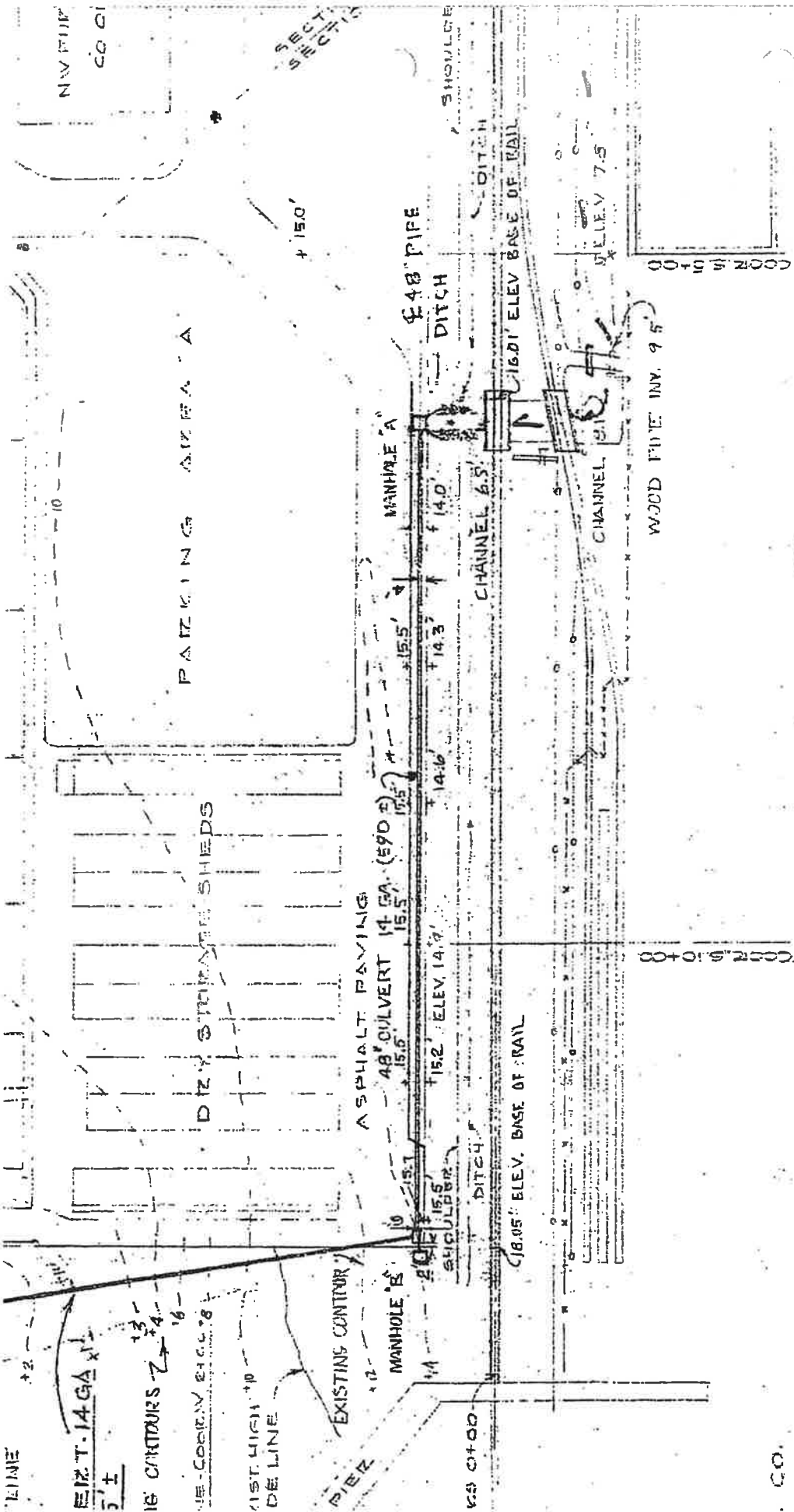
Its: Executive Director

WSS233067.1AGR/F0006.900000/B0006.

APPROVED AS TO FORM



Walter C. Sellers
Attorney for Port of Edmonds



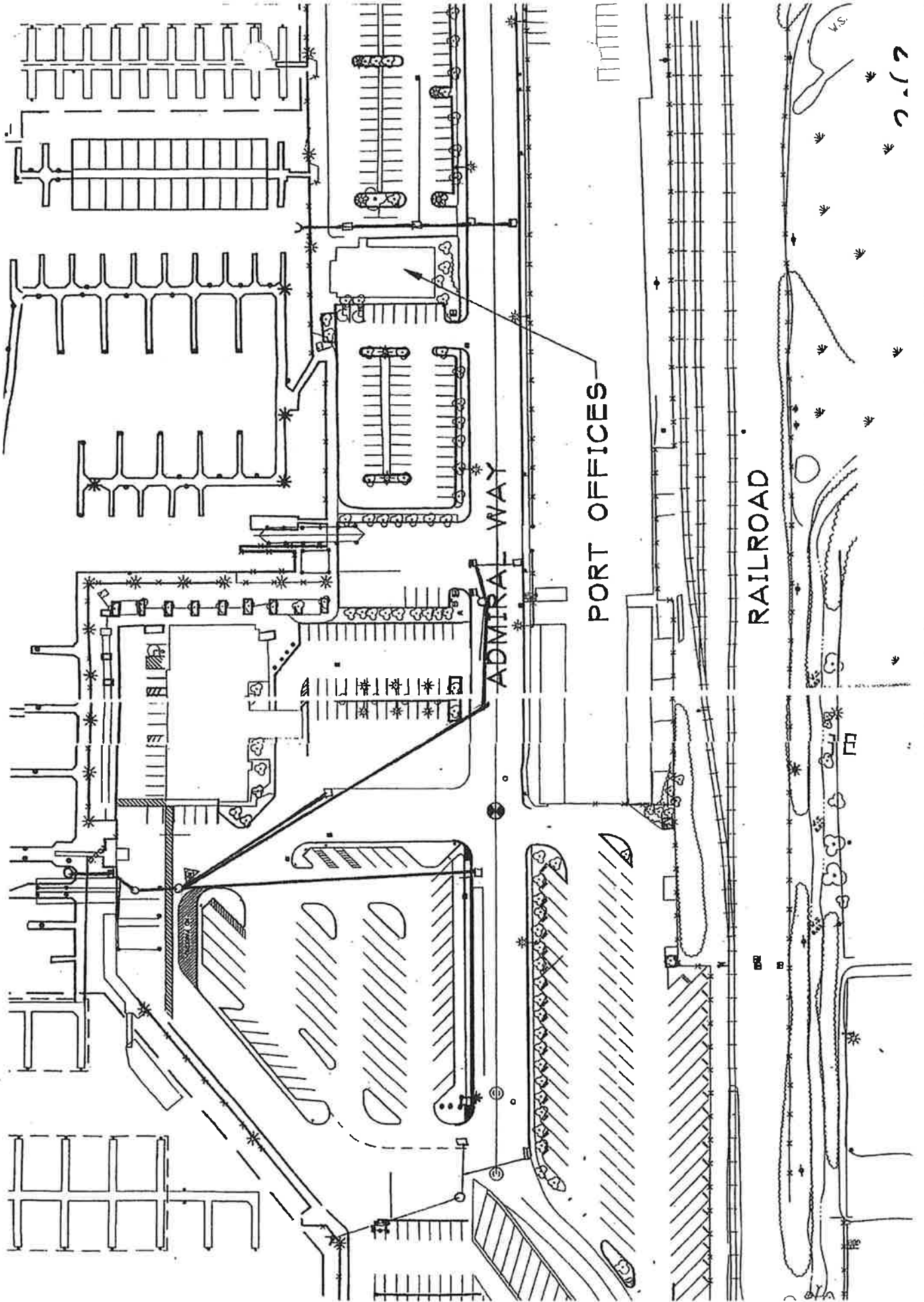
GRAPHIC SCALE
1" = 100'

GENERAL PLAN

NOTE:
MAINTENANCE OF 48" DRAIN LINE FROM DISCHARGE END TO PROPERTY LINE IN THE VICINITY OF MANHOLE SHALL BE BY THE WHICH OIL COMPANY. MAINTENANCE FROM THE PROPERTY LINE TO THE ENTRANCE STRUCTURE SHALL BE BY THE PORT JEWELSONS

EXHIBIT A

EXHIBIT 'A'



7.17

Exhibit 'B'

The following stormwater facilities are owned and maintained by the Port of Edmonds which are to be used to transport stormwater from the City of Edmonds through the Port of Edmonds property.

1. 48" diameter pipeline from the intake structure at Manhole 'A' to Manhole 'B' as shown on the Reid, Middleton & Associates plan and details drawing dated 8-18-81, Sheet 1 of 2, File No. #.5J
2. Any stormwater drainage pipeline which transports stormwater runoff from the Admiral Way City right-of-way through the Port of Edmonds property and discharges into Puget Sound.