

After recording please return to:
City of Kennewick
PO Box 6108
Kennewick WA 99336

INTERLOCAL COOPERATIVE AGREEMENT
RELATING TO
SOUTHRIDGE REVITALIZATION AREA

This Interlocal Cooperative Agreement (the "Agreement") is made and entered into as of July 28, 2009, by the City of Kennewick, Washington, a municipal corporation and code city of the State of Washington (the "City"), and the Port of Kennewick, a municipal corporation of the State of Washington (the "Port").

RECITALS

WHEREAS, the City is authorized by Second Substitute Senate Bill 5045 (Chapter 270, Laws of 2009) (the "Act") to establish "revitalization areas" and to use "local revitalization financing" therein to finance "public improvements" that are reasonably likely to increase private investment and employment within such revitalization areas and generate increases in state and local property, sales, and use tax revenues;

WHEREAS, the City has created on the date hereof, pursuant to Ordinance No. 5265 (the "Ordinance"), a revitalization area designated as the "Southridge Revitalization Area" (the "Revitalization Area"); and

WHEREAS, the City and the Port wish to evidence their respective agreements pertaining to the use of "local property tax allocation revenues" for purposes of local revitalization financing of public improvements within the Revitalization Area; and

WHEREAS, the City and the Port recognize that there are various partners that will contribute towards the cost of public infrastructure in the Revitalization Area to include commitments outlined in developer agreements; and

WHEREAS, in 2004 the Port sold land in the Southridge area to Southridge Village, LLC, and pursuant to the purchase and sale agreement, the developer was obligated to build certain roads within the proposed LRF boundaries and those roads are depicted on Exhibit "A", attached hereto; and

WHEREAS, certain roads set for in Exhibit "A" were bargained-for consideration by the Port and said consideration resulted in the Port establishing the purchase price for its Southridge property; and

WHEREAS, using Port funding to build the roads as referenced above would not be in the best interests of the public and could result in legal and state audit liability to the Port; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, and the benefits to be realized by each party and by the general public from the creation of the Revitalization Area, the City and the Port agree as follows:

1. Authority and Purpose. This Agreement is entered into pursuant to the authority of chapters 39.34 RCW and the Act. This Agreement sets forth the Port's approval of and agreement to, pursuant to Sections 106 and 201 of the Act, the City's use of the Port's share of "local property tax allocation revenues" (as defined in Section 102(6) of the Act) with respect to the Revitalization Area for local revitalization financing of the Public Improvement Costs of the Public Improvements (as such terms are defined in the Ordinance). [Any changes to the Public Improvements where the Port funds are being allocated shall require the written consent of the Port].

2. Timing of Property Tax Distributions. Commencing on January 1, 2011, the "local property tax allocation revenues" (including the portion thereof attributable to the Port's property tax) with respect to the Revitalization Area, not to exceed \$14,000 annually, will be distributed by the County Treasurer pursuant to Section 201 of the Act and used by the City for the purposes described by Section 1 of this Agreement. Such distributions shall terminate on the earlier of: (i) the date such revenues are no longer obligated to pay the costs of the Public Improvements, whether such obligation is evidenced by LRF Bonds (as defined in the Ordinance) or contracts relating to pay-as-you-go projects being financed with such local revitalization financing; or (ii) December 31, 2035 (provided, that any delinquent taxes collected after such date that were due on or before December 31, 2035, shall be distributed to the City to the extent the tax revenue so collected is attributable to "property tax allocation revenue value" (as defined in Section 102(13) of the Act)) with respect to the Revitalization Area. The City agrees to receive less than the full amount of the additional portion of regular property taxes permitted by the Act.

3. Interlocal Cooperation Act Required Provisions.

(a) Duration. This Agreement shall continue until the earlier of (i) the date that all obligations to distribute money to the City under Sections 2 and 3 of this Agreement have expired, or (ii) December 31, 2035.

(b) Organization of Separate Entity and Its Powers. No separate legal entity is intended to be created pursuant to this Agreement.

(c) Purpose. See Section 1 above.

(d) Manner of Financing and Establishing and Maintaining a Budget. The financing of the Public Improvements will be accomplished in the manner described under Sections 1, 2 and 3 of this Agreement. The parties adopt Section 5 of the Ordinance as the budget for such expenditures.

(e) Termination and Disposal of Property. Except as agreed in writing by the parties, this Agreement may not be terminated any earlier than as provided in section 3(a) above. Title to all property acquired by any party in the performance of this Agreement shall remain with the acquiring party upon termination of this Agreement.

(f) Administration of this Agreement. The Port hereby designates the Port's Executive Director as its representative for the purpose of implementing this Agreement on behalf of the Port. The City hereby designates the City Manager as its representative for the purpose of implementing this Agreement on behalf of the City.

(g) Manner of Acquiring, Holding and Disposing of Property. All real and personal property acquired pursuant to this Agreement shall be acquired by the City, held by the City and disposed in such manner as the City determines from time to time.

(e) Agreement to be Filed. The City shall file this Agreement with its City Clerk. The Port shall file this Agreement with the Port.

4. Public Improvements.

(a) The City shall direct the Port's portion of property tax collections, as noted in Section 1 and 2 above, to Hildebrand Boulevard and the Water and Sewer System Construction Projects.

(b) The City will work with the Port to fund public infrastructure and public amenities on Clover Island and the Columbia Drive, "Cable to Causeway" areas as appropriate over the next seven years; and

(c) The roads and streets set forth and highlighted in yellow on Exhibit "A" will not be funded with Port funds that are collected by the City for public funding through the LRF and no Port funds collected by the City shall be utilized for the construction of said improvements that include but not limited to the roads and streets; and,

(d) The City agrees that it will not initiate an LID that encompasses property that is owned by the Port within the LRF area.

5. Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

6. Counterparts. The parties may sign this Agreement in one or more counterparts hereto and each counterpart shall be treated as an original.

7. Binding Effect. Both parties have full power and authority to execute and deliver this Agreement and to perform their respective obligations under this Agreement. This Agreement constitutes a valid and binding obligation of the Port and the City and is enforceable in accordance with its provisions.

8. Notice. Any formal notice or communication to be given under this Agreement shall be deemed properly given if delivered or if mailed by certified mail, postage prepaid and addressed:

To: City of Kennewick
210 West 6th Avenue
P.O. Box 6108
Kennewick, WA 99336

To: Port of Kennewick
350 Clover Island Dr., Ste 200
Kennewick, WA 99336

9. Waiver and Amendment. No waiver by any party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or any subsequent breach, whether of the same or a different provision of this Agreement. No term or condition shall be waived, modified, changed or deleted except by an instrument, in writing, signed by the parties hereto.

10. No Third-Party Beneficiaries. The parties to this Agreement do not intend by this Agreement to assume any contractual obligations to anyone other than the parties to this Agreement.

11. Governing Law. This Agreement is made and entered into in the State of Washington and shall be governed by and construed and enforced in accordance with the laws of the State of Washington. Should any dispute arise concerning the enforcement, breach or interpretation of this Agreement, venue shall be placed exclusively in Benton County, Washington, provided that the parties shall first submit the matter to mediation and non-binding arbitration pursuant to the rules of said court. The prevailing party shall be entitled to its reasonable attorney fees and costs and additional judgments.

12. Entire Agreement; Amendments. This Agreement constitutes the entire Agreement of the Jurisdictions with regard to the LRF and, except as set forth herein, supersedes all prior written and oral agreements and representations. All amendments to this Agreement must be in writing and signed by each Jurisdiction.

(Signatures appear on the following page.)

IN WITNESS WHEREOF, the parties have executed the Agreement and it shall be effective as of the last date of execution below.

CITY OF KENNEWICK, WASHINGTON

Robert R. Hammond

City Manager

ATTEST:

Valerie J. Duffler

City Clerk

(SEAL)

PORT OF KENNEWICK, WASHINGTON

[Signature]

Port of Kennewick Executive Director

ATTEST:

Mary J. Fitch

Port of Kennewick

(SEAL)

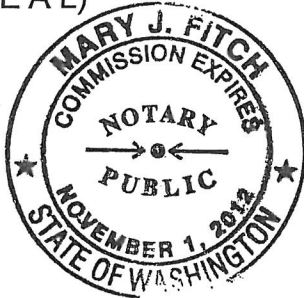


Exhibit A

