

**FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT  
BETWEEN THE  
CITY OF SUMNER AND THE CITY OF PACIFIC FOR  
DESIGN, RIGHT-OF-WAY AND CONSTRUCTION OF THE  
136<sup>TH</sup>/VALENTINE CORRIDOR IMPROVEMENTS**

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**THIS AGREEMENT** is entered into pursuant to RCW 39.34, the Interlocal Cooperation Act, between the **CITY OF SUMNER**, a Washington municipal corporation, located and doing business at 1104 Maple Street, Sumner, Washington 98390 (“Sumner”), and the **CITY OF PACIFIC**, a Washington municipal corporation, located and doing business at 100 3<sup>rd</sup> Avenue S.E., Pacific, Washington 98047 (“Pacific”), together referred to as the “Parties”, for the purpose of reconstructing 136<sup>th</sup>/Valentine Avenue from 24<sup>th</sup> Street in Sumner to County Line Rd in Pacific.

**WHEREAS**, the Parties entered into an Interlocal Agreements for the design and construction and corresponding financing of the 136<sup>th</sup>/Valentine Project (the “Project”); and

**WHEREAS**, Pacific formed Local Improvement District No. 6 (“LID No. 6”), pursuant to its Ordinance No. 1806, approved on August 11, 2011.

**WHEREAS**, the Interlocal Agreements were adopted by Sumner Resolution No. 1348 dated April 24, 2012 (corresponding Pacific Resolution No. 12-1171 dated April 23, 2012) and by Sumner Resolution No. 1370 dated December 17, 2012 (corresponding Pacific Resolution No. 12-1221 dated December 10, 2012) and

**WHEREAS**, Sumner was the lead agency for the Project and also initially administered LID No. 6 by providing funding and financing for that portion of the costs; and

**WHEREAS**, the Project is nearly complete and the Parties desire to reallocate the LID funding responsibilities and to further clarify other responsibilities; **NOW THEREFORE**, the Parties agree as follows:

**AGREEMENT**

- A. **Pacific LID No. 6.** Pursuant to the Section B of the Interlocal Agreement authorized by Sumner Resolution No. 1370, Sumner was to assume all responsibility for the Administration of LID No. 6. The Parties agree that such Interlocal should be amended to reflect that Pacific is now (effective as of the effective date of this Agreement) assuming all responsibilities for the administration of LID No. 6. The Parties shall work cooperatively to exchange information and records regarding the Project and Project costs so that Pacific

obtain interim funding, finalize the LID No. 6 assessment roll and proceed to permanent financing. All other financing and/or funding responsibilities set forth in Section B and elsewhere in this or other related Interlocal Agreements shall remain in full force and effect.

B. **Outstanding Costs and Interim Financing.** Sumner submitted to Pacific an invoice reflecting the financial obligations to date for the Project which total approximately \$4.2 million. Pacific shall pay to Sumner said amount by December 31, 2016 by interim financing or by other means.

C. **Ongoing Costs and Expenses.** All Costs and expenses incurred between the date of substantial completion and when the final assessment roll is adopted that are attributable to both parties shall be split in the same manner as costs and expenses as set forth below.

D. **Miscellaneous.**

1. **Funding.**

(a) **Additional Funding.** Should additional funding be required, the Parties agree that each party is responsible for the additional funds required to perform the work falling within its corporate city limits; unless, however, if it is work necessary for the Project as a whole, then the costs for such work will be apportioned at a rate of 33.5% for the City of Sumner and 66.5% for the City of Pacific based upon the total length of the project and the proportional share.

(b) **Delay Costs.** Should additional costs be incurred due to delay of the project, the party to whom the delay is attributable shall be responsible for all costs associated to the delay. If any additional delay costs cannot be attributed to a specific party, then any such cost will be apportioned at a rate of 33.5% for the City of Sumner and 66.5% for the City of Pacific based upon the total length of the project and the proportional share.

2. **Modification.** No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party.

3. **Severability.** If any one or more of the sections, subsections, clauses or sentences of this Agreement is/are held to be unconstitutional or invalid, that unconstitutionality or invalidity shall not affect the validity of the remaining sections, subsections, clauses or sentences of this agreement, and the remainder shall remain in full force and effect.

4. **Entire Agreement.** This Agreement and any attached exhibits hereto contain the entire agreement between the parties. Should any language in any exhibit to this Agreement conflict with any language contained in this agreement, the terms of this agreement shall prevail. Written provisions and terms of this

Agreement, together with any attached exhibits, supersede all prior verbal statements by any representative of either party, and those statements shall not be construed as forming a part of or altering in any manner this Agreement.

5. Indemnification. Sumner shall defend, indemnify and hold Pacific, its officers, employees, agents, and assigns harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and reasonable attorney fees, arising from or in connection with the design or construction of the Project, but only to the extent of Sumner's negligence or comparative fault. Pacific shall defend, indemnify and hold Sumner, its officers, employees, agents, and assigns harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and reasonable attorney fees, arising from or in connection with the design or construction of the Project, but only to the extent of Pacific's negligence or comparative fault.

6. Project Coordination, Dispute Resolution and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If a dispute arises from or relates to this Agreement or the breach thereof, resolution of the dispute shall be as follows:

(a) Attempted through direct discussions as follows: (1) Pacific's designated contact person and Sumner's designated Project Manager shall make every effort to identify the problem(s) and resolve issues at their level to the satisfaction of both parties; (2) Should they fail to resolve the disputed issue, then the Sumner Project Manager, in coordination with Pacific's designated contact person, shall attempt to narrow the issue in dispute for consideration by the Public Works Director of Sumner and the City Administrator for Pacific shall determine if the dispute can be resolved through negotiations; (3) If the Public Works Director of Sumner and the City Administrator for Pacific are unable to resolve the dispute, then they shall each select, in addition to Sumner's PM and Pacific's contact person, one additional representative from among its employees who, together shall form a dispute resolution panel to resolve the dispute. (4) Should the dispute resolution panel be unable to settle any difference or claim arising from the parties' performance of this Agreement or the breach thereof through direct discussions, then the procedures as set forth in the ensuing paragraph (b) shall be employed as the means for resolving the dispute.

(b) The parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies. The mediator may be selected by agreement of the parties or through JAMS. All fees and expenses for mediation shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. Following mediation, or upon written agreement of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be resolved by filing suit exclusively under the venue, rules and jurisdiction of the Pierce County

Superior Court, Pierce County, Washington. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section 7 of this Agreement.

7. Review Committee. The Parties shall appoint a committee to review the progress of the Project and advise and make recommendations on design, functions and scope of the Project. The committee shall be made up of two representatives from Pacific (Richard Gould and Jim Morgan) and two representatives from Sumner (PM being one). The PM from Sumner shall be the chair person for this committee.

8. Written Notice. Unless notified to the contrary, all communications regarding this Contract shall be sent to the parties as follows:

<p><b>CITY OF SUMNER:</b></p> <p>Mike Dahlem, P.E. Interim Public Works Director City of Sumner 1104 Maple Street Sumner, WA 98390 253-299-5702 (telephone) 253-299-5539 (facsimile)</p>	<p><b>CITY OF PACIFIC:</b></p> <p>James Morgan, PE Public Works Manager City of Pacific 100 3<sup>rd</sup> Avenue S.E. Pacific, WA 98047 253- 253-929-1113(telephone) 253-939-6026(facsimile)</p>
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Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract or such other address as may be hereafter specified in writing.

9. Full Force and Effect. Unless specifically amended by this First Amendment all other terms, conditions, and responsibilities of the Interlocal Agreements identified in the recitals above shall remain in full force and effect.

AGREED TO ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2016.

[SIGNATURE PAGE FOLLOWS]

**THE CITY OF SUMNER:**

*David L. Enslow*

David L. Enslow, Mayor

**THE CITY OF PACIFIC:**

*Leanne Guier*

Leanne Guier, Mayor

APPROVED BY SUMNER CITY COUNCIL MOTION ON 7 November 2016

APPROVED BY PACIFIC CITY COUNCIL MOTION ON 11/14/16

ATTEST:

*Michelle Converse* (SEAL)  
MICHELLE CONVERSE  
SUMNER CITY CLERK

ATTEST:

*Amy Stevenson-Ness* (SEAL)  
AMY STEVENSON-NESS, CMC  
PACIFIC CITY CLERK

APPROVED AS TO FORM:

*Brett C. Vinson*  
BRETT C. VINSON  
SUMNER CITY ATTORNEY

APPROVED AS TO FORM:

*Cynthia Weed*  
CYNTHIA WEED  
SPECIAL COUNSEL FOR THE  
CITY OF PACIFIC