

RESOLUTION 2014-19

A RESOLUTION ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE PORT OF GARIBALDI FOR CONSTRUCTION MANAGEMENT AND ENGINEERING/SURVEYING SERVICES

WHEREAS, the Port of Garibaldi (Port) has secured funding for the purpose of reconstructing street infrastructure located in public right of ways controlled by the City of Garibaldi; and,

WHEREAS, the Port requires the services of a licensed professional engineer and land surveyor for the purpose of construction management, engineering services and project surveying; and,

WHEREAS, the City of Garibaldi (City) desires to offer engineering and surveying services to the Port of Garibaldi to facilitate the reconstruction of Commercial Avenue, Mooring Basin Road and South Seventh Street in Garibaldi; and,

WHEREAS, the City employs a licensed professional engineer and land survey capable of providing these services to the Port; and,

WHEREAS, the City and the Port are willing to enter into an IGA that adequately compensates the City for the cost of providing its personnel to the Port; and,

WHEREAS, this IGA is made pursuant to ORS 190.010, which provides that units of local government may enter into agreements for the performance of any and all functions and activities that any party to the Agreement, or its officers or agents, has the authority to perform; and,

WHEREAS, the Garibaldi City Council has reviewed this agreement and determines it to be in the best interests of the City,

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF GARIBALDI RESOLVES AS FOLLOWS:

Section 1. The Mayor is hereby authorized to sign the Intergovernmental Agreement (IGA) with the Port of Garibaldi, which is attached as **Exhibit A** and incorporated by reference into this resolution, on behalf of the City of Garibaldi.

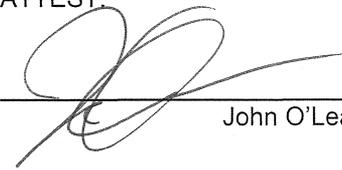
Section 2. This resolution is effective upon passage by the Garibaldi City Council.

PASSED BY THE COMMON COUNCIL AND APPROVED BY THE MAYOR, this 25th day of August, 2014.



Hon. Suzanne McCarthy, Mayor

ATTEST:



John O'Leary, City Manager

Attached **Exhibit A** – Intergovernmental Agreement between the City of Garibaldi and the Port of Garibaldi

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
CITY OF GARIBALDI AND PORT OF GARIBALDI**

This Intergovernmental Agreement (IGA or Agreement) is entered into by the CITY OF GARIBALDI, an Oregon municipal corporation, and PORT OF GARIBALDI, an Oregon municipal corporation (collectively “parties”), effective August 11, 2014.

The parties agree as follows:

RECITALS

- A. This IGA is made pursuant to ORS 190.010, which provides that units of local government may enter into agreements for the performance of any and all functions and activities that any party to the Agreement, or its officers or agents, has the authority to perform.
- B. CITY OF GARIBALDI (“City”) owns and operates water, sanitary sewer, storm sewer and street systems along with related appurtenances within Commercial Avenue in the City of Garibaldi. The City employs certain persons responsible for operations and management of these systems.
- C. PORT OF GARIBALDI (“Port”) owns and leases properties, buildings and wharfs adjacent to Commercial Avenue within the boundaries of the Port and employs certain persons responsible for operations and management of these facilities.
- D. The Port desires to rebuild City right of way infrastructure, including but not limited to, streets, sidewalks, utility lines and conduits, and stormwater drainage systems located within the Commercial Avenue right-of-way following reconstruction of the wharf.
- E. The Port is in need of, and City is able and willing to provide, personnel qualified to perform engineering inspection and construction surveying services to Port for its reconstruction of Commercial Avenue
- F. At all times covered by this IGA, City is the “Owner” of the infrastructure within the right-of-way of Commercial Avenue and employs certain persons to operate, manage and maintain the infrastructure.
- G. At all times covered by this IGA, Port is the “Owner” of its infrastructure adjacent to and outside of the Commercial Avenue right-of-way.
- H. This IGA establishes the terms under which City and Port agree to share City personnel to assist Port in the reconstruction of Commercial Avenue.

**Exhibit A - A RESOLUTION ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE
PORT OF GARIBALDI FOR CONSTRUCTION MANAGEMENT AND ENGINEERING/SURVEYING
SERVICES**

TERMS

Section I. General Provisions

1. **Initial and Additional Term.** The Initial Term of this IGA will be a period of one year, beginning on its Effective Date. At the expiration of the Initial Term, the IGA shall be renewed as established or as amended by the parties, for a mutually agreed amount of time necessary to complete construction should construction not be complete.
2. **Amendments.** This IGA may be amended provided the amendment is reduced to writing and signed by the parties. Any amendment shall be attached to and made a part of the IGA by incorporation. Unless stated otherwise, an amendment shall be effective as of the date last signed by a party.
 - a. **Change in Law Affecting Services.** Any change in law, rule, or regulation affecting the services performed under this IGA shall not require a modification of this IGA or its exhibits. However, if either party determines a change in law, rule, or regulation materially affects the City's ability to perform services or the charges to Port for services, the parties may at any time mutually agree to amend the IGA as appropriate under the circumstances.
 - b. **Charges for Service.** See Section II(5) for charges established for services.
3. **Termination.** The parties may mutually agree to terminate this IGA at any time. The Port may terminate this IGA at any time with thirty (30) days written notice to City. City may terminate this IGA at any time with sixty (30) days' notice to Port.
4. **Dispute Resolution; Arbitration; Attorney Fees.**
 - a. Dispute Resolution. The parties agree to first attempt to resolve any complaint or problem through their respective managers in an informal process. If such process is unsuccessful, the parties may choose to mediate the dispute by an appointee of each of the governing bodies, or by the governing bodies, as the parties determine appropriate in the circumstances.
 - b. Arbitration. If any disputes, disagreements, or controversies arise between the parties pertaining to the interpretation, validity, or enforcement of this agreement, the parties shall, upon the request of either party, submit such dispute to binding arbitration. Except as otherwise provided in this agreement, arbitration shall be requested by delivering to the other party and written request for arbitration. Within five (5) days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the parties cannot agree upon an

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arbitrator within five (5) days, an arbitrator may be appointed by the Tillamook County Circuit Court, upon the request of either party submitted in accordance with Oregon's Uniform Arbitration Act, ORS 36.600, *et seq.* If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the parties.

- c. Attorney Fees. If either party commences any arbitration, suit, or proceeding against the other to rescind, interpret or enforce the terms of this agreement, the parties agree that the prevailing party shall be awarded reasonable attorney's fees and costs incurred in any such arbitration, action, suit or proceeding and in any later appeals filed as a consequence thereof. Such costs shall bear interest at the maximum legal rate from the date incurred, until the date paid by the losing party.

5. Insurance and Indemnification.

- a. Each party shall be responsible, to the extent allowed by law (including the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300), only for the acts, omissions or negligence of its own officers, employees or agents
- b. During the term of this Agreement, each party shall maintain, at its own expense, the following types of insurance in the following amounts:
 - i. Occurrence form commercial general liability insurance, including coverage for premises operations, independent contractors, protected products, completed operations, contractual liability, personal injury, and broad form for property damage (including coverage for explosion, collapse, and underground hazards):

- \$2,000,000 – each occurrence (bodily injury)
 - \$2,000,000 – general aggregate
 - \$1,000,000 – property damage, contractual, etc.
 - \$1,000,000 – umbrella liability coverage

Coverage shall also include contractual liability coverage for the indemnity provided under this Agreement.

- ii. Automobile Liability insurance limit shall not be less than \$1,000,000 combined single limit per accident.
 - iii. Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$1,000,000 per occurrence.

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- iv. The limits required in this Section 7.1 may be met with a combination of underlying and umbrella coverage.
 - c. Policies shall provide that the other party, its governing body, officers, representatives, employees, and agents will be included as an additional insured with respect to the coverages required in Section 7.b.i and Section 7.b.ii and a waiver of subrogation against them shall be obtained for all coverages.
 - d. Each party shall furnish the other with certificates of insurance evidencing all required coverages prior to commencing any work or services under this Agreement. Upon request, each party shall furnish the other with executed copies of such policies of insurance. Each party shall furnish the other with at least 30 days' written notice of cancellation of, or any modification to, the required insurance coverages. Failure to maintain any required insurance coverages in the minimum required amounts shall constitute a material breach of this Agreement and shall be grounds for immediate termination of this Agreement.
 - e. To the extent allowed under the Oregon Constitution and the Oregon Tort Claims Act, each party shall indemnify and hold harmless the other party from all claims, damages, or expenses of any kind, including attorney's fees and other costs and expenses of litigation, for personal or property damage arising out of the indemnifying party's performance required by this Agreement.
 - f. City's performance of services is conditioned upon Port's compliance with applicable law, including Oregon Public Contracting Code and Ports public contracting rules.
6. **Delegation of Authority.** The City Manager of the City of Garibaldi, and the Manager of the Port of Garibaldi, shall be the respective agents authorized to implement this IGA.
7. **Notice.** Unless specified otherwise, notice provided under this Agreement shall be effective the date mailed or sent electronically to the parties as follows:
- | | |
|--|--|
| John O'Leary, City Manager
City of Garibaldi
P.O. Box 708, 107 Sixth Street
Garibaldi, Oregon 97118
john@ci.garibaldi.or.us
503-322-3327 | Mike Saindon, Port Manager
Port of Garibaldi
P.O. Box 10, 402 S. Seventh Street
Garibaldi, Oregon 97118
manager@portofgaribaldi.org
503-322-3292 |
|--|--|
8. **Integration.** This IGA supersedes all prior oral or written agreements between City and Port. It represents the entire agreement between the parties.

Exhibit A - A RESOLUTION ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE PORT OF GARIBALDI FOR CONSTRUCTION MANAGEMENT AND ENGINEERING/SURVEYING SERVICES

9. **Severability.** Should any clause or section of this IGA be declared by a court of competent jurisdiction of the State of Oregon to be void or voidable, the remainder of this IGA shall remain in full force and effect to the extent practicable under the circumstances.

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10. **Waiver.** Failure to enforce any provision of this IGA does not constitute a continuing waiver of that provision, any other provision, or of the entire IGA. The rights and duties under this IGA shall not be modified, delegated, transferred or assigned, except with the written consent of both parties.
11. **Jurisdiction; Law.** This IGA is executed in the State of Oregon and is subject to Oregon law and jurisdiction. Venue of any claim or suit shall be in Tillamook County, unless otherwise agreed by the parties.
12. **Construction.** The parties agree and acknowledge that the parties had the advice of counsel in the drafting of this Agreement, and that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not apply to interpretation of this Agreement.
13. **No Third Party Beneficiaries.** City and Port are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons.

Section II. City Responsibilities

1. **City Services to Port.** City will oversee the reconstruction of Commercial Avenue's infrastructure and review construction for compliance with the construction documents and specifications, in conformance with the Scope of Services set forth in Exhibit A attached hereto and incorporated herein by this reference.
2. **Personnel for Services.** City will make available City personnel to Port, including but not limited to at least one City employee who is currently Registered and Licensed in the State of Oregon to provide Civil Engineering and Land Surveying services for services defined by ORS Chapter 672, to perform the services detailed in Section II.2 until such time as this IGA is terminated or otherwise expires.
3. **Services Performed.** City will furnish all labor, professional and technical services for the purpose of fulfilling construction staking and inspection services, excluding all compaction pressure testing services, as required to comply with the specific engineering documents associated with construction of public infrastructure within the City's right of way as further detailed in Exhibit A. Said services shall be provided in accordance with a work schedule, to be provided by Port and pre-approved by City on a weekly basis.
4. **City Personnel.** At all times under this IGA, City employees providing services to Port shall remain employees of City and under City supervision. City is wholly responsible for its employees including assigning employee duties, paying all wages and benefits (including but not limited to insurance and workers

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compensation), paying payroll tax, and applying all laws, regulations, and policies relating to employment, including any adopted personnel rules.

5. **Notice of Authorized Personnel.** City will provide Port written notice identifying City personnel authorized by City to provide services to Port, including contact information for each such person. City will notify Port of any changes in such authorized personnel at least 30 days prior to the change taking effect.

6. **Charges for Service.**

a. City shall charge Port \$75 per City employee staff hour for services provided by City under this IGA. City will submit monthly invoices to Port detailing the previous month's services, and associated costs and fees.

b. The hourly charge is based on the following assumptions:

i. Labor and services will be billed at a flat, hourly rate of \$75 per hour, to be calculated in quarter-hour increments, and includes transportation, surveying equipment, engineering/ surveying computer software/hardware and all City's indirect costs.

ii. The parties estimate the service hours required per month will be greater during surveying operations than that of inspection services. An estimated average of 8-16 hours per week is anticipated during construction, not including any emergencies.

iii. The City will make its staff as described in this agreement available to the Port during normally scheduled work hours as established by the City for such staff. The City has the option of making its staff available outside of their regular work schedule at the hourly rates described in §II.6(b)(i).

iv. The hourly rate includes the use of all City-owned equipment, vehicles or tools used by City personnel to perform services, including the cost of any repair or replacement of such equipment, vehicles or tools.

c. Before May 29, 2015, the parties will review the services performed and make any mutually agreed adjustments to charges as provided in Section I(4)(b), Amendments.

7. **Additional Services, Equipment, Materials, Supplies.** Port is responsible for obtaining any services, equipment, materials, or supplies necessary for services

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to be performed, including repairs, in the event City does not desire to use or provide such equipment, materials or supplies owned by the City. At the request of Port and pursuant to City contracting rules, City may arrange to procure equipment, materials or supplies to be used for providing services to Port. The Port will be responsible for payment in full of any such procurement. The Port will own such equipment, materials or supplies unless the respective managers of the parties mutually determine otherwise in writing.

8. **Security Responsibility.** Port is the ultimate authority responsible for security of its system and facilities. City will cooperate with Port's security requirements.
9. **Reports and Records.** City will ensure that personnel assigned under this IGA record and report on work performed by City staff as described in this agreement to Port and City on a monthly basis or as otherwise determined appropriate by the parties.
10. **Access to Records; City as Agent.** Port will have access to all City documents, records, and reports regarding services performed. All records associated with the work performed under this agreement must be maintained as required by City and Port public records retention schedules. City will act as Port's agent and assigned personnel are authorized to sign on Port's behalf such reports and other documents as may be required under Oregon rules.

Section III. Port Responsibilities

1. **Information on System.** Port is responsible for providing all required or necessary information to City employees so City may perform the services as required. This includes notifying City of any changes made to the Construction Documents.
2. **Services, Equipment, Materials and Supplies.** Port is responsible for providing all services, materials, supplies, and equipment needed for City to provide services in Section II (6). City may arrange to procure equipment, materials or supplies to be used for providing services to Port at City's expense.
3. **Payment for Services.** Port is responsible for paying City for services provided under this IGA within 20 days of receipt of a statement from City for services performed the previous month, as specified in Section II(5).
4. **Security Responsibility.** Port is responsible for security of its property and facilities.
5. **Port Responsibility for Port Personnel.** Port acknowledges City's responsibility for services provided during construction. Port is responsible for ensuring its employees do not interfere with City's services provided under this IGA.

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PORT OF GARIBALDI

Mike Saindon, Port Manager

CITY OF GARIBALDI

Suzanne McCarthy, Mayor

Attest: _____
John O'Leary
City Manager/Recorder

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**EXHIBIT A
SCOPE OF SERVICES**

1. Pursuant to OAR 333-061-0225 the Port of Garibaldi, as the responsible party for the contracting of construction services to reconstruct Commercial Avenue's infrastructure, delegates the responsibility to the City of Garibaldi of:

- a. Topographic surveying
- b. Engineering designs for all Infrastructure improvements
- c. Construction surveying
- d. Construction inspection/administration services
- e. Certifying construction is in compliance with the Construction Documents
- f. Similar services as agreed to by both parties

2. Infrastructure improvements and their related engineering/surveying tasks include but are not limited to the following.

Provide engineering, surveying and project management services to the Port of Garibaldi for several projects under the TIGER Grant program. The assistance will include project management, data collection, coordination, design, drawing and specification preparation, advertising and bidding, contractor selection, construction management support, record drawings, and project closeout. The engineer will be required to prepare plans and permits for 1200-C DEQ permitting. There are five projects that will be bid as one project for bidding purposes. All projects will be designed per City of Garibaldi and Oregon Standard Specifications for Construction Standards.

- a. Commercial Avenue Improvements.
- b. Data collection.
- c. Right of way delineation.
- d. Preparation of drawings and specifications for roadway and pedestrian facilities, street lighting, storm sewer, and sanitary sewer improvements.

B. Commercial Avenue Water system improvements.

- a. Data collection and system review.
- b. Design of looped waterline including services, fire hydrants and connect to existing.
- c. Preparation of drawings and specifications for water system construction.

C. Undergrounding of Private Utilities.

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- a. Private utility coordination.
- b. Preparation of drawings and specifications for construction.

D. Wharf truck and marina access.

- a. Meet with local stakeholders to determine trucking needs.
- b. Preparation of plans and specifications to accommodate truck access for commercial wharf use.

E. Hwy 101 to Commercial Avenue.

- a. Data collection.
- b. Meet with stakeholders to review options.
- c. Preparation of drawings and specifications for construction.
- d. Redesign intersection of South Biak Avenue and Mooring Basin Road
- e. Improve traffic and pedestrian flow.
- f. Design repair of degraded asphalt in front of boat ramp on Mooring Basin Road with Portland Concrete.
- g. Design improvements on South Seventh Street between Biak Avenue and Hwy 101 N. in accordance with the attached concept plan.

3. City will provide the day to day surveying, engineering, construction inspection services and perform all tasks necessary within the scope of this IGA for the reconstruction of Commercial Avenue, Mooring Avenue, Biak Avenue intersection with S. 7th Street, S. 7th Street, and the intersection of S. 7th Street and Hwy. 101 N all according to state and federal statutes, rules, regulations, standards, codes and policies.

4. City will be available on call 24 hours a day and able to respond within 1 hour of an emergency.

5. City is solely responsible for its employees safely conducting all operations in order to avoid the risk of endangerment to health, bodily harm to persons, and damage to property. City is responsible for inspecting all equipment and services provided to Port to determine any condition that appears to present a risk and to correct any such condition.