

May 16, 2013

Stephanie Johnson, Arts & Events Program Manager
Olympia Parks, Arts & Recreation
P.O. Box 1967
Olympia, WA 98507-1967

RE: **Interlocal Agreement – “Windstar” Sculpture**
Art at Port Plaza

Dear Stephanie:

Enclosed herewith please find one fully executed inked copy of the Interlocal Agreement between City of Olympia and Port of Olympia dated 4/30/13 for the “Windstar” Sculpture to be installed at Port Plaza.

I look forward to meeting with you on Tuesday, May 21st at 11:00 am for the logistical discussion on getting this piece of art relocated and installed at Port Plaza.

We are happy we were able to accommodate such request for the enjoyment and viewing of our community!

Best regards,



Michele Jorgenson
Interim Property Manager
michelej@portolympia.com

Enclosure

Cc: Linda Oesterich – cover only
Clarita Mattox
File

INTERLOCAL AGREEMENT
Between
CITY OF OLYMPIA and PORT OF OLYMPIA
Regarding
INSTALLATION AND MAINTENANCE OF "WINDSTAR" SCULPTURE

This Interlocal Agreement is made and entered into this 30th day of April, 2013, by and between the Port of Olympia, a port district organized under the laws of the State of Washington, hereinafter referred to as "Port", and the City of Olympia, a city organized under the laws of the State of Washington, hereinafter referred to as "City", collectively hereinafter referred to as the "parties". This Agreement is made pursuant to the Washington Interlocal Cooperation Act, RCW Chapter 39.34.

Recitals

- A. The Port is a port district organized under the authority of RCW Title 53.
- B. The City is a city organized under the authority of RCW Title 35.
- C. RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.
- D. RCW 39.34.080 authorizes one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized to perform, provided that such contract shall be authorized by the governing body of each party to the contract.
- E. The City acquired the sculpture "Windstar" by Ross Matteson, and the City requests and the Port agrees to place "Windstar" in a certain location in the Port Plaza in the Port's Market District, where "Windstar" can be viewed by the public, for the benefit of the public served by the Port and the City. The Port Plaza site was recommended by the Olympia Arts Commission and is favored by the artist.

NOW, THEREFORE, in consideration for the terms and conditions and mutual promises and obligations contained herein, the parties agree as follows:

Agreement

1. **Purpose.** The parties enter into this Agreement to define the rights, roles, responsibilities, and allocation of costs between the parties, regarding the display of the sculpture "Windstar".
2. **Display of "Windstar".** The City shall have the right to install and display "Windstar" in the Port Plaza in the Port's Market District, at the location identified in Exhibit A attached hereto. The City at its cost shall obtain all permits, licenses, and other approvals required for such installation and display.

3. Maintenance of "Windstar". The City shall be responsible for maintaining "Windstar", and shall have the right to access the Port Plaza for such purpose at all reasonable times, provided that such access and activity by the City shall not disturb or interfere with any other use or user of the Port Plaza. Such maintenance shall include periodic inspection, and cleaning and maintenance and repair as necessary, of the sculpture, and the sculpture base and shall include but not be limited to any damage from exposure, accident, casualty, or vandalism, or the City may remove Windstar, at the City's discretion. The City shall give advance written notice and detailed scope of work to the Port prior to any activity other than inspection, which notice and scope of work shall be subject to the Port's prior written approval, which approval shall not be unreasonably withheld. If the City fails to perform its obligations as provided in this Section 3, the Port may (but is not obligated to) give notice to the City and upon the City's failure to cure such failure within thirty (30) days after receipt of such notice, remove Windstar from the Port Plaza, deliver the sculpture back to the City, and restore the grounds to the same condition as prior to Windstar's installation, at the City's expense.

4. Allocation of Costs. All costs associated with preparation of the area where the sculpture is to be located, and transporting, placing, and maintaining Windstar, and any and all other costs related to Windstar, shall be the responsibility of the City. The Port shall not be responsible for any costs related to Windstar. Notwithstanding the foregoing, each party shall be responsible for its own costs related to the preparation, approval, execution, and filing of this Agreement.

5. Effective Date, Duration, and Termination. This Agreement shall be effective upon execution by all parties hereto and filing or alternative publication pursuant to Section 14 below. The duration of this Agreement shall be perpetual, subject to termination pursuant to this Agreement or applicable law. This Agreement may be terminated at any time by either party upon sixty (60) days advance written notice, and shall be automatically terminated upon removal of Windstar from the Port Plaza. Upon termination of this Agreement, if Windstar has not already been removed from the Port Plaza, then the City, at its cost, shall remove Windstar from the Port Plaza and restore the property where Windstar was located to the condition it was in before Windstar was located on the Port Plaza. The removal and restoration provisions of this Section 5 shall survive termination of this Agreement.

6. Organization; Administration. No separate legal or administrative entity is created under this Agreement. The parties designate the following individuals to manage and administer this Agreement:

City of Olympia:
Linda Oestreich, Director
Olympia Parks, Arts & Recreation
PO Box 1967
Olympia, WA 98507

Port of Olympia:
Clarita Mattox
Real Estate Operations Manager
915 Washington St NE
Olympia WA 98501

All notices required or permitted under this Agreement shall be delivered to the above individuals and addresses, and as otherwise required by law.

7. **Financing.** No joint financing or budget is created under this Agreement. Each party shall be responsible for financing its own undertakings and obligations as set forth in this Agreement.

8. **Property Ownership.** No real or personal property will be transferred or jointly acquired or held under this Agreement. The City shall continue to be the sole owner of Windstar. The Port shall continue to be the sole owner of the Port Plaza.

9. **Legal Obligations.** This Agreement does not relieve either party of any obligation or responsibility imposed upon it by law.

10. **Indemnification.** The City shall defend, indemnify, and hold the Port, its officers, employees, agents, and assigns harmless from any and all claims, injuries, damages, losses, or suits, including but not limited to all legal costs and attorney fees, arising from or related to this Agreement or Windstar. The City's obligations under this Section shall survive any termination of this Agreement.

11. **Complete Agreement.** This Agreement constitutes the complete and final agreement of the parties regarding its subject matter, replaces and supersedes all oral and/or written proposals and agreements heretofore made by the parties regarding the subject matter, and may be modified only by a writing signed by the parties hereto. No waiver, alteration, or modification of any provision of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party.

12. **Non-Appropriation.** Nothing in this Agreement shall be construed as obligating the City or the Port to expend funds, or involve either party in any contract or other obligation for future payment of money, in excess of appropriations authorized by law and administratively available for this work.

13. **Dispute Resolution; Venue; Controlling Law.** If any dispute arises between the parties under this Agreement, the parties shall first seek to resolve the dispute themselves and then through the use of mediation by a mediator mutually acceptable to the parties with the cost of the mediator shared equally by the parties, prior to litigation. All actions and proceedings arising under or related to this Agreement shall be filed and held in Thurston County Superior Court, Thurston County, Washington. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.

14. **Publication of Agreement.** Prior to its entry into force, this Agreement after being signed by the parties shall either be filed for record with the Thurston County Auditor or, alternatively, listed by subject on each party's web site or other electronically retrievable public source, as allowed under RCW 39.34.040, and shall be filed with the respective parties.

15. Access to Port property. The Artist of Windstar, Ross Matteson shall have reasonable access to the Port property for installation of Windstar and the City shall have reasonable access to the Port property for installation, inspection, and maintenance of Windstar subject to the notice requirements outlined in Section 3.

PASSED BY Council of City of Olympia, State of Washington, and signed in authentication thereof this 5th day of February, 2013.

PORT OF OLYMPIA

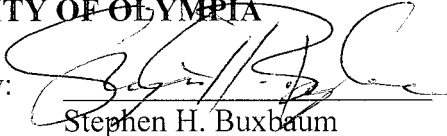
By:



E.B. Galligan
Executive Director

CITY OF OLYMPIA

By:



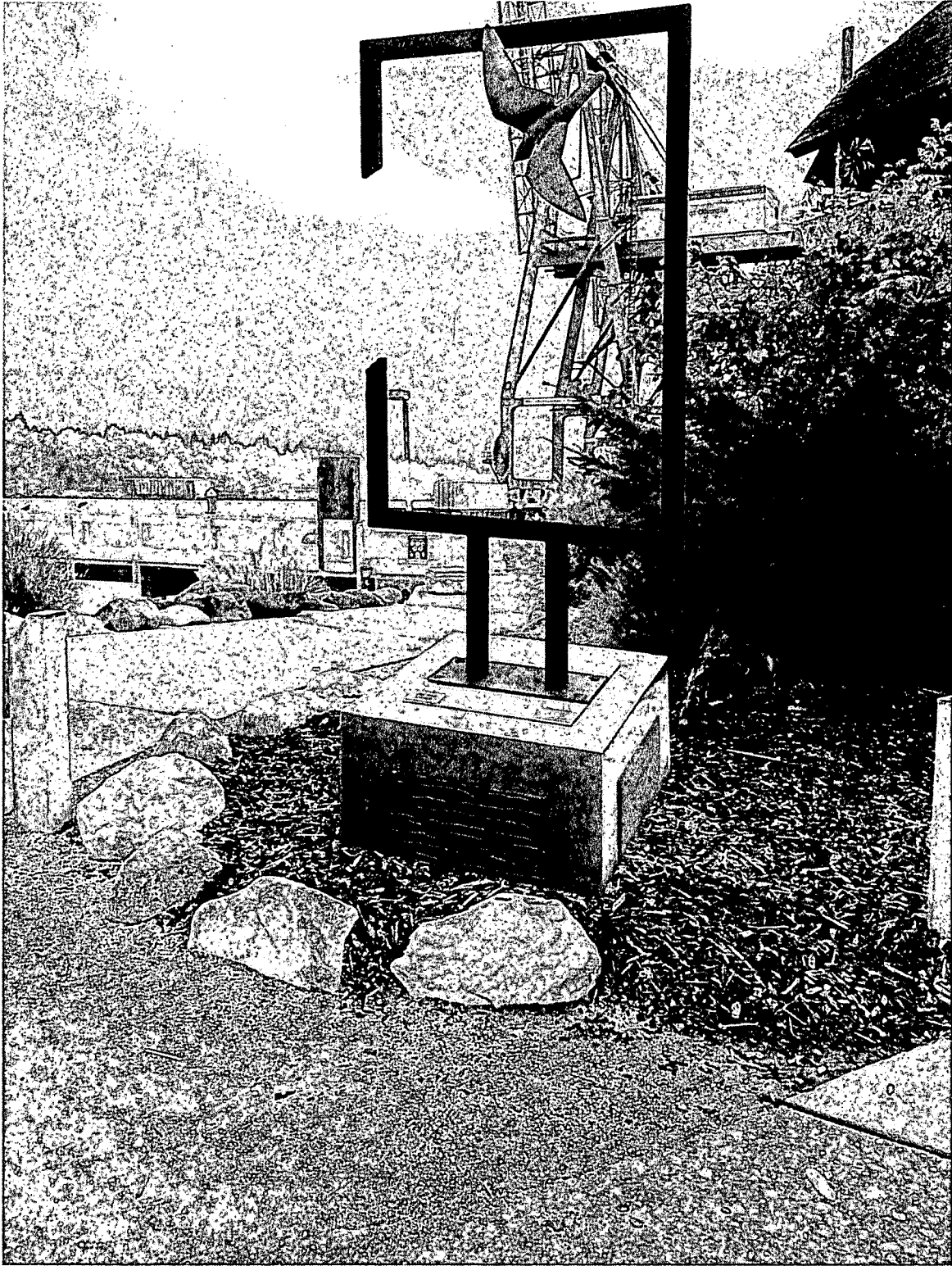
Stephen H. Buxbaum
Mayor

APPROVED AS TO FORM:



Assistant City Attorney

EXHIBIT A
LOCATION OF WINDSTAR IN PORT PLAZA



RATIFICATION

This Lease shall be subject, as a condition subsequent, to ratification by the Port of Olympia Commission within thirty (30) days after the date set forth on Page 1. This **Interlocal Agreement** shall be effective and binding on the parties until such time (and thereafter if ratified), the Executive Director having the authority to sign this Lease and bind the Port to all of its material terms. If this Lease is not ratified, it shall terminate and be of no further force and effect.

The undersigned confirms that this Lease was ratified by the Port of Olympia Commission on May 13, 2013

Port of Olympia Commission

By:

Its:

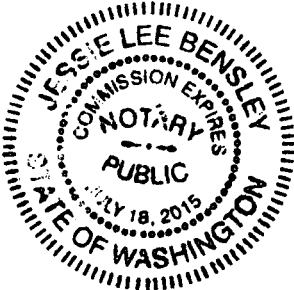
Date:

George L. Banner Jr.
President
May 13, 2013

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

On this 13th day of May, 2013, personally appeared before me George L. Banner Jr., to me known to be the President of the Port of Olympia Commission, the municipal corporation named in the within and foregoing **Interlocal Agreement**, and acknowledged to me that he signed the same on its behalf, as he is so authorized to do, as his free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



Jessie Bensley
Print Name: Jessie Bensley
NOTARY PUBLIC in and for the State of Washington,
residing at Olympia
My commission expires: July 18, 2015