

**AGREEMENT TO PURCHASE  
HYLEBOS WATERWAY SMA 421-B  
HABITAT MITIGATION CREDITS**

This Agreement to Purchase Hylebos Waterway SMA 421-B Habitat Mitigation Credits (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2026 by the Port of Tacoma (“Port”) and Hylebos Waterfront Property, LLC, (“HWP”). The Port and HWP may each be referred to individually as a “Party” and collectively as the “Parties.”

**RECITALS**

A. The Parties, among others, previously entered into an Agreement Regarding Hylebos Waterway SMA 421-B RD/RA Activities and Excess NCD Site Capacity, effective October 15, 2004, which obligated HWP and American Construction Co., Inc. (“American”) to implement Sediment Management Area 421-B remedial design/remedial action activities. Habitat impacts resulted from these activities, therefore, the Environmental Protection Agency (“EPA”) required HWP and American to implement a compensatory mitigation project to offset that habitat loss.

B. HWP completed the requisite mitigation project (“Project”) pursuant to HWP’s SMA 421-B Compensatory Habitat Mitigation Plan, dated March 4, 2024. HWP is currently preparing a Remedial Action Construction Report (“RAC Report”) for submittal to EPA that details the SMA 421-B Project and confirms quantification of the compensatory habitat mitigation generated by the Project.

C. Habitat mitigation created by the Project, as described and quantified in the RAC Report, totals 1.6 acres. The compensatory mitigation requirement related to the SMA-421-B RD/RA activities totaled 1.39 acres, leaving an excess of .21 acres of mitigation acreage. The Parties desire to convey the excess .21 habitat mitigation credits (“Mitigation Credits”) to the Port to satisfy outstanding Port mitigation obligations for the Hylebos Waterway.

D. The RAC Report, upon written approval by EPA, will confirm that the Project provides 1.39 acres of mitigation to offset SMA 421-B RD/RA activities, and .21 acres of mitigation to the Port to offset mitigation requirements for the Hylebos Waterway.

E. The Parties desire to set forth their respective rights and obligations in this Agreement for conveyance of the excess .21 acres of mitigation to the Port pursuant to the terms and conditions below.

## AGREEMENT

In consideration of the foregoing and the mutual covenants and promises contained herein, the Parties hereby agree as follows:

1. Recitals. The Recitals are hereby incorporated into and made a part of this Agreement.
2. Submittal and Approval of Remedial Action Construction Report (“RAC Report”). HWP shall continue to use its commercially reasonable efforts to (i) secure final EPA approval of the RAC Report, (ii) confirm that the Project satisfies the 1.39-acre mitigation requirement for SMA 431-B, and (iii) confirm that the Project generated excess mitigation of .21 acres or such other amount as EPA finally determines. Except as set forth in this Agreement, the Port shall be solely responsible for securing any and all approvals from EPA and any other governmental authority necessary to ensure that the Port is entitled to the benefits associated with the Mitigation Credits; provided, however, that HWP shall cooperate with the Port in connection with its efforts to secure such approvals at no material cost to HWP.
3. Payment for Mitigation Credits. Within twenty (20) days after the Port’s receipt of EPA’s final written approval of the RAC Report or other documentations confirming that the Port is entitled to the benefits of the Mitigation Credits, the Port shall pay HWP a total of \$320,058 (“Mitigation Credits Payment.”). The Mitigation Credits Payment shall be made by electronic funds transfer as specified in written instructions to be provided by HWP.
4. No Warranty; Limitation on Damages. HWP makes no representations or warranties of any kind with respect to the Mitigation Credits, and the same are purchased by the Port “as-is” and “where-is.” If for any reason the EPA withdraws its approval of the Mitigation Credits at any time after EPA approval of the RAC Report and payment of the Mitigation Credits, the Port’s sole and exclusive remedy shall be the return of the Mitigation Credits Payment to the Port by HWP.
5. Notice. All notices required or permitted under this Agreement shall be in writing and deemed effectively given: (a) upon personal delivery to the Party to be notified, (b) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (c) one business (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery. All communications shall be sent to the Parties as set forth below or at such other address as a Party may designate by written notice to the other Party in accordance with this Section 5.

<p>If to HWP, at:</p> <p>Hylebos Waterfront Property, LLC  1501 Taylor Way  Tacoma WA 98421  Attention: Steven P. Brannon  Email: <a href="mailto:brannonsteve@gmail.com">brannonsteve@gmail.com</a>  Telephone: (425) 870-3221</p>	<p>If to Port, at:</p> <p>Port of Tacoma  P.O. Box 1837  Tacoma, WA 98401  Attn: Robert Healy  Director, Remediation and Water Quality  <a href="mailto:rhealy@portoftacoma.com">rhealy@portoftacoma.com</a>  Telephone: (253) 428-864</p>
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<p>With a copy to:</p> <p>Barry G. Ziker  Hillis Clark Martin &amp; Peterson P.S.  999 Third Avenue, Suite 4600  Seattle, WA 98104  Email: <a href="mailto:barry.ziker@hcmp.com">barry.ziker@hcmp.com</a>  Telephone: (206) 470-7616</p>	
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6. Additional Provisions.

a. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to conflict of law principles.

b. Fees and Expenses. Each Party shall each bear its own expenses and legal fees incurred with respect to this Agreement and the transactions contemplated by this Agreement. Provided, however, if any action at law or in equity is necessary to enforce or interpret the terms of this Agreement or any transactions contemplated by this Agreement, or otherwise arises out of or with respect to the transactions contemplated by this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, including the costs of trial and appeal, in addition to any other relief to which such Party may be entitled.

c. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be enforced to the maximum extent permitted under such applicable law (or excluded from this Agreement if wholly unenforceable) and the balance of the Agreement shall be interpreted as if such provision were so modified or excluded and shall be enforceable in accordance with its terms.

d. Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties. Nothing in this Agreement, expressed or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

e. Modification; Waiver. Modification or waiver of any provision of this Agreement shall be effective only upon the further written agreement of the Parties and only with respect to the specific circumstances contained in such writing.

f. Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the Parties with regard to the subject matter of this Agreement. Neither Party shall be liable or bound to the other Party in any manner by any representations, warranties, covenants and agreements except as specifically set forth in this Agreement:

g. Counterparts; Electronic Signatures. This Agreement may be executed in counterparts by the Parties, each of which shall be considered one and the same agreement and shall become effective when a counterpart has been signed by each of the Parties. Electronic signatures, including by DocuSign, shall bind the Party delivering the same.

[no further text; signature page follows]

**PORT OF TACOMA**

By: \_\_\_\_\_

Name: Eric D. Johnson

Title: Executive Director

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

By: \_\_\_\_\_

Name: Heather L. Burgess

Title: Port of Tacoma Legal Counsel

Date: \_\_\_\_\_

**HYLEBOS WATERFRONT  
PROPERTY, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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