

**INTERLOCAL AGREEMENT BETWEEN PORT OF TACOMA AND
CITY OF TACOMA
PORT OF TACOMA ROAD RECONSTRUCTION PROJECT**

This Interlocal Agreement (“Agreement”) is made and entered into by the City of Tacoma, a municipal corporation of the State of Washington, hereinafter called the “City” and the Port of Tacoma, a port district organized under the laws of the State of Washington, hereinafter called the “Port.” As used in this Agreement, “Project” means the construction of those elements associated with the Port of Tacoma Road Reconstruction Project, to benefit the movement of freight and goods as further described in Section 1. The Port and the City are also referred to in this Agreement collectively as “the Parties,” and individually as a “Party.” This Agreement supersedes and replaces the Agreement for the Project signed by the Port on October 7, 2013 and by the City on October 21, 2013, effectively terminating said former agreement.

RECITALS

WHEREAS, the assurance of continuing freight movement throughout Puget Sound is an issue of critical strategic importance to the City and to the Port.

WHEREAS, the Project provides mutual benefit to the City and the Port (see **Exhibit B**)

WHEREAS, the Port as lead sponsor and the City as cosponsor are applying for Surface Transportation Program (STP) grant funding and inclusion of the Project within the Regional Transportation Improvement Program (TIP), to commit approximately Eight Million Eight Hundred Sixty Six Thousand Two Hundred Dollars (\$8,866,200) towards the reconstruction of Port of Tacoma Road between East 11th Street and south of Marshall Avenue (See **Exhibit A**) should the Project receive grant funding;

WHEREAS, the City agreed to provide Five Hundred Eighty One Thousand Dollars (\$581,000) of secured local grant match support, leveraging the Port’s commitment to provide Six Hundred Sixteen Thousand Dollars (\$616,000) of secured local match, satisfying the STP program’s required local funding contribution;

WHEREAS, the Project has been awarded partial funding by the Pierce County Regional Council through regionally-managed funds in the amount of Four Hundred Twenty Nine Thousand Forty Dollars (\$429,040), allowing for the Project’s design phase to commence (See **Exhibit C**);

WHEREAS, the City shall be assigned all duties of Project Management and perform all phases of Project work, including design, permitting and construction, as the Project falls under the City’s jurisdiction and ownership.

NOW, THEREFORE, the Parties agree as follows:

1. PROJECT SCOPE OF WORK

1.1. Title: Port of Tacoma Road Reconstruction

1.2. Description: The proposed project scope:

- Removes all surface pavement between the curb lines on Port of Tacoma Road from East 11th Street to just south of Marshall Way (approximately 7,800 LF).
- Replaces the pavement section with cement concrete to be consistent with the approved City of Tacoma Pavement Design Standards for Heavy Haul Industrial Corridors.

- Installs cement concrete sidewalk where missing.
 - Replaces only existing curb and gutter sections that are damaged.
 - Provides the design and installation of in-street conduit for future ITS implementation.
 - Replaces temporary traffic signal at Washington United Terminal truck queuing location with permanent signal.
 - The roadway will be restriped per the original channelization.
- 1.3. Schedule: Pending availability of funding, the City will advertise the Project for bid in late 2014, with construction starting in early 2015. Construction completion is scheduled by the fourth quarter of 2015, at which time the roadway corridor will be fully operational.
- 1.4. Phases: The Project is fully funded for design and is seeking funding for the construction phase. Cost details are as follows, provided that, if grant funding is secured at an amount below that anticipated in the below Table, the Port and City shall contribute a proportionally reduced payment.

Phase	Port Contribution	City Contribution	Previous STP Award	Anticipated Grant Award	Total Cost
Design	\$33,480	\$33,480	\$429,040	\$0	\$496,000
Construction	\$582,489	\$547,489	\$0	\$7,240,222	\$8,370,200
Total	\$615,969	\$580,969	\$429,040	\$7,240,222	\$8,866,200

2. TERMS AND CONDITIONS

- 2.1. Lead Agency: The City shall be the lead agency for the Project with regard to State Environmental Policy Act (SEPA) and National Environmental Policy Act (NEPA) compliance and shall be responsible for obtaining all necessary permits and/or agreements. As lead agency, the City shall be responsible for accomplishing all aspects of the Project scope.
- 2.2. Contact Persons: The Parties to this Agreement have designated person(s) to act as liaison(s) for the Project, as contained in Section 5 herein. The contact persons shall meet on a scheduled basis at a frequency appropriate to the phase and status of the Project.
- 2.3. Schedule/Scope: The scope and schedule for the Project, as set forth herein, are mutually agreed upon by the City and Port. All scope and schedule changes shall be agreed to by the Parties and coordinated by the City using its formal documentation process; provided however, Construction change orders that do not change the overall scope or general schedule of the Project will not require coordination or documentation with the Port.
- 2.4. Traffic Control Plans: The City will review all contractor traffic control submittals giving strong consideration to the interests of freight traffic. The City will, to the extent feasible, work to minimize the impact of any traffic control plans that could negatively affect freight traffic.
- 2.5. Progress Report: Regular staff briefings illustrating Project status throughout the Project's delivery will be scheduled monthly by the City (or as the Project Manager deems appropriate) with the Port.

- 2.6 Design Changes: The City shall not order or approve any Project design changes that materially, negatively affect the traffic level of service or reduce the benefits of the Project for the Port without first obtaining the Port's written approval of these design changes. The City shall inform the Port of any design change that may materially reduce the Port's anticipated benefit of improved traffic flow. The City shall provide the Port with copies of the proposed design change for the Port's review, comment and approval. The Port, at its sole option, may provide the City with comments within two weeks of its receipt of the proposed design changes. If the Port offers comments or exceptions to the proposed plans, the Port further agrees to participate in meetings scheduled by the City to resolve the Port comments and exceptions. The City agrees to evaluate and consider incorporating appropriate changes proposed by the Port necessary to address the Port's concerns and exceptions.
- 2.7 Public Involvement: The City shall be responsible for the public involvement and/or community outreach process for the Project. The City shall give the Port at least two weeks' written notice of any scheduled public meetings.
- 2.8 Ownership and Maintenance: Except for those Project improvements owned by Tacoma Rail or other private parties, the City shall own all Project improvements and shall be responsible for the reasonable maintenance of the Project.

3. COST REIMBURSEMENT AND FUNDING

The Port agrees to contribute no more than Six Hundred Sixteen Thousand Dollars (\$616,000) in two or three payments, each payment being expressly contingent upon the Parties' receipt of grant funding in the amounts as specified in the Table in Section 1.4 herein, toward the design, permitting and construction of the Project and further contingent upon the following conditions:

1. Payment for the Construction Engineering and Construction phase of the Project is to be made after and only if grant funding for this phase has been obtained, all environmental review and permitting is completed by the City of Tacoma, and at conclusion of any appeal or legal challenge;
2. The Port and City continue to work together to ensure that the Project developments during construction meet the needs of both Parties including, but not limited to, construction staging and local freight circulation;
3. The Port is satisfied that the Project, as designed, provides the benefits to the Port identified in Exhibit B, and;
4. The Port Commission authorizes the execution of this Agreement and the payment of up to Six Hundred Sixteen Thousand Dollars (\$616,000) for the Project costs, all payments being contingent upon the Parties' receipt of grant funding in the amounts specified in the Table found at Section 1.4 herein. If grant funding for any phase is provided at an amount below that anticipated in the Section 1.4 Table, the Port shall contribute a proportionally reduced Port payment for that phase.

The Port shall make payment as follows:

Up to three payments in total, not to exceed \$616,000. The first payment of \$75,000 has been invoiced and paid. The second and third payments may be invoiced together or separately and is dependent upon the timing and amounts of additional grant awards to the Parties for this Project. The City shall submit to the Port evidence that the Construction Engineering (CE) and Construction (CN) of the Project are underway as a condition precedent to justify payment.

To receive payment, the City shall submit to the Port a detailed numbered invoice showing description of work items being invoiced, this Interlocal Agreement number, Project number, and work title of the Project.

The invoice shall be mailed "Attention: Port Contracts Department." Alternatively, the invoice may be emailed to procurement@portoftacoma.com. The email must include the required supporting documentation. An incomplete or improperly prepared invoice will be returned for correction without processing or payment.

The City shall certify the Project has reached Substantial Completion by sending the Port a copy of the letter from the City's Engineer to the Contractor establishing the Substantial Completion date. Upon receipt of the letter, the Port reserves, at its sole option, the right to request an inspection of the Project, to confirm the Project improvements, as defined in Section 1, Scope of Work, and Exhibit B, are in place and fully operational. To allow the City to proceed with the construction contract approval process in a timely manner, if the Port has not conducted said inspection and provided the City with any comments within seven (7) days of the established substantial completion date, the Port waives the right to request and perform said inspection.

4. AMENDMENT

Either Party may request changes to the provisions contained in this Agreement. Any change to this Agreement must be mutually agreed to by both Parties, in writing and executed with the same formalities as the original Agreement.

5. NOTIFICATION

Any notice required or permitted to be given pursuant to this Agreement shall be in writing, and shall be sent by email followed by postage prepaid by U.S. Mail, return receipt requested, to the following addresses unless otherwise indicated by the Parties to this Agreement:

To the CITY: Tom Rutherford
 City of Tacoma
 Tacoma Public Works/Special Projects
 Tacoma Municipal Building
 747 Market Street, Room 544
 Tacoma, WA 98402-3769

To the PORT: Thais Howard, Director, Engineering
 Port of Tacoma
 PO Box 1837
 Tacoma, WA 98401-1837
 thoward@portoftacoma.com

6. RECORDS RETENTION AND AUDIT

During the progress of the work on the Project and for a period not less than six (6) years from the date of final payment by the Port to the City, the records and accounts pertaining to the Project and accounting thereof are to be kept available for inspection and audit by the Port and the City shall provide the Port with copies of all records, accounts, documents, or other data pertaining to the Project upon the Port's request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claims, or audit finding has been resolved, even though such litigation, claim, or audit continues past the typical six-year retention period. This provision is not intended to alter or amend records retention requirements established by applicable state and federal laws.

7. DISPUTES

The designated representatives herein under section 5.0, NOTIFICATION, shall use their best efforts to resolve disputes between the Parties. If the designated representatives are unable to resolve a dispute, then the responsible Project directors for each Party shall review the matter and attempt to resolve it. If the Project directors are unable to resolve the dispute, the matter shall be reviewed by the department director or chief executive officer of each Party or his or her designee. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

8. EFFECTIVENESS AND DURATION

This Agreement is effective upon the date of execution by both Parties and will remain in effect until completion of the Project, unless otherwise stated herein or unless amended or terminated.

9. TERMINATION

This Agreement shall terminate five years from the date of execution, unless mutually extended by the Parties, and provided however, that either Party may terminate this Agreement at any time upon thirty (30) days' written notice to the other Party, provided however, if the Port decides to terminate this Agreement, the Port shall reimburse the City for all costs payable under this Agreement and all non-cancelable obligations that the City incurred prior to receiving the Port's notice of its intent to terminate this Agreement. For the purposes of this Agreement, "non-cancelable obligations" are defined as those costs that the City is obligated to pay as of the day that the Port provides notice that it is terminating this Agreement, not to exceed the Port's percentage of the total cost of any phase of the Project that the City has commenced prior to the Port's notice of termination, whether or not such a phase has reached Completion.

10. INDEMNIFICATION AND HOLD HARMLESS

- 10.1. To the maximum extent permitted by law, the City shall protect, defend, indemnify, and hold harmless the Port, its officers, officials, employees, and agents from any and all costs, claims, demands, suits, actions, judgment, and/or awards of damages, including but not limited to reasonable attorney's fees, to the extent arising out of, or in any way resulting from the City's negligent or intentional acts or omissions in the performance of its obligations under this Agreement.

- 10.2. To the maximum extent permitted by law, the Port shall protect, defend, indemnify, and hold harmless the City, its officers, officials, employees, and agents from any and all costs, claims, demands, suits, actions, judgment, and/or awards of damages, including but not limited to reasonable attorney's fees, to the extent arising out of, or in any way resulting from the Port's negligent or intentional acts or omissions in the performance of its obligations under this Agreement.
- 10.3. The Parties agree that their respective obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Parties hereby waive, with respect to the other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provision of Title 51 RCW to the extent necessary to provide indemnification as required under this Agreement.
- 10.4. The indemnification, hold harmless, and/or waiver obligations described in this Agreement in Section 10 shall survive the termination of this Agreement.

11. VENUE

This Agreement shall be deemed to be made in the County of Pierce, State of Washington, and the legal rights and obligations of the City and Port shall be determined in accordance with the laws of the State of Washington. All legal actions in connection with this Agreement shall be brought in the County of Pierce, State of Washington.

12. PROJECT FINANCING.

Except as provided above, the Parties shall finance their own conduct of responsibilities under this Agreement.

13. PROPERTY OWNERSHIP.

No ownership of property will transfer as a result of this Agreement.

14. NO THIRD PARTY BENEFICIARIES

This Agreement is entered into solely for the mutual benefit of the Parties. This Agreement is not entered into with the intent that it shall benefit any other person or entity and no other such person or entity shall be treated as a third-party beneficiary of this Agreement.

15. SEVERABILITY

The provisions of this Agreement are hereby declared to be separate and severable, and the invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Agreement or the invalidity of its application to any person or circumstance shall not affect the validity of its application to other persons and circumstances.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement which shall be effective upon the date of recording.

PORT OF TACOMA

John Wolfe, Chief Executive Officer Date

APPROVED AS TO FORM:

Carolyn Lake, Port Legal Counsel Date

CITY OF TACOMA

T.C Broadnax, City Manager Date

Kurtis D. Kingsolver, P.E. Date
Public Works Director/City Engineer

APPROVED:

Andrew Cherullo, Finance Director Date

APPROVED AS TO FORM:

Jeff Capell, Deputy City Attorney Date

Debbie Dahlstrom, Risk Manager Date

Doris Sorum, City Clerk Date

Exhibit A – Vicinity Map



<p>EXHIBIT A SHEET: 1 OF 1 PURPOSE: VICINITY MAP DATE: 01/30/2014</p>	<p>PORT OF TACOMA ROAD RECONSTRUCTION VICINITY MAP</p>	<p> PORT OF TACOMA ROAD +/- 1.48 MILES OR 7,800FT</p>	
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Exhibit B—Elements of Mutual Benefit

Scope Summary and Benefits

Scope Elements	Benefits
<p>Removes all surface pavements between the curb lines on Port of Tacoma Road from East 11th Street to just south of Marshall Way (approximately 7,800 LF).</p>	<p>The existing pavement is a patchwork of asphalt concrete pavement. Over time, and with the high volume of loaded truck traffic, the pavement condition has experienced multiple and significant failures, including: alligator cracking with broken surfaces, edge cracks with surface distortion and broken surfaces, joint cracks at lane joints and pavement edges, transverse cracking, pavement upheaval, channels/rutting and potholes. These failures create safety issues as truck drivers and commuters swerve to avoid problem areas, create damage to vehicles/equipment and cargo, and ultimately adversely impact the reliability and efficiency of the Port of Tacoma's core arterial connection between marine terminals, intermodal facilities, and the regional roadway network of SR 509 and Interstate 5. Removing the failed asphalt section allows for a full pavement reconstruction.</p>
<p>Replaces the pavement section with cement concrete to be consistent with the approved City of Tacoma Pavement Design Standards for Heavy Haul Industrial Corridors.</p>	<p>As a Heavy Haul corridor, Port of Tacoma Road will implement a 10-inch concrete paving section to withstand the demands of a heavily utilized T-1 corridor. The proposed reconstruction project endeavors to correct the current roadway condition, and better enable durable, safe and efficient over-the-road travel within the Port of Tacoma's industrial development district.</p>
<p>Installs cement concrete sidewalk to provide continuous pedestrian access (will not have sidewalks on both sides of the road in some areas).</p>	<p>Supports a complete street profile, accommodating pedestrians and vehicles alike. Pedestrian traffic is a significant component of the arterial's overall traffic.</p>
<p>Replaces only existing curb and gutter that is damaged.</p>	<p>Supports Right-of-Way certification and minimizes impacts to adjacent properties, easements and franchises.</p>
<p>The roadway will be restriped per the original channelization.</p>	<p>Provides safe, conventional vehicle operations within the roadway.</p>

Exhibit C – PSRC Award Letter (Design Phase grant funds)



February 26, 2013

Commissioner Don Meyer, President
Port of Tacoma Board of Commissioners
P.O. Box 1837
Tacoma, WA 98401

Dear Commissioner Meyer:

Congratulations! The Puget Sound Regional Council has approved \$429,040 in federal funding to support transportation in your community for the following project:

- *Port of Tacoma Road Rehabilitation*

The PSRC Executive Board voted in December to approve priority projects that will improve local and regional mobility and help achieve our long-range regional transportation plan, Transportation 2040. Final approval by the Governor and federal funding agencies is expected in early 2013.

Thanks to your leadership and excellent work by your staff, our region is advancing a better system that gets people and goods where they need to go, provides transportation choices, and helps grow jobs in the region.

At PSRC we are deeply committed to the future of this region, and we look forward to continuing to partner with you to find transportation, economic development and land use solutions that work locally and regionally.

Warm regards,

A handwritten signature in black ink, appearing to read "Bob", is written over the typed name.

Bob Drewel
Executive Director

cc: John Wolfe, Chief Executive Officer