

AGREEMENT BETWEEN THE CITY OF TACOMA
AND THE PORT OF TACOMA REGARDING PUYALLUP RIVER BRIDGE
F16A, F16B & F22 REPLACEMENT PROJECT

This Agreement (AGREEMENT) is entered into this ___ day of _____, 2019 by and between the CITY OF TACOMA a local government of the State of Washington (hereinafter the “City”), and the PORT OF TACOMA, a Washington municipal corporation (the “Port”), (collectively “Parties”) in consideration of the mutual covenants contained herein. The Parties hereby recite and agree as follows:

RECITALS

NOW, THEREFORE, pursuant to Chapter 39.34 RCW, and in consideration of the mutual benefits and covenants described herein, the Parties agree as follows:

1. SCOPE OF WORK.

The City’s Fishing Wars Memorial Bridge (aka, Puyallup River Bridge) F16A, F16B and F22 Replacement Project (“Project”) consists of the following:

- Replacement of structures F16A, F16B and F22 (all structures west of the Puyallup River) as depicted in **Exhibit A** attached.

2. PORT’S CONDITIONAL AGREEMENT TO CONTRIBUTE FUNDS.

The Port agrees to contribute to the City an amount not to exceed \$500,000 toward payment of the Project. In the event Project costs are higher than projected, the City will assume any excess Project costs.

The Port’s not to exceed payments will be made within thirty days of the City’s submittal of written proof to the Port of actual Project, as described above in section 1. Scope of Work, expenses.

3. TIMEFRAME/PROJECT SCHEDULE.

Design: July 2017 through April 2018
Construction: May 2018 through August 2019

4. CITY’S PROJECT FINANCIAL SUMMARY.

Funding Source	Amount
BRAC Grant	\$15,628,538
State Legislature via Dept of Commerce	\$ 6,950,000
FHWSA (STP) Grant	\$12,200,000
FMSIB	\$ 5,000,000
City of Tacoma	\$ 1,713,510
Port of Tacoma	\$ 500,000
TOTAL FUNDING	\$41,992,048

5. ABANDONMENT. If the Project is abandoned, then this AGREEMENT shall be of no further force or effect.

6. ASSIGNMENT. Neither Party to this AGREEMENT shall have the right to convey, assign, apportion or otherwise transfer any and all of its rights, obligations, conditions and interests under this AGREEMENT, without the prior written approval of the other.

7. THIRD PARTY BENEFICIARIES. This AGREEMENT is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right or cause of action based upon any provisions of this AGREEMENT.

8. EQUAL DRAFTING. This AGREEMENT has been reviewed and revised by legal counsel for both parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this AGREEMENT.

9. SEVERABILITY. If any provisions of this AGREEMENT are determined to be unenforceable or invalid pursuant to a final decree or judgment by a court of law with jurisdiction, then the remainder of this AGREEMENT not decreed or adjudged unenforceable or invalid shall remain unaffected and in full force and effect to the extent that the primary purpose of this AGREEMENT can be preserved.

10. MODIFICATION. This AGREEMENT may not be modified except by mutual agreement reduced to writing in a formal amendment hereto and approved by each Party's governing body.

11. TERMINATION. This AGREEMENT shall terminate upon completion by both Parties of their respective obligations hereunder, or on December 2019 unless terminated earlier.

12. GOVERNING LAW. This AGREEMENT shall be governed exclusively by the laws of the State of Washington both as to interpretation and performance without recourse to any principles of Conflicts of Laws. Any action at law, suit in equity or judicial proceeding for the endorsement of this AGREEMENT or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Pierce County, Washington

13. NOTICES. All notices given pursuant to this AGREEMENT shall be deemed delivered to the respective party on the date that it is personally delivered to the address(es) set forth below, or on the date that it is successfully sent by email transmission to the email addresses set forth below:

ENTITY: City of Tacoma
757 Market Street, Room 544
Tacoma , WA 98402

Attention: Chris Storey
Email: CSTOREY@ci.tacoma .wa.us

Port: Port of Tacoma
PO Box 1837
Tacoma, Washington 98401

Attention: Evette Mason
Email: emason@portoftacoma.com

CC: Deirdre Wilson
Email: dwilson@nwseaportalliance.com

14. ENTIRE AGREEMENT. This AGREEMENT constitutes the entire agreement of the parties, supersedes all previous oral or written understandings, and incorporates all prior discussions and agreements pertaining to this subject matter. The Parties participated equally in any negotiations and the process leading to execution of this AGREEMENT. If a dispute should arise with regard to the meaning or interpretation of any provision hereof, there shall be no presumption of draftsmanship as to such provision.

15. LEGAL RELATIONS.

A. Independent Municipal Governments. The Parties hereto are independent governmental entities and nothing herein shall be construed to limit the independent government powers, authority or discretion of the governing bodies of each Party. It is understood and agreed that this AGREEMENT is solely for the benefit of the Parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this AGREEMENT. No employees or agents of any Party shall be deemed, or represent themselves to be, employees of any of the other Party.

B. Legal obligations. This AGREEMENT does not relieve either Party of any obligation or responsibility imposed upon it by law.

C. Timely Performance. The requirements of this AGREEMENT shall be carried out in a timely manner according to a schedule negotiated by and satisfactory to the Parties.

D. Recording. A copy of this AGREEMENT shall be recorded in the Office of the Pierce County Auditor as provided by law, or shall be posted to each Parties' web site.

16. RECORDS AND AUDIT. During the term of this AGREEMENT, and for a period not less than six (6) years from the date of termination, records and accounts pertaining to the work of this AGREEMENT and accounting therefore shall be kept by each Party and shall be available for inspection and audit by representatives of either Party and any other entity with legal entitlement to review said records. 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 six-year (6) retention period. This provision is in addition to and is not intended to supplant, alter or amend records retention requirements established by applicable state and federal laws.

17. LIMITS OF FINANCIAL OBLIGATIONS/PROPERTY OWNERSHIP. Except as provided above, each Party shall finance its own conduct of responsibilities under this AGREEMENT. No ownership of property will transfer as a result of this AGREEMENT.

18. INDEMNIFICATION AND HOLD HARMLESS.

A. The City releases the Port from, and shall defend, indemnify, and hold the Port and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of the City and/or its agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the City's performance of its obligations under this AGREEMENT, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the Port or its agents, employees, and/or officers.

B. The City shall defend, indemnify, and hold the Port and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of any third parties and/or their agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to City's performance of its obligations under this AGREEMENT, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the Port or its agents, employees, and/or officers.

C. The Port releases the City from, and shall defend, indemnify, and hold the City and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of the Port and/or its agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the Port's performance of its obligations under this AGREEMENT, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the City or its agents, employees, and/or officers.

D. The Port shall defend, indemnify, and hold the City and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of any third parties and/or their agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the Port's performance of its obligations under this AGREEMENT, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the City or its agents, employees, and/or officers.

E. Each Party specifically assumes liability for actions brought by its own employees against the other Party and for that purpose each Party specifically waives, as respects the other parties only, any immunity under the Worker's Compensation Act, RCW Title 51.

E. The Parties recognizes that this waiver was the subject of mutual negotiation. In the event any Party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this AGREEMENT against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party.

F. No liability shall attach to any of the Parties by reason of entering into this AGREEMENT except as expressly provided herein.

H. The provisions of this Article shall survive any termination or expiration of this AGREEMENT.

CITY OF TACOMA:

PORT OF TACOMA:

Elizabeth Pauli, City Manager
Date: _____

John Wolfe, CEO
Date: _____

Approved as to form:

City Attorney

Port Legal Counsel

EXHIBIT A – Graphic showing six sections of the Fishing Wars Memorial Bridge (aka, Puyallup River Bridge). Project scope includes work on sections F22, F16A & F16B.

