

**INTERLOCAL AGREEMENT BETWEEN PORT OF TACOMA AND CITY OF  
TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION  
FOR NORTH LEAD RAIL FUNDING CONTRIBUTION**

This Interlocal Agreement ("Agreement") is made and entered into by the City of Tacoma through its Department of Public Utilities, Beltline Division dba Tacoma Rail a municipal department of a first class city of the State of Washington, hereinafter referred to as the "City/Tacoma Rail", and the Port of Tacoma, a port district organized under the laws of the State of Washington hereinafter called the "Port" pursuant to RCW § 39.34. As used in this Agreement, "Project" means North Lead Rail Improvements Project as further described in Section 1. The Port, and the City/Tacoma Rail are also referred to in this Agreement collectively as "the Parties", and individually as a "Party".

**RECITALS**

**WHEREAS**, RCW § 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other agencies on a basis of mutual advantage, and

**WHEREAS**, the assurance of continuing freight movement throughout Puget Sound is an issue of critical strategic importance to the City/Tacoma Rail and to the Port; and

**WHEREAS**, The Parties acknowledge that each owns land, railroad track and supporting facilities which function as a port and a freight rail system within the general area frequently referred to as the Tacoma Tide flats. The Parties seek to increase the capacity of the Port and the freight rail system; and

**WHEREAS**, the Parties anticipate substantial growth in Port freight rail traffic volumes and operations; and

**WHEREAS**, the Project provides mutual benefit to the City/Tacoma Rail and the Port; and

**WHEREAS**, the Project will reconfigure and build rail improvements in the rail classification yard to increase the capacity with the addition of two intermodal tracks approximately 7,000 feet in length and increase efficiency of rail operations by approximately 34 percent.

NOW, THEREFORE, the Parties agree as follows:

**1. SCOPE OF WORK**

1.1. Project Title: North Lead Rail Improvements Project

1.2. Description: The proposed Project scope: The Port's reconfiguring the existing rail classification yard and constructing of two (2) long intermodal tracks including 12,300 feet of track, 9 cross-overs and 24 turnouts. Project work includes select demolition, earthwork, asphalt paving, relocation of utilities, light relocations, fencing, installation of compressed air system and installation of an arch culvert, storm drainage, storm filter catch basins and modular wetland treatment systems

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**1.3. Anticipated Schedule:**

Tacoma Public Utility Board approval of ILA, February 10, 2016  
City Council approval of ILA, February 23, 2016  
Port Commission approval, March 17, 2016  
Parties' Execution of the ILA following governing bodies' approval;  
Port Advertisement of Project for bids, March 2016  
Port's Construction Contract award, May 2016  
Start of Construction, June 2016  
Substantial Completion, May 2017  
Final Acceptance, sixty days after Substantial Completion.

**1.4 Project Costs:**

1.4.1. The Project has been awarded partial funding by the Washington State Department of Commerce Direct Appropriation Grant 13-96701-012 in the amount of Four Million Nine Hundred and Fifty Thousand (\$4,950,000) allowing the Project to commence; and

1.4.2. Tacoma Rail agreed to provide (\$) 2,000,0000 of secured local funds support, leveraging the Port's commitment to satisfy the total funding required to complete the Project.

**2. TERMS AND CONDITIONS**

2.1. Lead Agency: Port of Tacoma

2.2. Contact Person: Carol Rhodes, Senior Project Manager

2.3. Schedule/Scope: The scope and schedule for the Project as set forth herein is mutually agreed upon by the City/Tacoma Rail and Port. All scope and schedule changes shall be agreed to by the Parties and coordinated by the Port using its a 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 City/Tacoma Rail.

2.4. Agency Coordination: The Port and Tacoma Rail will coordinate during the weekly construction meeting.

2.5. Design Changes: The Port will coordinate all design changes as they related to track and track-related facilities and to track operations.

2.6. Public Involvement: The Port shall be the lead on all public involvement.

2.7 Ownership and Maintenance:

The Port retains ownership of the Port Track and the Port Property and remains responsible, at Port's expense, for track inspection, maintenance, repairs, replacement and reporting related to Port Tracks, without cost to Tacoma Rail. Tacoma Rail retains ownership of Tacoma Rail Tracks and remains responsible, at Tacoma Rail's expense, for track inspection, maintenance, repairs, replacement and reporting related to Tacoma Rail Track. Exhibit A reflects Port and Tacoma Rail ownership of North Lead track improvements. For tracks within in the Project area that are not modified by the Project,

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ownership, operation and use remains consistent with the Port/City of Tacoma Department of Public Utilities Operating Agreement, dated July 1, 2013.

**3 COST REIMBURSEMENT AND FUNDING**

The City/Tacoma Rail shall make payment to the Port for the full funding agreement upon the Port's receipt of track materials to reconfigure the west-end of the classification yard. Notice of Award to the Contractor and prior to the Port's execution of the Contract for Construction.

**4 AMENDMENT**

Any Party may request changes to the provisions contained in this Agreement. Any change to this Agreement must be mutually agreed to by all 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 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/Tacoma Rail: Alan Matheson  
Tacoma Rail Chief Mechanical Officer  
Beltline Division dba Tacoma Rail  
2601 SR 509 N. Frontage Road  
Tacoma, WA 98421  
[Alan.Matheson@cityoftacoma.org](mailto:Alan.Matheson@cityoftacoma.org)  
253-502-8934

To the PORT: Carol Rhodes  
Senior Project Manager  
Port of Tacoma  
1 Sitcum Way  
Tacoma, WA 98401  
[crhodes@portoftacoma.com](mailto:crhodes@portoftacoma.com)  
253-592-6703

**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 City/Tacoma Rail to the Port, the records and accounts pertaining to the Project and accounting thereof are to be kept available for inspection and audit by the City/Tacoma Rail and the Port shall provide the City/Tacoma Rail with copies of all records, accounts, documents, or other data pertaining to the Project upon the City/Tacoma Rail 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.

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**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 until the Project achieves Final Acceptance, as issued by the Port's Engineer, upon which Acceptance, this Agreement shall terminate except as provided herein.

**9 TERMINATION**

Any Party may terminate this Agreement at any time upon thirty (30) days written notice to the other Parties, provided however, if the City/Tacoma Rail decides to terminate this Agreement, the City/Tacoma Rail shall reimburse the Port for all costs payable under this Agreement and all non-cancelable obligations that the Port incurred prior to receiving the City/Tacoma Rail'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 Port is obligated to pay as of the day that the City/Tacoma Rail provides notice that it is terminating this Agreement, and such costs shall not exceed the amount of Tacoma Rail's funding obligation as set forth in Paragraph 1.4.2 herein. One non-cancelable obligation, upon execution of this Agreement, is the actual cost of the two track crossing of \$229,400.

**10 INDEMNIFICATION AND HOLD HARMLESS**

- 10.1 To the maximum extent permitted by law, each Party shall protect, defend, indemnify, and hold harmless the other Parties, their 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 this Agreement.
- 10.2 Each Party agrees that their obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of their employees or agents. For this purpose, each Party hereby waives, with respect to the other Parties 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.
- 10.3 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 any other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party.
- 10.4 No liability shall attach to any of the Parties by reason of entering into this Agreement except as expressly provided herein.

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10.5 The indemnification, hold harmless, and/or waiver obligation described in this Agreement in paragraphs 10.1 through 10.4 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/Tacoma Rail 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 its own conduct of responsibilities under this Agreement.

**13 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.

**14 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.

**15 LEGAL OBLIGATIONS.** This Agreement does not relieve either party of any obligation or responsibility imposed upon it by law.

**16 TIME IS OF THE ESSENCE.** The requirements of this Agreement shall be carried out in a timely manner according to a schedule negotiated by and satisfactory to the parties.

**17 COPIES FILED WITH COUNTY AUDITOR OR POSTED ON PARTIES' WEB SITE:** Copies of this Agreement shall either be filed with the Pierce County Auditor's Office after execution or posted on each Parties' website listed by subject or other electronically retrievable public source, as allowed by RCW 39.34.040, and shall be filed with the respective Party authorities.

**18 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 City/Tacoma Rail and the Port 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.

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**19. 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.

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

PORT OF TACOMA

CITY OF TACOMA

\_\_\_\_\_  
Chief Executive Officer  
Date: \_\_\_\_\_

\_\_\_\_\_  
William A. Gaines, Director Public Utilities/CEO  
Date: \_\_\_\_\_

\_\_\_\_\_  
Dale W. King, Rail Superintendent/COO

\_\_\_\_\_  
Andy Cherullo, Finance Director

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Port Legal Counsel  
Date: \_\_\_\_\_

\_\_\_\_\_  
City of Tacoma Attorney  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk