

**AGREEMENT BETWEEN  
CITY OF TACOMA  
and  
PORT OF TACOMA  
REGARDING  
McKINLEY OVERLOOK**

**THIS AGREEMENT** (“**AGREEMENT**”) is entered into this 20th day of August, 2024, by and between the **CITY OF TACOMA**, a municipal jurisdiction of the State of Washington (hereinafter the “**City**”), and the **PORT OF TACOMA**, a Washington public port district (the “**Port**”), (each a “**Party**,” collectively the “**Parties**”) in consideration of the mutual covenants contained herein. The Parties hereby recite and agree as follows:

**RECITALS**

1. The Port is charged by state statute with a mission of furthering economic development. To that end, the Port has adopted a Local Economic Development Policy by which the Port administers its monetary support of economic projects sponsored by local public agencies in Pierce County.

2. The City proposes a new redevelopment plan for the McKinly Overlook area to provide usable public space for tourists and the community (the “**Project**”).

3. The City has requested \$30,700 and the Port agrees to provide an investment of \$30,000 toward the Project costs, conditioned upon proof of Project expenditures, and as expressly specified herein.

4. The Port finds the requested contribution meets the Port’s Local Economic Development Policy criteria as follows:

A. This project meets our criteria outlined in section D, “Planning activities or events promoting tourism intended to attract tourists to Pierce County from outside locations”.

B. This project will promote tourism to Pierce County from outside locations by creating a cohesive wayfinding signage, viewfinders with Port of Tacoma views, and interpretive signage which will help tell the Port of Tacoma story, among others.

**CONSIDERATION**

**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**

A. The Project consists of the following:

i. Interpretive signage, developed in partnership with the Port, to help tell the story of viewable locations from the overlook, including the Port, Tideflats, and downtown.

ii. Wayfinding signage

iii. Viewfinder

**B.** All as described in the City's Application, as attached hereto as **Attachment A.**

## **2. PORT'S CONDITIONAL AGREEMENT TO CONTRIBUTE FUNDS**

**A.** Subject to the terms herein, the Port agrees to provide reimbursements of an amount not to exceed \$30,000 reimbursable up to 24 months from the Port signing for expenses incurred by the City for the Project. The City shall be responsible for timely payment of all invoices submitted by third parties providing goods or services for the Project. The City shall submit to the Port, or its designee, paid project invoices within ninety (90) days after the referenced goods or services have been provided. The Port or its designee shall review any such invoices and as appropriate make payment to the City within thirty (30) days of receipt of the invoice. The Port shall not be obligated to reimburse the City for invoiced goods or services where invoices are not submitted in a timely fashion. The City shall be solely responsible for compensation of the City's employees, including those employees' salaries, fringe benefits, or any other compensation, including for time spent by those employees related to the Project. The Port shall not be responsible to provide reimbursement for any compensation to the City's employees.

**B.** Conditions of the Port's funding are as follows:

i. If the Project costs are higher than projected, the City will assume any excess Project costs.

ii. The Port's annual Project contribution shall be allocated and is identified in the Port's 2024 budget.

**C.** The Port's distribution of funds is further contingent on the City obtaining full committed funding 24 months from the Port signing for the complete Project scope and the contents of this AGREEMENT remain unchanged.

**D.** Port payments up to the not-to-exceed amount will be made pursuant to this signed AGREEMENT, and within 45 days of the City's submittal of written proof to the Port that City has paid its minimum contribution of \$30,000 in expenditures.

## **3. TIMEFRAME/PROJECT SCHEDULE**

This AGREEMENT shall last no more than twenty-four months from the date of the Port's signatory, below.

**4. CITY' S PROJECT FINANCIAL SUMMARY**

- A.** Total Project Cost: \$370,000
- B.** Source of Funds (other than the Port):
  - City of Tacoma: \$300,000
  - National Endowment for the Arts: \$40,000

**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 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 after all reimbursements are paid or two years following completion of the Project, whichever occurs first, unless terminated earlier by written agreement. However, absent express authorization by the Port, in no case will the Port's allocations as provided under this AGREEMENT be committed for more than two years after approval of this AGREEMENT by the Port.

**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:

City: Attention: Lauren Hoogkamer  
Email: [LHoogkamer@cityoftacoma.org](mailto:LHoogkamer@cityoftacoma.org)

Port: P.O. Box 1837  
Tacoma, Washington 98406  
Attention: Matthew Mauer  
Email: [mmauer@portoftacoma.com](mailto:mmauer@portoftacoma.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 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 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 in accordance with chapter 39.34 RCW 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 that set out terms and conditions to which the Parties agree shall be kept by each Party and shall be available for inspection and audit by representatives of either Party and any other City with legal entitlement to review said records. If any litigation, claim, or audit is commenced, such records and accounts along with supporting documentation shall be retained until all litigation, claims, or audit finding has been resolved, even if 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 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.

**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 to the other party only, any immunity under the Worker's Compensation Act, RCW Title 51.

**F.** The Parties recognize 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.

**G.** No liability shall attach to either Party by reason of entering into this AGREEMENT except as expressly provided herein.

**H.** The provisions of this Article 18 shall survive any termination or expiration of this AGREEMENT. CITY OF

TACOMA:

PORT OF TACOMA:

Signed by:  
By: City Manager Elizabeth Pauli  
Elizabeth Pauli  
Its: City Manager  
Date: 08/26/2024

Eric D. Johnson  
By: Eric Johnson  
Its: Executive Director  
Date: Jul 3, 2024

Approved as to form:

Signed by:  
By: Steve Victor, Deputy City Attorney  
Steve Victor  
Its: Chief Deputy City Attorney  
Date: 08/26/2024

Heather L. Burgess  
By: Heather L. Burgess  
Its: Legal Counsel

Attest:

DocuSigned by:  
By: Nicole Emery  
Nicole Emery  
Its: City Clerk  
Date: 08/28/2024



## RESOLUTION NO. 41510

1 A RESOLUTION relating to neighborhood and community improvement; authorizing  
2 the execution of an Interlocal Agreement with the Port of Tacoma, in the  
3 amount of \$30,000, and accepting and depositing said sum into the Special  
4 Revenue Fund, for reimbursement of costs related to interpretive and  
5 wayfinding signage and a viewfinder at the McKinley Overlook.

6 WHEREAS the City's McKinley neighborhood is a diverse and historically  
7 under-served, underrepresented community, which ranks "very low" on the City's  
8 Equity Index, and

9 WHEREAS as part of the McKinley Hill Neighborhood Plan, the community  
10 identified the McKinley Overlook ("Project") as a top priority, with the aim to reduce  
11 the criminal activity that has historically negatively impacted the surrounding  
12 community, and a new public space to enjoy the views of downtown, the Port of  
13 Tacoma ("Port"), and Commencement Bay, and

14 WHEREAS the new public space will feature a walking path, separated from  
15 the roadway by a planted landscape area, public art, viewfinders, garbage cans,  
16 artist-designed seating, pedestrian-scale lighting, and defined parking spaces, and

17 WHEREAS the final project will also include accessibility improvements,  
18 including Americans with Disability Act-compliant parking, new sidewalks, and new  
19 curb ramps, and

20 WHEREAS this Interlocal Agreement ("ILA") with the Port of Tacoma Local  
21 Economic Development Fund grant ("LEDIF") will further enhance the Project,  
22 providing \$30,000 in funding for two interpretive signs to tell the history of the site  
23 and neighborhood, as well as a viewfinder and wayfinding signage to direct people  
24 to the newly created site, and  
25  
26



1 WHEREAS in addition to recognizing the community's desire to see this site  
2 celebrated and enhanced, the Project responds to concerns about illegal dumping  
3 and other unsafe and criminal activities at the site, and protects recent plantings  
4 and restoration of the adjacent McKinley Slope, a City-managed open space and  
5 critical area, and  
6

7 WHEREAS the LEDIF grant adds new amenities and interpretation to the  
8 planned Project, and the Project team will work in partnership with the Puyallup  
9 Tribe of Indians and the Port, as well as City departments such as the Public Works  
10 department and the Office of Arts and Cultural Vitality, to develop signage content  
11 and design, and  
12

13 WHEREAS the construction of the Project is fully budgeted and funded,  
14 having received both City Council and grant funding through the Transportation  
15 Improvement Board, and the Project has been designed, a contractor selected, and  
16 construction will begin in late summer or fall; Now, Therefore,  
17

18 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

19 That the proper officers of the City are hereby authorized to enter into an  
20 interlocal agreement with the Port of Tacoma ("Port"), in the amount of \$30,000,  
21 and accepting and depositing said sum into the Special Revenue Fund, for  
22 reimbursement of costs related to interpretive and wayfinding signage and a  
23  
24  
25  
26





viewfinder at the McKinley Overlook, as more specifically set forth in the document on file in the office of the City Clerk.

Adopted August 20, 2024

M. Woodard  
Mayor

Attest:

[Signature]  
City Clerk

Approved as to form:

[Signature]  
Chief Deputy City Attorney