

# **INTERLOCAL AGREEMENT BETWEEN PORT OF TACOMA AND CITY OF TACOMA PORT OF TACOMA ROAD REHABILITATION 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 Rehabilitation 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."

## **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 and the City jointly applied for Surface Transportation Program (STP) grant funding and inclusion of the Project within the Regional Transportation Improvement Program (TIP), which commits approximately Six Million Two Hundred Thousand Dollars (\$6,200,000) towards the rehabilitation of the Port of Tacoma Road corridor between East 11<sup>th</sup> Street and the grade separation spanning State Route 509 (See **Exhibit A**) should the Project be prioritized to receive grant funding;

**WHEREAS**, the City agreed to provide Three Hundred Thirty Seven Thousand Dollars (\$337,000) of secured local grant match support, leveraging the Port's commitment to provide Five Hundred Thousand Dollars (\$500,000) of secured local match, satisfying the STP program's required local funding contribution (see **Exhibit C**);

**WHEREAS**, the Project is listed on the Pierce County Prioritized Contingency List October 18, 2012, (per PCRC funding Recommendations) as the #2 project (see **Exhibit D**);

**WHEREAS**, the Project has been awarded partial funding by the Puget Sound Regional Council through regionally-managed funds resulting from the Project's position within the Pierce County Contingency list in the amount of Four Hundred Twenty Nine Thousand Forty Dollars (\$429,040), allowing for the Project's design phase to commence (See **Exhibit E**);

**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 Rehabilitation

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 9,300 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.
  - Leaves the existing curb and gutter in place.
  - 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 2013, with construction starting in early 2014. Construction completion is scheduled by the fourth quarter of 2014, at which time the roadway corridor will be fully operational.
- 1.4. Phases: The Project will be phased in two segments, each with anticipated correlating Port and City matching funds and Grant Award amounts as follows, provided that, if grant funding for any phase is provided at an amount below that anticipated in the below Table, the Port shall contribute a proportionally reduced Port payment for that phase.

Phase	Port Contribution	City Contribution	Anticipated Grant Award
Preliminary Engineering (PE)	\$75,000	\$26,960	\$429,040
Construction Engineering (CE)/ Construction (CN)	\$425,000	\$310,040	\$4,933,960
Total	\$500,000	\$337,000	\$5,363,000

## 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 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 BNSF 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 Five Hundred Thousand Dollars (\$500,000) 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 Five Hundred Thousand Dollars (\$500,000) 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 \$500,000. The first payment of \$40,000 will be invoiced no sooner than the effective date of this Agreement and upon receipt of a letter from the City Project Manager certifying the Project is underway and funds are

being spent towards the Project as described in Section 1 above, or as hereafter mutually amended by the Parties. The second (\$60,000) and third (\$400,000) 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 is 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](mailto: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:

Dakota Chamberlain, Director, Engineering  
Port of Tacoma  
P.O. Box 1837  
Tacoma, WA 98401-1837  
[dchamberlain@portoftacoma.com](mailto:dchamberlain@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  
Interim 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 B—Elements of Mutual Benefit

### Scope Summary and Benefits

Scope Elements	Benefits
Removes all surface pavements between the curb lines on Port of Tacoma Road from East 11 <sup>th</sup> Street to just south of Marshall Way (approximately 9,300 LF).	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 rehabilitation.
Replaces the pavement section with cement concrete to be consistent with the approved City of Tacoma Pavement Design Standards for Heavy Haul Industrial Corridors.	As a Heavy Haul corridor, Port of Tacoma Road should implement a 10-inch concrete paving section to withstand the demands of a heavily utilized T-1 corridor. The proposed rehabilitation 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.
Installs cement concrete sidewalk where missing.	Supports a complete street profile, accommodating pedestrians and vehicles alike. Pedestrian traffic is a significant component of the arterial's overall traffic.
Leaves the existing curb and gutter in place.	Supports Right-of-Way certification and minimizes impacts to adjacent properties, easements and franchises.
The roadway will be restriped per the original channelization.	Provides safe, conventional vehicle operations within the roadway.

## Exhibit C – Pierce County 2012 Project Contingency List



City of Tacoma  
Public Works Department

May 1, 2012

Brian Mannelly  
Planning Director  
Port of Tacoma

Subject: Port of Tacoma Road commitment of financial support

Dear Mr. Mannelly:

The City of Tacoma agrees to provide \$337,000 toward the Port of Tacoma Road improvement project. Port of Tacoma Road is listed as a heavy haul route in Tacoma's heavy haul system. This listing makes it eligible for heavy haul funds as provided in Tacoma's Six Year Comprehensive Transportation Program. We understand that when combined with Port funds and the proposed FHWA grant the total project will total \$6.2 million. This shows a significant leverage of City funds for our infrastructure.

Additionally we are excited to participate in the much needed improvement of this vital corridor. Port of Tacoma Road is the core of the transportation system in the Port and it is vital to keep this roadway open and available for the movement of freight and goods.

Sincerely,

Chris Larson, P.E.  
Engineering Division Manager  
City of Tacoma



## Exhibit D – Pierce County 2012 Project Contingency List

Pierce County Prioritized Contingency List October 18, 2012 (Per PCRC funding Recommendations)

Sponsor	(Project ID #) - Project Title	Application Type	Points Scored	Amount
<b>STP</b>				
UNIVERSITY PLACE	(UP 5) Bridgeport Way Phase 3B	Roadway	67 (Partial funded)	\$ 250,000
UNIVERSITY PLACE	(UP 4) S. 56th Street and Cirque Drive Corridor Improvements	Roadway	66 (Partial funded)	\$ 578,500
UNIVERSITY PLACE	(UP 2) 40th St W Asphalt Overlay Project	Preservation	19 (Partial funded)	\$ 167,969
PORT OF TACOMA	(POT 1) Port of Tacoma Road Rehabilitation	Intermodal	55 (Partial funded)	\$ 4,933,960
SUMNER	(SUM 4) Stewart Road Bridge Replacement	Roadway	52	\$ 1,211,000
BUCKLEY	(BUC 1) SR 410/SR 165/Ryan Road/112th St E Realignment Phase 2	Roadway	46	\$ 1,583,815
LAKEWOOD	(LAK 3) Bridgeport Way SW - Main Gate JBLM to Interstate 5	Roadway	45	\$ 233,550
BONNEY LAKE	(BON 3) SR 410 & Veterans Memorial Drive Intersection Improvements	Roadway	44	\$ 4,228,120
EDGEWOOD	(EDG 1) Jovita Blvd Slope Stabilization - Seismic Wall	Other	41	\$ 220,900
STEILACOOM	(STE 2) Sequallish Street Reconstruction	Roadway	39	\$ 2,165,100
ORTING	(ORT 1) Washington Avenue Two-way Left Turn Lane Improvements	Roadway	29 (Partial funded)	\$ 631,500
PIERCE COUNTY	(PC 6) 9th Street East (190th Avenue East to 198th Avenue East)	Roadway	24	\$ 2,575,000
SUMNER	(SUM 3) East Valley Highway Resurfacing - Clerget Corner to Forest Canyon	Preservation	16	\$ 749,147
PACIFIC	(PAC 2) West Valley Hwy Rehabilitation	Roadway	13	\$ 100,000
<b>CMAQ-TRANSIT</b>				
SOUND TRANSIT	(SOU 1) Tacoma Link Expansion	Capacity	47 (Partial funded)	\$ 127,719
PIERCE TRANSIT	(PT 3) Vanpool Vehicle Replacement	Preservation	27 (Partial funded)	\$ 1,303,417
<b>CMAQ-OTHER</b>				
TACOMA	(TAC 3) Historic Water Ditch Trail Project	Nonmotorized	71 (Partial funded)	\$ 500,000
UNIVERSITY PLACE	(UP 1) Bridgeport Way Phase 5 Roadway Improvements	Nonmotorized	67 (Partial funded)	\$ 250,387
TACOMA	(TAC 2) Thea Foss Waterway - Site 10 Esplanade	Nonmotorized	63 (Partial funded)	\$ 1,922,200
FIFE	(FIF 2) Pac Hwy E (SR 99) Pedestrian and Bicycle Safety Improvements	Nonmotorized	63	\$ 1,436,592
PIERCE COUNTY	(PC 3) Countywide and I-5 Corridor Transportation Demand Management	Other	61 (Partial funded)	\$ 100,000
LAKEWOOD	(LAK 5) Lakewood Traffic Signal Upgrade - ITS - Ph. IV	Other	53 (Partial funded)	\$ 100,000
LAKEWOOD	(LAK 4) Gravelly Lake Dr SW - 100th St SW to Bridgeport Way SW Sidewalk Improvements	Nonmotorized	58	\$ 695,000
SUMNER	(SUM 1) No. 9 Ditch Trail (Sumner Trail System)	Nonmotorized	56	\$ 93,500
TACOMA	(TAC 5) 2014 Sidewalk Reconstruction Project	Nonmotorized	54	\$ 750,000
PUYALLUP	(PUY 1) SR161/Meridian Corridor Sidewalk Curb Ramps and Pedestrian Signal Upgrades	Nonmotorized	53	\$ 415,000
PUYALLUP	(PUY 3) Non-motorized Transportation Plan	Other	50	\$ 129,750
FIFE	(FIF 1) UPRR Non-motorized Overcrossing	Nonmotorized	49	\$ 636,640
PIERCE COUNTY	(PC 2) Foothills Trail - Buckley City Limits to SR-162 Overcrossing	Nonmotorized	46	\$ 750,000
PACIFIC	(PAC 1) Interurban Trail - Stewart Road Segment from SR-167 to UPRR Right-of-way	Nonmotorized	42	\$ 431,981
PIERCE COUNTY	(PC 1) Jahn Av NW/32 St NW/2 Av NW - 36 St NW to 24 St NW	Nonmotorized	42	\$ 519,000
MILTON	(MIL 1) Milton Way Pedestrian Improvements (17th Ave to 22nd Ave)	Nonmotorized	37	\$ 693,168
SUMNER	Pavement Management System	Other	9	\$ 7,000

Small City

**Exhibit E – PSRC Award Letter (PE 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,

  
Bob Drewel  
Executive Director

cc: John Wolfe, Chief Executive Officer