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Pages: 15 Fee: \$0.00

Name & Return Address:

City of Tacoma - City Clerk's Office

733 Market Street, Room 11

Tacoma, WA 98402-3769

Washington State Recorder's Cover Sheet (RCW 65.04) Please print legibly or type information.

Document Title(s) Interlocal Agreement - Resolution No. 40597
Grantor(s) City of Tacoma ____ Additional Names on Page ____ of Document
Grantee(s) Port of Tacoma ____ Additional Names on Page ____ of Document
Legal Description (Abbreviated: i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section) Resolution No. 40597 - Amendment No. 1 to the Interlocal Agreement related to reconstruction of Taylor Way (Resolution No. 39302, 2016) Complete Legal Description on Page ____ of Document
Auditor's Reference Number(s) Amends Recorded Doc. No. 201608180679 (Resolution No. 39302)
Assessor's Property Tax Parcel/Account Number(s)
Non Standard Fee \$50.00 By signing below, you agree to pay the \$50.00 non standard fee. I am requesting an emergency non standard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document. _____ Signature of Party Requesting Non Standard Recording NOTE: Do not sign above or pay additional \$50.00 fee if document meets margin/formatting requirements. The Auditor/Recorder will rely on the information provided on this cover sheet. Staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

**FIRST AMENDMENT TO INTERLOCAL AGREEMENT BETWEEN PORT OF
TACOMA AND CITY OF TACOMA
REGARDING IMPROVEMENTS TO TAYLOR WAY**

This First Amendment to Interlocal Agreement ("Amendment") 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 Taylor Way Road Rehabilitation Project (bid by the City PW 19-0262F), to benefit the movement of freight and goods as further described in the January 21, 2016 Interlocal Agreement ("2016 Agreement") The Port and the City are also referred to in this Agreement collectively as "the Parties," and individually as a "Party."

RECITALS

WHEREAS, the 2016 Agreement included a proposed scope of work with regard to the reconstruction of Taylor Way to a Heavy Haul Industrial Corridor standard, and

WHEREAS, the Parties desire to amend and update the 2016 Agreement to reflect the current state of items addressed in the 2016 Agreement, and

WHEREAS, the Port is agreeable to provide additional funding to the Project to maintain elements of the scope of the Taylor Way reconstruction that are beneficial to the operations of the Port, and

NOW, THEREFORE, the Parties agree to amend the 2016 Agreement as follows:

1. Project Funding. Section 4 of the 2016 Agreement is deleted and replaced by the following:

4. Project Funding. The Port will invest not more than \$ 500,000 of additional Project funding to complete the Taylor Way Reconstruction Project, conditioned upon all other funding sources for the Project have first been depleted, including but not limited to any contingency funds. The Port has agreed to the elimination of three crossings contemplated in the original scope (Crossings 1, 2, and 3), as depicted on the attached Exhibit A, and the elimination of these crossings are recognized as in-kind savings to the Project provided by the Port. The additional Port cash contribution will allow retention of the reconstruction of the other crossings within the Project, installation of ITS infrastructure, and construction of improvements to Taylor Way and the SR509 intersection to Heavy Haul Industrial Corridor standards.

2. Section 3 of the 2016 Amendment is deleted and replaced with the following:

3. Project Plans and Specifications. The Parties acknowledge and agree that the Plans and Specifications for the Project are those established in the Taylor Way Road Rehabilitation Project under City of Tacoma Public Works bid PW 19-0262F. Any references to Plans or specifications in the 2016 Agreement are hereby modified accordingly.

3. City Contact. Section 15 of the 2016 Agreement is hereby amended to change the City contact for notification as follows:

First Amendment to Interlocal Agreement between Port of Tacoma and City of Tacoma for Taylor Way Reconstruction
Page 2

To the CITY: Mark D'Andrea, P.E.
City of Tacoma
Tacoma Public Works/Special Projects
Tacoma Municipal Building
747 Market Street, Room 544
Tacoma, WA 98402-3769
mdandrea@cityoftacoma.org
253-591-5518

- 4. **Termination Date.** Section 13 is amended to extend the Termination Date to December 31, 2025, or final completion of the Project, whichever is later.
- 5. **No Additional Changes.** All other terms and conditions of the 2016 Agreement except as specifically modified herein shall remain in full force and *effect*.
- 6. **COVID19 Emergency.** The Parties acknowledge and agree that the current COVID19 emergency as declared by the Governor of Washington, and the Tacoma City Council, may affect the Project in ways that are not foreseeable, and are not within the control of either party. Neither party shall be responsible or liable for issues or impacts to the Project arising in any manner from the COVID19 emergency.

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




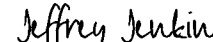


Eric Johnson, Executive Director
4/16/20
Date

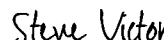
Elizabeth Pauli, City Manager
06/16/20
Date

APPROVED AS TO FORM:


Carolyn Lake, Port Legal Counsel
4/16/20
Date

For: 
Kurtis D. Kingsolver, P.E.
Public Works Director/City Engineer
06/08/20
Date

APPROVED AS TO FORM:


Steve Victor, Deputy City Attorney
06/08/20
Date



Req. #20-0307

RESOLUTION NO. 40597

1 A RESOLUTION relating to transportation systems; authorizing the execution of
 2 Amendment No. 1 to the Interlocal Agreement with the Port of Tacoma, in
 3 the amount of \$500,000, accepting and depositing said sum into the Street
 4 Capital Projects Fund, in support of rail, Intelligent Transportation System
 5 improvements, and other improvements associated with the reconstruction
 6 of Taylor Way, from approximately 300 feet east of State Route 509 to the
 7 intersection of Alexander Avenue and East 11th Street, and authorizing
 8 Tacoma Water to make betterments to the water utility infrastructure along
 9 Taylor Way from 1,400 feet west of State Route (SR) 509 to Lincoln
 10 Avenue, as previously approved by the Public Utility Board.

11 WHEREAS, Taylor Way is a major arterial within the Port of Tacoma
 12 Manufacturing Industrial Center, which is the main corridor on the Blair-Hylebos
 13 Peninsula, an essential emergency access route, and part of Washington State's
 14 Truck Freight Economic Corridor System, which carries 4-10 million tons of freight
 15 annually, and

16 WHEREAS Taylor Way currently has failing pavement, poorly coordinated
 17 signals, deteriorating rail crossings, limited pedestrian access, and the intersection
 18 at State Route 509/Taylor Way has been ranked by the Washington State
 19 Department of Transportation ("WSDOT") as the second-worst congested
 20 intersection in a seven county area, and

21 WHEREAS, reconstruction of the rail crossings and road to heavy haul
 22 standards will allow freight and passenger vehicles to operate more efficiently, and
 23 will minimize road and rail maintenance, and

24 WHEREAS Intelligent Transportation System improvements, including
 25 roadway cameras, fiber optic communication, interconnected traffic signals, and
 26 electronic blank-out signs will allow the corridor to be managed for train movement,



1 roadway blockages/collisions, detours, and real time messaging to the traveling
2 public, and

3 WHEREAS Port of Tacoma ("Port") funding for the project will be combined
4 with City, state, and federal funding, including approximately \$18.3 million in
5 grants, and

6 WHEREAS the City would benefit from partnering with the Port in
7 reconstructing Taylor Way to heavy haul standards, and to improve connectivity
8 along the corridor, by making traffic flow, communication with the public, and
9 emergency management more effective and efficient, and

10 WHEREAS Tacoma Water has identified needed betterments to water
11 infrastructure along Taylor Way, which can be more economically and efficiently
12 upgraded in coordination with the reconstruction work, and

13 WHEREAS Tacoma Water desires to participate in the Taylor Way
14 Rehabilitation Project to install a new intertie with the City of Fife and replace
15 approximately 6,600 feet of water main along Taylor Way, from 1,400 feet west of
16 State Route (SR) 509 to Lincoln Avenue, and

17 WHEREAS the total project cost of \$3,964,425.30 is fully funded and has
18 been approved by the Public Utility Board, and

19 WHEREAS Section 4.11 of the Tacoma City Charter requires City Council
20 approvals for significant betterments of utility infrastructure; Now, Therefore,
21
22
23
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26



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

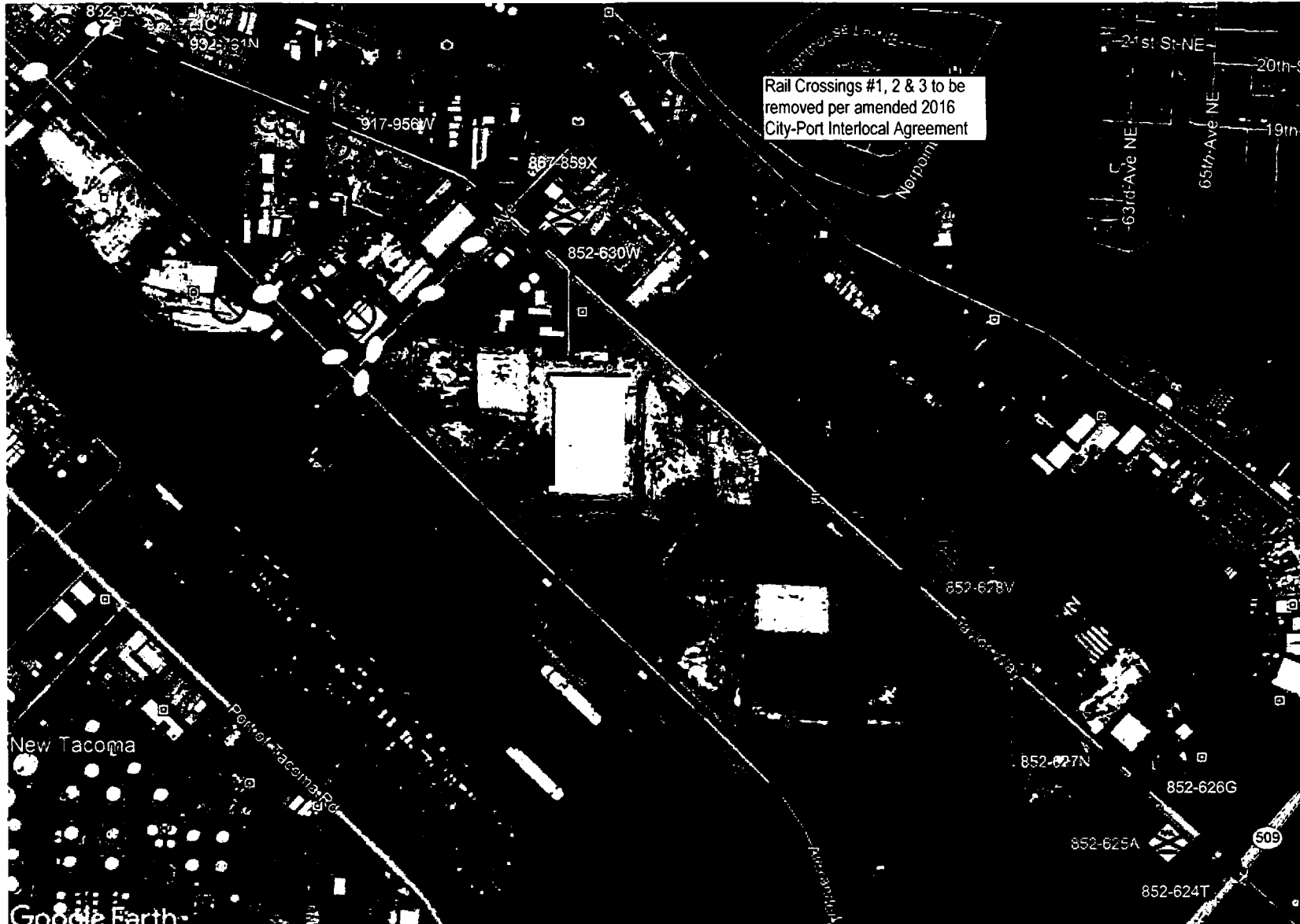
2 Section 1. That the proper officers of the City are hereby authorized to
3 execute Amendment No. 1 to the Interlocal Agreement with the Port of Tacoma, in
4 the amount of \$500,000, accepting and depositing said sum into the Street Capital
5 Projects Fund, for the purpose of rail, Intelligent Transportation System
6 improvements, and other improvements associated with the reconstruction of
7 Taylor Way, from approximately 300 feet east of State Route 509 to the
8 intersection of Alexander Avenue and East 11th Street.
9

10 Section 2. Tacoma Water is authorized to participate in the Taylor Way
11 Rehabilitation Project to make betterments to the water utility system along Taylor
12 Way, including installation of a new intertie with the City of Fife and replacement of
13 approximately 6,600 feet of water main, all as previously approved by the Public
14 Utility Board.
15




16 Section 3. That the City Manager, or designee, is hereby authorized to take
17 and execute any additional measures or documents that may be necessary to
18 complete this transaction which are consistent with the approved form of
19 documents referenced by this Resolution, and the intent of this Resolution.
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26

TAYLOR WAY - ITS FOR RAIL CROSSINGS

NOVEMBER 7, 2018



Legend

-  Rebuild Crossing
-  Remove Crossing
-  Existing Crossing



-  Signalized Public Xing
-  Public Passive Xing

EXHIBIT A





201608180679 KYOHN 7 PGS
08/18/2016 03:35:58 PM \$0.00
AUDITOR, Pierce County, WASHINGTON

UNOFFICIAL DOCUMENT

When Recorded, Return To: City of Tacoma City Clerk's Office 747 Market Street, Room 220 Tacoma WA 98402-3769
DOCUMENT TITLE Interlocal Agreement
Grantor City of Tacoma
Grantees Port of Tacoma
Description Regarding improvements related to the Puget Sound Energy Liquefied Natural Gas Facility
Reference Number Resolution 39302
Assessor's Parcel Number

For reference only, not for re-sale.

COPY

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF TACOMA
AND THE PORT OF TACOMA
REGARDING IMPROVEMENTS RELATED TO THE
PUGET SOUND ENERGY LIQUID NATURAL GAS PLANT AT 11TH AND TAYLOR WAY**

This Interlocal Agreement (ILA) relates to the development of an LNG plant at 11th and Taylor Way (this "Agreement") is entered into this 21 day of November, 2016 by and between the **CITY OF TACOMA**, a first class municipal corporation 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

1. The Port has entered into a lease with Puget Sound Energy ("PSE") wherein the Port leases to PSE a site to build, and operate a LNG facility (the "Project") on a 28 acre site at the intersection of 11th and Taylor Way in the City of Tacoma.
2. Based on information supplied to the City, the Project will supply cleaner fuel for ships and provide back-up capacity for Tacoma and Pierce County natural gas customers.
3. At the outset of PSE's entitlements process and with the concurrence of the Washington State Department of Ecology ("DOE") the City was designated the Lead Agency under the State Environmental Policy Act (RCW 43.21C, "SEPA"). The City has commissioned an Environmental Impact Statement ("EIS") for the Project.
4. This EIS explicitly identifies City code requirements and mitigations deemed necessary by the City for this Project to be located at the intended location ("Project Costs").
5. Some grant funding has been secured that can go toward the Project Costs and, given a window of opportunity, the Parties reasonably anticipate more grant funding can be obtained.
6. The City requests a contingency plan be in place to address compliance with applicable City code requirements and for City- PSE agreed upon mitigations measures to be in place concurrent with Project operation. For purposes of this Agreement, "concurrent" is defined as upon expiration of two (2) years after the commencement of PSE operations at the site.
8. PSE has committed \$5.5 million towards Project mitigation/Project Costs consisting of capital contribution towards refurbishing Fire Station 15 and rebuilding Taylor Way to heavy haul standards from SR 509 to 11th Street, and the City has committed projected new tax revenues derived from the Project to reopening a functioning Fire Station 15.

For reference only, not for re-sale.

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. **Taylor Way Rebuild.** The Parties will make every reasonable effort to secure funding for a 'complete' rebuild of Taylor Way from SR 509 to 11th Street using federal and state grant funding supplemented by appropriate contributions from new developments, railroads, and infrastructure providers. A 'complete' rebuild is defined as a rebuild to the City's existing heavy haul standards with curb, and gutters with approximately the same paving width as currently exists, and with a complete rebuild of those railroad crossings that must remain ("Taylor Way Rebuild").
2. **Intelligent Transportation System.** In addition to the funds the Port still has available from its 2015 Homeland Security Grant (the "Existing Grant Funds") and expected contributions from new developments, the Parties will make every reasonable effort to secure up to \$475,000 in grant funding for Intelligent Transportation System ("ITS") improvements. These additional funds, if secured, will be added to the Existing Grant Funds and used for improvements for interim and long-term ITS improvements to support an operational ITS on the Hylebos Peninsula. The final figure necessary for ITS improvements will be proposed by a consultant retained and paid by the City.
3. **Potential Taylor Way Realignment.** The Parties may take up to twelve months from the execution of this Agreement to work with stakeholders on establishing an optimal Taylor Way alignment or widening ("Taylor Way Realignment"). If the Parties and stakeholders cannot agree on an alternative alignment for Taylor Way within this twelve month period, the current alignment will be used for project design. The Parties recognize that any realignment or widening of Taylor Way may result in additional costs not covered by this Agreement.
4. **Local Improvement District (LID) Formation.** The Parties agree that after two (2) years of the commencement of PSE operations, the City may form a LID to fund the balance of the cost for the Taylor Way Rebuild and the ITS improvements described above and that the Port will not oppose formation of such an LID, although the Port reserves any right it may have to disagree under RCW 35.44. The maximum amount to be financed through LID funding is \$5.5 million for the Taylor Way Rebuild plus a maximum of \$475,000 in ITS funding, less any amounts contributed by the Port from Existing Grant Funds (to include the Port's local match contribution), or any federal and state funding or grants, or local funding obtained by the Parties for these purposes, and any contributions received from new developments.
5. **Abandonment.** If the Project is abandoned, then this Agreement shall be of no further force or effect.
6. **Port Credits.** Any additional Port money contributed to the Taylor or ITS projects in advance of any LID formation shall be credited toward the Port's assessment under any later formed LID.
7. **Fire Station 15.** The City agrees that, by a date not later than commencement of commercial operations of the Project, it will reopen Fire Station 15 located on the Hylebos Peninsula and operate it in accordance with Tacoma Fire Department procedures and protocols. The Parties

understand and acknowledge that the City's continued operation of Fire Station 15 is subject to the budgetary and operational decision making of the City as a Washington State municipal corporation. If the City exercises its budgetary and operational decision making to close Fire station 15, neither the Port nor PSE shall be responsible for operational costs associated with the Fire Station.

8. **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.

9. **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.

10. **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.

11. **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.

12. **Modification.** This Agreement may not be modified except by mutual agreement reduced to writing in a formal amendment hereto and approved by each Parties' governing body.

13. **Termination.** This Agreement shall terminate upon completion by both Parties of their respective obligations hereunder, or on December 31, 2022 unless terminated earlier.

14. **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

15. **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 facsimile number(s) set forth below:

City:

747 Market Street
Tacoma, Washington 98402
Attention: Ian S. Munce
Facsimile: (253) 573-2478
Email: imunce@cityoftacoma.org

For reference only, not for re-sale.

Port:

PO Box 1837
Tacoma, Washington 98406
Attention: Evette Mason
Facsimile: (253) 597-7573
Email: emason@portoftacoma.com

16. 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 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.

17. 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.

18. 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.

19. 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

For reference only, not for re-sale.

property will transfer as a result of this Agreement.

20. 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 the other parties only, any immunity under the Worker's Compensation Act, RCW Title 51.

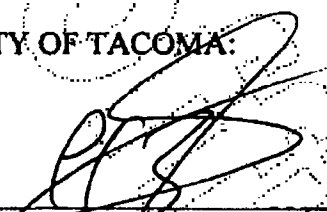
F. The Parties recognizes that this waiver was the subject of mutual negotiation. In the event any Party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this Agreement against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing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

G. 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:


T.C. Broadnax, City Manager

Date: 1/20/16


John Wolfe, CEO

Date: 12-4-15

Attest:

 1-21-2016

Deris Sorum, City Clerk


Peter Huffman, Director, Planning & Development Services

Approved as to form:


Deputy City Attorney


Port Legal Counsel


Andrew Cherullo, Finance Director

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