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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**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)

Agreement for Mutual Cooperation & Support Regarding Agency Stormwater
Management (Resolution No. 40655)

Complete Legal Description on Page ____ of Document

Auditor's Reference Number(s)**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.

**INTERLOCAL AGREEMENT
BY AND BETWEEN THE PORT OF TACOMA and THE CITY OF TACOMA
FOR
Mutual Cooperation & Support Regarding Agency Stormwater Management**

The Port of Tacoma, a public port district organized under the laws of the State of Washington (hereafter, "Port") and the City of Tacoma, a municipal corporation (hereafter, "City"), collectively "the Parties" enter into this Interlocal Agreement ("Agreement") pursuant to the Interlocal Cooperation Act (Chapter 39.34 RCW).

RECITALS

WHEREAS the Parties have a common interest in the proper management of surface water runoff (stormwater) to protect the water quality of Commencement Bay, its waterways and other receiving waters in and around the City and Port.

WHEREAS the Port of Tacoma and the City each have a responsibility to comply with their respective requirements set forth in the NPDES Phase I Municipal Stormwater Permit (MS4 Permit) issued by the Department of Ecology.

WHEREAS the Parties recognize there is a mutual benefit in cooperating and coordinating the integration of certain MS4 Permit program elements to ensure better water quality in Commencement Bay, its waterways and other receiving waters, and have a shared interest in exploring ways to create efficiencies and cost savings with regard to stormwater management.

NOW, THEREFORE, in consideration of the mutual promises, benefits and obligations hereinafter set forth, the Parties agree as follows:

TERMS OF AGREEMENT

A. PURPOSE

The purpose of this Agreement is to provide a cooperative framework for coordination by the Parties to eliminate barriers to compliance with the terms of their respective MS4 Permit, which is allowed under the Special Conditions of the MS4 Permit and is in the public interest. Each Party remains responsible for their permit compliance, and this Agreement does not transfer such responsibility.

Cooperation is mutually beneficial because each Party benefits by a coordinated approach that targets the reduction of pollutants in municipal stormwater to the maximum extent practicable within two independently owned and operated municipal stormwater systems.

B. COORDINATION

The Port's Environmental Director and the City's Director of the Environmental Services Department or their respective designees will coordinate all activities included herein unless otherwise noted.

1. Parties shall meet annually to review development categories for Port-owned parcels and related surface water rates and charges for potential errors. As a result of the review, if corrections are warranted, the City shall verify within 30 days that the rate has been adjusted in its billing system. Within 60 days thereafter, the Party owing payment or rebate of fees shall remit payment to the other Party. The Parties further agree to meet annually to review the City's rates, charges, and regulations applicable to the Port, and any other related topic of mutual interest.
2. Parties shall meet annually to discuss maintenance of City-owned drainage ways (e.g., vegetation and sediment removal) and conveyance structures located within the Port District to assess whether such drainage ways or conveyance structures are causing property damage. Such review shall include identifying necessary infrastructure improvements and maintenance actions of the outfall structure and tide gate system for those parts of the drainage ways that are part of the City's stormwater system to address flooding of Port properties and portions of Milwaukee Avenue. Infrastructure improvements and needed maintenance actions shall be subject to available funding, work prioritization by the City and, in the case of shared infrastructure, obtaining access and/or cost sharing agreements for such work.
3. Parties shall meet annually to set an inspection schedule for properties that drain to City of Tacoma MS4 infrastructure. The Port shall be responsible for notifying the tenant of the scheduled inspection date.
4. Parties shall meet annually or as otherwise requested by the Port and/or City to discuss stormwater ordinance modification proposals, and changes to properties affected by C&E requirements, if any, deemed necessary by either party to support their business objectives and the successful implementation of their respective MS4 Permit obligations.

C. ROLES AND RESPONSIBILITIES

1. The Port will:
 - a. Fulfill all requirements, terms and conditions that are applicable in the MS4 Permit for the municipal separate storm sewers it owns and operates.
 - b. At no cost to the City, and as required by the City as a condition of various development permit approvals ("Permit"), grant access to Port properties which contain private storm drainage collection systems approved by the City ("Private Storm Drainage System" or "System") which discharge to the City's stormwater system covered by its MS4 Permit or

receiving waters, and for which the Parties have executed the written Covenant and Easement, in the form attached hereto as **Attachment A** (“C&E”). The terms of the City’s access shall be as described in the C&E.

c. Continue its internal review for compliance with the Port's MS4 Permit requirements for Port new development and redevelopment projects that only discharge to Port-owned MS4 stormwater system. Upon request, the City's Environmental Services and/or Planning and Development Services Department(s) are available for consultation regarding applicable stormwater-related requirements for such projects in accordance with Section 6 of the Stormwater Services Cost Summary, attached as **Attachment B**, which is incorporated by reference into and made part of this Agreement.

d. Comply with the City of Tacoma Stormwater Management Manual and those portions of Tacoma Municipal Code 12.08 applicable to surface water and/or stormwater for Port new development and redevelopment projects that discharge surface or stormwater to the City of Tacoma’s MS4 stormwater system.

e. Compensate the City for certain stormwater services as set forth in the Stormwater Services Cost Summary **Attachment B**, when the Port has requested such services and the City has provided a written scope and cost estimate prior to performing work, provided however, the requirement for a written estimate is waived when imminent harm may occur to the environment without immediate response. In such cases, verbal authorization from the Port will suffice.

f. Coordinate internal efforts and assist City staff to ensure timely completion of the action elements in this Agreement.

2. **The City will:**

a. Implement the requirements that are applicable in the City’s MS4 Permit for the separate municipal storm sewers it owns and operates.

b. Provide a courtesy stormwater review by Environmental Services or Planning and Development Services, in conjunction with other required project reviews for Port projects that discharge to the Port-owned MS4 at no cost to the Port.

c. Implement Chapter 12.08. Tacoma Municipal Code (“TMC”) and specifically TMC 12.08.500 A.3, “*Surface water rates and charges*” as that section currently exists or as it may be amended by the City Council, to maintain reduced surface water fees for Port properties/tax parcels that do not flow through the City’s municipal stormwater system but discharge directly through and from Port properties/tax parcels to receiving waters.

d. Implement Chapter 12.08. TMC and specifically TMC 12.08.500 A.2, as “*Surface water rates and charges*” as that section currently exists or as it may be amended

by the City Council, to maintain the effect of reducing surface water fees for undeveloped Port- owned “open space” upland properties that are not planned for future development and can be demonstrated to provide a water quality benefit.

e. At no cost to the Port, grant Port staff access to City infrastructure which discharges to the Port’s MS4 system to map, provide spill/emergency response, inspect and perform other related activities in accordance with City policies and the MS4 Permit.

f. Provide consultation regarding applicable stormwater-related requirements for Port projects and provide other stormwater-related services to the Port as set forth in **Attachment B.**

D. GENERAL PROVISIONS

1. **Effective Date.** This Agreement shall be effective upon approval by both the Tacoma City Council and the Port Commission, and execution by all signatories below. The Agreement shall remain in effect through the date of February 28, 2025 a period of four and one-half years unless extended by mutual agreement or terminated sooner by either Party for convenience.

2. **No Real Property Transfers.** No ownership of real property will transfer as a result of this Agreement.

3. **Financial Obligations.** Except for the Port’s payment for stormwater-related services the City provides the Port upon Port request as set forth in **Attachment B.**, each Party is responsible to finance the obligations it agrees to undertake as a result of this Agreement.

4. **Contract Administrators.** Each of the Parties shall designate a contract administrator with responsibility for administration of the terms of this Agreement.

5. **Limitation of Agreement.** This Agreement does not relieve either Party of any obligation or responsibility imposed upon it by law, including the obligations set forth in each Parties’ respective MS4 Permit.

6. **Timing.** The requirements of this Agreement shall be carried out in a timely manner according to a schedule negotiated by the Parties.

7. **Incorporation Clause.** This Agreement constitutes the complete and final agreement of the Parties, replaces and supersedes all oral and/or written proposals and agreements heretofore made by the Parties on the subject matter, and may be modified only by a writing signed by the Parties hereto.

8. Filing/Posting. In accordance with Chapter 39.34 RCW, a copy of this Agreement shall be recorded in the Office of the Pierce County Auditor or posted by each Party on their website.

9. Record Retention. All project records shall be retained in accordance with each Party's document retention schedule and available for review or audit by the other Party during the term of this Agreement.

10. Disputes. The Contract Administrators herein shall use their best efforts to resolve disputes between the Parties. If the Contract Administrators are unable to resolve a dispute, then the City's responsible Environmental Services Director and Port of Tacoma Environmental Programs and Planning Director shall review the matter and attempt to resolve it. If the Directors are unable to resolve the dispute, the matter shall be reviewed by the City Manager and Port Executive Director or their designees. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

11. Indemnification. The City shall defend, indemnify and hold the Port, its officers, elected officials, employees, agents, and tenants harmless from and against any and all costs, claims, demands, suits, actions, judgments, and/or awards of damages (collectively "Claims") resulting from this Agreement, which arise due to the Fault of the City, and persons acting on its behalf. This Agreement does not transfer to or make the City responsible for any of the Port's MS4 Permit compliance obligations, and any Claims based on such compliance obligations are not covered by this paragraph. The Port shall defend, indemnify and hold the City, its officers, elected officials, employees and agents harmless from and against any and all Claims resulting from this Agreement, which arise due to the Fault of the Port, and persons acting on its behalf, including any claims that arise due to the City's inability to perform because of access restrictions imposed by Port Security. This Agreement does not transfer to or make the Port responsible for any of the City's MS4 Permit compliance obligations, and any Claims based on such compliance obligations are not covered by this paragraph. The term "Fault" as it is used in this paragraph shall be defined according to RCW 4.22.015. The Indemnification obligations in this paragraph shall survive the termination of this Agreement.

SIGNATURES ARE ON NEXT PAGE

APPROVED BY the Commissioners of the Port of Tacoma, State of Washington

and signed in authentication thereof the ____ day of _____, 2020.

APPROVED BY and signature authorized by the Tacoma City Council pursuant to Resolution No.

_____ on the _____ day of _____, 2020.


PORT OF TACOMA:

CITY OF TACOMA



9/21/20

By: John McCarthy____ (Date)
Port of Tacoma Commission President



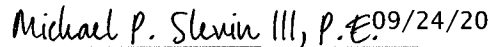
09/24/20

Elizabeth Pauli____ (Date)
City Manager



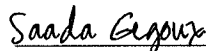
9/21/20

Eric D. Johnson, (Date)



09/24/20

Michael P. Slevin, III, P.E. (Date)
Director,
Environmental Services Department



09/24/20

Saada Gegoux____ (Date)
Risk Manager

ATTEST:



Doris Sorum, City Clerk

APPROVED AS TO FORM:



Carolyn Lake, Port General Counsel

APPROVED AS TO FORM:



Deputy City Attorney

Attachment A –
Covenant & Easement Agreement Template

When Recorded, Return To:

City of Tacoma
 Planning and Development Services
 747 Market Street Rm 620, Tacoma, WA 98402

DOCUMENT TITLE: MAINTENANCE COVENANT AND ACCESS EASEMENT
 type project name or address here

GRANTOR:

Grantee:

CITY OF TACOMA, a Municipal Corporation

Legal Description (abbreviated):

*****EXAMPLE*****Northeast Quarter of Section 27, Township 20 North , Range 3, Quarter 12

See Page 9, Exhibit "A", for Complete Legal Description of Servient Property
 See Page 10 Exhibit "B", for Graphic Depiction of Subject Property Private Stormwater System and Easement Area
 See Page 11 Exhibit "C", for Description of the Easement Area

Reference Number(s):

City of Tacoma Short Plat No. type short plat # here;
 City of Tacoma Work Order No. type work order # here;
 City of Tacoma Building Permit No. type building permit # here
 City of Tacoma Site Development Permit No. type SDEV permit # here

Assessor's Parcel Choose an item :

Insert parcel no. here

MAINTENANCE COVENANT AND ACCESS EASEMENT

type project name or address here

RECITALS

A. Grantor, _____ (name) (“**Grantor**”) is the owner of certain real property situated in the City of Tacoma, Pierce County, Washington, legally described on **Exhibit A** attached hereto and commonly known as

_____, (the
“**Property**”). (*Name of development and property address or tax parcel*)

B. As a condition of permit approval No. _____, (**Permit(s)**) the following private stormwater management system (“**Stormwater System**”) was constructed or will be constructed at the Property in accordance with City-approved construction plans and as further described below and depicted in the approved Permit and **Exhibit B** (Site Plan, showing and identifying Stormwater System):

(Note to reviewer: *Written description of the Stormwater Systems goes into the area above here*).

C. The City approved the Permit submitted by Grantor, or Grantor’s tenant, for the new development or redevelopment of the Property, including the Stormwater System. The Stormwater System is designed in accordance with City’s stormwater regulations and applicable Stormwater System Operation and Maintenance Manual (the “**O&M Manual**”).

D. Failure to inspect, maintain, repair, and replace the Stormwater System after it is constructed can result in an unacceptable impact to the public stormwater system or receiving waters. The City requires Grantor to enter into this Maintenance Covenant and Access easement (“**Agreement**”) as a condition of the City’s approval of the Permit(s) for the development or redevelopment of the Property. This Agreement confirms Grantor’s and Grantor’s successors and assigns’ obligation to inspect, maintain, repair, and replace the Stormwater System. The term “**Owner(s)**” is used herein to refer to the owner or owners of any part of the Property on which Stormwater System is located, including Grantor while Grantor owns any part of the Property on which Stormwater System is located.

E. In connection with new development or redevelopment of the Property, Grantor may divide the Property into individual lots (each a “**Lot**” and collectively the “**Lots**”). The Stormwater System for the Property will be maintained by the Owner(s). Therefore, although Grantor will be the sole owner responsible for constructing, inspecting, maintaining, repairing, and replacing

the Stormwater System while Grantor owns the entirety of the Property, upon Grantor's sale or transfer of ownership of any Lot, or part of the Property, those responsibilities will be transferred jointly and severally to the subsequent Owner(s).

F. "Emergency" shall mean and refer to any time that the Stormwater System, or a discharge into or therefrom, pose an imminent threat to the environment, human health, or public safety and immediate remedial action is required.

COVENANTS AND EASEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Grantor agree as follows:

1. **Incorporation of Recitals and Exhibits.** The Recitals and exhibits attached to this Agreement are incorporated into and made a part of this Agreement as though fully set forth herein.
2. **Run with the Land.** The City, Grantor and Owner(s)' ("**Parties**") rights, duties and obligations contained herein shall run with the land and shall be binding upon the Grantor and its successors and assigns (including, without limitation, the Owner(s) of the Lot(s) and any homeowner's association owning common areas in the Property). Those rights and obligations shall inure to the benefit of the City, as well as its successors and assigns and provide a public benefit.
3. **Agreement to Maintain and Repair.** The Owner(s) shall, at their sole expense, themselves or through qualified independent contractors or through Owners' tenants, at all times during their ownership of the Property, or any portion thereof, maintain the Stormwater System in good working order, condition and repair, clear of all debris, and in compliance with the Permit and all applicable state and local rules, regulations, and guidelines (including those adopted from time to time by the City and including the City's Stormwater regulations) and the O&M Manual. The O&M Manual shall be retained within reasonable access to the site of the Stormwater System and shall be transferred with the Property, or any portion thereof, to any new Owner(s).
4. **Agreement to Inspect.** The Owner(s) shall perform, at a minimum, regular inspections of all Stormwater System covered by this Agreement, in accordance with the O&M Manual and applicable stormwater regulations and guidelines. The regular inspection required by this Agreement shall identify work necessary to repair or maintain the Stormwater System in good working order. The Owner(s) shall maintain records of inspection, maintenance activities (including identification of the corrective actions taken in response to the regular inspection), monitoring activities and results (if applicable), and receipts for such activities when contracted for. Such records shall be maintained for six years and made available to the City for inspection and copying upon request.
5. **Easement.** Grantor hereby grants the City, its authorized employees, independent contractors and designees, a nonexclusive easement for ingress and egress over, across and under the Easement Area described in **Exhibit C** ("the **Easement Area**") which shall encompass the Stormwater System and ingress and egress over the Property to and from the Stormwater

System, pursuant to the conditions described herein, from time to time at the City's sole discretion to inspect, sample, and monitor components of the Stormwater System and discharges therefrom to ensure that the Stormwater System are being maintained and operated in accordance with the O&M Manual and applicable stormwater regulations and guidelines; provided that, except in the event of an Emergency, the City shall conduct regular compliance inspections of the Private Storm Drainage Facilities not more often than once a year. Grantor hereby grants to the City permission to undertake the actions described in Sections 7 and 8 of this Agreement. The City further agrees that:

(a) the City shall first provide not less than three (3) business days prior written notice of the intent to access, except in case of an Emergency, as that term is defined herein, requiring immediate action in which case the City shall provide as much prior notice as practicable under the circumstances,

(b) access shall occur only during normal business hours (8AM-4PM Monday-Friday and not on any holiday) except in an Emergency as defined herein,

(c) access shall be subject to ☐ Port of Tacoma and/or ☐ Port Tenant's policies and health, safety, and security rules, and/or ☐ Department of Homeland Security Rules and Regulations, as applicable, including ensuring a TWIC-compliant escort is readily available for City personnel access (check any that are applicable for this Property); provided that, such policies and rules shall not operate to prevent or unreasonably interfere with access to the Property's Easement Area for the purposes set forth herein, and provided that if applicable policies changes as a result of Property's use/ownership change, then Parties herein will execute an appropriate addendum; and

(d) the City, Grantor and Grantor's Tenant, if applicable, shall coordinate and cooperate with each other and other lawful occupants and users of the Property regarding any inspections or work to be performed by the City within the Property's Easement Area to facilitate the access as described herein and to minimize interference with the Grantor's or any Tenant's or other person's lawful use of the Property.

6. Improvements by Grantor. Owner(s) shall not place or construct any permanent structures or other improvements on the Easement Area that would restrict or interfere with the proper functioning of the Stormwater System or the City's access to perform the inspection, maintenance, or repair authorized under this Agreement. Permanent structures shall mean any concrete foundation, wall, building, or other site improvement that would unreasonably interfere with the ability to access the Stormwater System in said Easement Area. Permanent structures shall not mean normal landscaping that does not impede access, asphalt, paving (concrete or asphalt) firewood or chain-link or other fences that provide access to the Easement Area through gate or other means, or other similar site improvements.

7. Failure to Perform Agreement. If the City, in its sole and reasonable discretion, determines that the Owner(s) are not in compliance with the duties or obligations described in Sections 3 and 4 of this Agreement, the City or its designee shall provide the non-complying Owner(s) written notice to perform the maintenance and/or repair work specified in the notice. Provided, however, no prior written notice shall be required in the case of an Emergency, which

shall be governed by Section 8. If such work is not performed to the City's reasonable satisfaction within thirty (30) days after the date of such notice ("Cure Period"), or such other longer time as the City may in its sole discretion determine, exercise its rights under the Easement described in Section 5 of this Agreement to enter the Property's Easement Area, with all materials and construction equipment determined by the City to be reasonably necessary to perform any and all work required to bring the Stormwater System into compliance with this Agreement. The City may, in its sole discretion, extend said Cure Period upon receipt of Owner's written request for same, given good cause.

8. Emergency. If the City, in its sole discretion, determines that an Emergency exists on or about the Property with respect to the Stormwater System, the City, may immediately exercise its rights described in Section 5 of this Agreement to immediately enter the Property's Easement Area, with all material and reasonably necessary construction equipment determined to be necessary to perform any and all work required to bring the Stormwater System into compliance with this Agreement, and in such case the City shall use reasonable efforts to notify the affected Owner(s) prior to entering the Property's Easement Area. Owner(s) shall cooperate with the City, its authorized employees, independent contractors and designees, to ensure safe and secure access to the Stormwater System within the Property's Easement Area for the purposes set forth herein. Notwithstanding the above, the work performed may consist only of avoiding or mitigating the Emergency and/or cleaning and/or repairing the Stormwater System to its original condition and standards.

9. City under No Obligation. The City, as well as its authorized departments, employees, independent contractors and/or designees shall have no obligation to exercise its rights under this Agreement, including the right under Sections 7 and 8 of this Agreement, to perform the work required of the Owner(s), or to perform any other maintenance or repair of the Stormwater System. In addition, neither the City, nor any of its authorized departments, employees, independent contractors and/or designees shall have any liability to any Owner(s) in connection with the exercise or non-exercise of such rights, the maintenance or repair of the Stormwater System, or the failure to perform the same, except as described herein.

10. Grantor Obligations. Grantor and Owner(s) agree that, prior to sale of any portion of the Property, they will make specific references to this Agreement and the O&M Manual in a separate notice paragraph in any contract, deed, lease or other legal instrument by which any possessory or equitable interest in the Property is conveyed, which obligation is satisfied by reference to this recorded Agreement on the Property's title policy.

11. Reimbursement. If the City exercises its rights as described in Section 7 and Section 8, the Owner(s) shall reimburse the City for all its reasonable costs and expenses incurred in connection therewith within thirty (30) days after Owners' receipt of a written invoice. If the Property is owned by more than one Owner (i.e., multiple lot owners), for each Property or Lot where the City exercises its rights as described in Section 7 and Section 8, the Owner(s) shall be jointly and severally liable for reimbursing the City for all its reasonable costs and expenses incurred in connection therewith within. If any of the Owner(s) fail to pay the invoiced amount within such period, such amount shall thereafter accrue interest at the statutory rate. Such amount, together with interest, shall be a lien on the Property (and each of the Lots within the Property) that may be foreclosed in accordance with applicable law.

12. **Enforcement.** In the event of a breach of any of the terms, covenants, agreements and/or conditions of this Agreement, the Parties shall be entitled to any and all remedies available at law or in equity, including but not limited to the equitable remedies of specific performance or mandatory or prohibitory injunction issued by a court of appropriate jurisdiction. In the event it becomes necessary for any Party to defend or institute legal proceedings as a result of the failure of any Party to comply with the terms, covenants, agreements and/or conditions of this Agreement, the prevailing party in such litigation shall be entitled to be reimbursed for all costs incurred or expended in connection with such legal proceedings, including, but not limited to, reasonable attorneys' fees (including appellate fees) and court costs.

13. **Modification or Termination.** No change or modification of, or waiver under, this Agreement shall be valid unless it is in writing and signed by authorized representative of the City, Grantor and if applicable Owners. No waiver of a breach or violation of any term, covenant, agreement or condition contained in this Agreement shall be deemed to be a waiver of any subsequent breach or violation of the same or any other term, covenant, agreement or condition in this Agreement. The obligations contained herein shall terminate at such time as the maintenance of the Stormwater System is no longer subject to regulation under the Tacoma Municipal Code. In the event that the proposed development that triggered the obligation to construction and maintain the Stormwater System is not constructed, Grantor/Owners may seek a release of this Agreement from the City, which consent will not be unreasonably withheld or delayed.

14. **All Writings Contained Herein.** This Agreement, together with all exhibits, constitutes the complete and final agreement of the Parties, replaces and supersedes all oral and/or written proposals and agreements heretofore made on the subject matter.

15. **Assignment.** The obligations of the City and Grantor under this Agreement shall run with the land and therefore shall bind the purchasers of the Property, in whole or in part, without the necessity of any separate agreement evidencing or confirming the assignment and the purchaser's assumption of the obligations.

16. **Choice of Law; Venue; Severability.** This Agreement shall be construed under the laws of the State of Washington and venue for any dispute related to this Agreement shall be in Pierce County, Washington. If any provision of this Agreement shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and every provision of this Agreement shall remain in full force and effect and enforceable to the fullest extent permitted by law. This Agreement shall be construed as covenants applicable to the Property and a violation hereof shall not be construed as causing a reversion of title.

17. **Authority.** If Grantor is an entity, the individual executing this Agreement on behalf of Grantor represents and warrants to the City that said individual the full power and authority to do so and that Grantor has full right and authority to enter into this Agreement and perform its obligations under this Agreement.

18. **Indemnification and Hold Harmless.**

18.1. To the maximum extent permitted by law, the City shall protect, defend,

indemnify, and hold harmless the Grantor, 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.

18.2. 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.

18.3. 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.

18.4. The indemnification, hold harmless, and/or waiver obligations described in this Agreement in this Section 18 shall survive the termination of this Agreement.

19. Effective Date. This Agreement shall become effective after signatures by all Parties and on the date it is recorded by the Pierce County Auditor's Office.

IN WITNESS WHEREOF, the GRANTOR and CITY have executed this Agreement the _____ day of _____, 20_____.

GRANTOR

CITY OF TACOMA

By: _____

By: _____

Printed Name: _____

Printed Name: Corey Newton, P.E.
Environmental Services Division Manager,
PDS Site & Building Division

Title: _____

Title: _____

Date: _____

Date: _____

☐ Associated Tenant's Name: _____

☐ Date of Tenant's Agreement: _____

[illegible]

Given under my hand and official seal this _____ day of _____, 20____.

Port General Counsel _____

[illegible]

Given under my hand and official seal this _____ day of _____, 20____.

Deputy City Attorney _____

City Surveyor

Page 8 of XX

EXHIBIT A

SUBJECT PROPERTY LEGAL DESCRIPTION

This is always required

Insert complete legal description for the parcel here

With Tax Parcel No, , Situated in the City of Tacoma, County of Pierce, State of Washington.

EXHIBIT B

Graphic Depiction of Property Stormwater System and Easement Area

EXHIBIT C

DESCRIPTION OF THE EASEMENT AREA

That portion of the Property, Tax parcel____described as follows:

On, across and below a twenty-foot strip of land where the Stormwater System graphically depicted on Exhibit B forms the centerline, with ten feet either side.

Stormwater Services Cost Summary

ATTACHMENT B

The Port may request the City to provide the following stormwater-related services as set forth in this Attachment B.

A. City Laboratory Services.

If requested by the Port, the City agrees to provide certain analytical services at its Environmental Services Department Laboratory ("City Laboratory") for the parameters listed and analytical costs quoted in the attached document titled "Laboratory Analytical Services Quotation." The City may periodically update this document either to add or delete parameters and/or to update cost quotes for analytical services and provide the Port with a copy of the same, upon request. The Port is responsible for requesting whether there are updated cost quotes at the time they seek analytical services from the City. The Port's costs for City Laboratory services shall be in accordance with and equal to the City's "Laboratory Analytical Services Quotation" in effect at the time analytical services are requested by the Port.

1. The laboratory cost quotes are for samples provided by the Port to the City Laboratory in an "analysis ready" format. The term "analysis ready" means the samples have been collected, stored and managed in accordance with an approved Quality Assurance Project Plan (QAPP") by persons trained and qualified to perform such sampling activities. The Port shall make every effort to assure the samples delivered to the City Laboratory are in an "analysis ready" format.

2. The cost quotes in the "Laboratory Analytical Services Quotation" do not cover any costs the City may incur to make a sample "analysis ready", which shall be the Port's responsibility to pay. The City will provide the Port an estimate in writing of such costs before incurring any such costs and receive approval for the estimated costs in writing.

3. Prior to requesting City Laboratory services, the Port shall: (i) provide the City with a copy of its QAPP at no cost; and (ii) schedule a meeting between the City Laboratory staff and Port's sampling personnel to discuss the QAPP and expectations for the analytical work. Each party shall bear its own costs associated with the effort described in this paragraph.

B. Other City NPDES Stormwater Permit - Related Services.

1. Smoke Testing Pipe Infrastructure. Upon request, the City may "smoke-test" the Port's storm pipes (or sanitary pipes within the Port District) to detect illicit connections and illicit discharges to the Port's municipal stormwater system ("MS4 System"), per the cost schedule set forth in Section C below.

2. GIS Database Information. City generated Geographic Information Services (GIS) information, and other stormwater-related records shall be made available to the Port upon request in accordance with the Public Records Act, Chapter 42.56 RCW. City-generated draft GIS mapping information of stormwater facilities and conveyance systems on properties within the Port district that discharge to the City's stormwater drainage system shall be provided to the Port for its review and comment prior to the City finalizing such information. If requested, the City may assist the Port with GIS mapping services for properties that drain to the Port's stormwater drainage system per the cost schedule set forth in Section C below. GIS layers depicting the Port's stormwater drainage system may be maintained and used by the City for mapping purposes subject to regulatory restrictions imposed by the United States Department of Homeland Security and Port policies implementing such regulations.

3. Source Control/Business Inspections. If requested, the City may assist the Port with stormwater source control inspections at businesses that drain to the Port's stormwater drainage system, per the cost schedule set forth in Section C below. Samples collected during such inspections shall be the Port's responsibility to manage and analyze in accordance with its QAPP.

4. Spill-Related Emergency Response. At the Port's written request, provide and/or assist the Port with spill-related emergency response services after regular business hours for spills and releases of oil or hazardous substances originating from Port properties in accordance with the cost schedule set forth in Section C below. Personnel costs shall be adjusted to be equal to the City's overtime rate for spill response assistance after 5 PM Monday through Friday, and anytime during a weekend or holiday. City assistance with spill coordination and cleanup activities shall continue until an authorized Port representative arrives or until the cleanup or response action is completed, whichever is earlier. The Port and City shall coordinate each agency's spill response process and procedures and work to achieve as much consistency as possible. The Port shall ensure that Port Security provides the City with timely access to Port properties for spill response purposes.

5. Training Services.

The City will provide periodic notice to the Port about any scheduled "internal" stormwater management-related training provided by City staff. Port personnel may attend such training at the same cost charged for City employees. The Port may also request the City to provide separate training to Port staff regarding stormwater best management practices. The scope, timing, cost and duration of such training shall be determined by the City in coordination with the Port. If the City offers training provided by an outside consultant or other provider, then Port staff may attend such training at the same cost per attendee as the City pays, provided there is no objection by the training provider.

6. New Development and Redevelopment Consultations.

Depending on the scope and extent of the new development or redevelopment consultation undertaken in accordance with Section C.1.c. of this Agreement, the City may charge the Port for such consultation. Such charge shall be discussed with the Port in advance of the consultation. The City will provide a written estimate of charges for this activity and the Port will approve it in writing prior to any work being performed.

C. Costs for Non-Laboratory City Services.

Personnel Costs.

The non-overtime hourly rate for the City personnel providing the services described in Section B of this Exhibit is as follows:

| Personnel Category | Billing Rate (Per Hour) |
|--------------------------------------|---|
| Environmental Specialist | \$69.86 or Applicable Rate |
| Senior Environmental Specialist | \$81.94 or Applicable Rate |
| Source Control Representative | \$66.21 or Applicable Rate |
| Senior Source Control Representative | \$70.01 or Applicable Rate |
| Professional Engineer | \$97.86 or Applicable Rate |
| Principal Engineer | \$109.25 or Applicable Rate or Applicable Rate |
| Collection System Worker | \$47.99 Straight-time (Cat A, overtime eligible) |
| Collection System Technician | \$51.464 Straight-time (Cat A, overtime eligible) |
| Engineer Technician III | \$67.46 Straight-time (Cat A, overtime eligible) |

Overtime work shall be charged at the City's overtime rate. The above-listed hourly rates may be periodically updated by the City to reflect City Council authorized changes in compensation for each of the job classifications listed. The Port is responsible for requesting whether there are updated cost quotes at the time they seek analytical services from the City. For services referenced herein where the Port has agreed to pay City costs, the Port shall pay the non-overtime hourly (and overtime) rate in effect at the time a City service is provided to the Port. Provided however, if the work requested by the Port is of a non-emergent nature which is the type of work that typically can be completed during normal working hours, unlike a spill event, for example, then the City shall charge the Port the non-overtime hourly rate.

Loaned Equipment.

The City may lend the Port smoke-testing equipment, or other equipment at a cost agreed to by the parties, which shall be documented in writing prior to the equipment loan occurring.

Other Costs and Expenses.

For services referenced herein where the Port has agreed to pay City costs, materials, fuel, and supplies used by the City to accomplish the services provided in Section B of this Exhibit A shall be charged at the City's cost. For those portions of services referenced herein where the Port has agreed to pay City costs, the City may also assess a charge for use of its vehicles and equipment to accomplish the work covered under this section to cover depreciation and "wear and tear" of such vehicles and equipment.

D. Payment.

Invoices shall be accompanied with supporting data showing:

- a) Written summary of work performed for the period of the invoice;
- b) Staff charges by name, personnel category, date of service, description of task and hourly rate;
- c) Costs for equipment, supplies or other expenses;
- d) Any markups, overhead or other fees comprising the total cost;
- e) A copy of any consultant agreement and invoice will also be provided when applicable.

All invoices shall be mailed "Attention: Contracts Department". Invoices may be emailed to cpinvoices@portoftacoma.com. The email must include the required supporting documentation. Incomplete or improperly prepared invoices will be returned for correction without processing or payment.

City agrees to submit timely invoices when the work is complete, unless a specific service requested by the Port takes longer than 60 days to complete, in which case the Port may ask the City to provide an invoice after the 60th day.

The Port agrees to pay all undisputed costs incurred for laboratory and non- laboratory services arising under this Exhibit A within thirty (30) calendar days of receiving a properly documented invoice from the City.

###

Laboratory Analytical Services Quotation

NPDES Stormwater 2020

Port of Tacoma

Per Attachment B Prices are subject to change

| Matrix | Parameters | Method | # | TAT (days) | Unit Price | Extended Price |
|-----------|--|--------------------------------|----------|---------------|---------------|-------------------|
| Water | Anionic Surfactants | SM 5540 C-2011 | 1 | 21 | \$75.00 | \$75.00 |
| Water | Chloride in water | SM 4500-Cl ⁻ E-2011 | 1 | 21 | \$25.00 | \$30.00 |
| Water | Nitrate/Nitrite | EPA 353.2_2_1993 | 1 | 21 | \$25.00 | \$25.00 |
| Water | Nitrogen, Total Kjeldal | SM 4500-Norg B | 1 | 21 | \$40.00 | \$40.00 |
| Water | Ortho-Phosphate | EPA 365.1 | 1 | 21 | \$30.00 | \$30.00 |
| Water | Phosphorus, Total | SM 4500-P F-2011 | 1 | 21 | \$35.00 | \$35.00 |
| Water | Phosphorus, Total | EPA 365.4_1974 | 1 | 21 | \$35.00 | \$35.00 |
| Water | Specific Conductivity | SM 2510 B-2011 | 1 | 21 | \$20.00 | \$20.00 |
| Water | Total Biological Oxygen Demand | SM 5210 B-2011 | 1 | 21 | \$55.00 | \$55.00 |
| Water | Total Nitrogen, Combustion and Chemiluminescence | COT-TN | 1 | 21 | \$40.00 | \$40.00 |
| Water | Total Organic Carbon | EPA 9060A | 1 | 21 | \$50.00 | \$50.00 |
| Water | TSS | SM 2540 D-2011 | 1 | 21 | \$25.00 | \$25.00 |
| Water | Turbidity in Water | SM 2130 B-2011 | 1 | 21 | \$20.00 | \$20.00 |
| Water | TVS | SM 2540 E-97 | 1 | 21 | \$25.00 | \$25.00 |
| Water | Cadmium, Dissolved 200.8 | EPA 200.8_5.4_1994 | 1 | 21 | \$20.00 | \$20.00 |
| Water | Cadmium, Total 200.8 | EPA 200.8_5.4_1994 | 1 | 21 | \$20.00 | \$20.00 |
| Water | Copper, Dissolved 200.8 | EPA 200.8_5.4_1994 | 1 | 21 | \$20.00 | \$20.00 |
| Water | Copper, Total 200.8 | EPA 200.8_5.4_1994 | 1 | 21 | \$20.00 | \$20.00 |
| Water | Hardness, Calculated 200.8 | SM 2340 B-2011 | 1 | 21 | \$65.00 | \$65.00 |
| Water | Lead, Dissolved 200.8 | EPA 200.8_5.4_1994 | 1 | 21 | \$20.00 | \$20.00 |
| Water | Lead, Total 200.8 | EPA 200.8_5.4_1994 | 1 | 21 | \$20.00 | \$20.00 |
| Water | Mercury, Dissolved LR 245.7 | EPA 245.7 | 1 | 21 | \$75.00 | \$75.00 |
| Water | Mercury, Total 245.7 | EPA 245.7 | 1 | 21 | \$75.00 | \$75.00 |
| Water | Zinc, Dissolved 200.8 | EPA 200.8_5.4_1994 | 1 | 21 | \$20.00 | \$20.00 |
| Water | Zinc, Total 200.8 | EPA 200.8_5.4_1994 | 1 | 21 | \$20.00 | \$20.00 |
| Water | NWTPH-G | NWTPH-Gx | 1 | 21 | \$65.00 | \$65.00 |
| Water | BNA_SIM | EPA 8270D | 1 | 21 | \$225.00 | \$225.00 |
| Water | NWTPH Diesel Extended | NWTPH-Dx | 1 | 21 | \$70.00 | \$70.00 |
| Water | PCBs as Aroclors | EPA 8270D | 1 | 21 | \$95.00 | \$95.00 |
| Item | Description | Item Type | Quantity | Price | Rate | Item Total |
| Line Item | QA/QC Charge | Percent | 1 | \$0.00 | 10 | \$204.10 |
| Line Item | Metals Prep Fee Water | Standard | 1 | \$18.00 | | \$18.00 |

\$1,557.10



Req. #20-0559

RESOLUTION NO. 40655

1 A RESOLUTION relating to stormwater systems; authorizing the execution of an
2 Interlocal Agreement with the Port of Tacoma for mutual cooperation and
3 support regarding agency stormwater management.

4 WHEREAS, on September 10, 2013, pursuant to Resolution No. 38724, the
5 City entered into an Interlocal Agreement ("ILA") with the Port of Tacoma ("Port") for
6 the purpose of providing a cooperative framework for coordinating certain
7 stormwater management activities, and

8 WHEREAS the ILA has been extended twice, on July 31, 2018, pursuant to
9 Resolution No. 40073; and on September 24, 2019, pursuant to Resolution
10 No. 40430, and
11

12 WHEREAS the most recent amendment will expire in September 2020, and
13 the City's Environmental Services Department ("ES") and the Port have updated the
14 ILA, as appropriate, to reflect changes related to the 2019 NPDES Phase I
15 Municipal Permit and current practices, and
16

17 WHEREAS continued and enhanced cooperation between the City and the
18 Port will increase efficiency of operations, and the proposed ILA will help
19 businesses on Port-owned properties operate with fewer inspection disruptions
20 from regulatory staff; will build an enhanced partnership for stormwater
21 management between the City and the Port; and will allow for easier construction
22 permit issuance for businesses on Port-owned property, and
23

24 WHEREAS the proposed ILA includes a form for a Maintenance Covenant
25 and Access Agreement for Port-owned properties, which is required for new and
26 redevelopment projects that install or improve their stormwater facilities, and



WHEREAS the proposed ILA requires City and Port administrators to meet annually to ensure that actions outlined in the ILA are occurring, and

WHEREAS ES staff is recommending approval of the proposed ILA with the Port for mutual cooperation and support regarding agency stormwater management; Now, Therefore,

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

Section 1. That the proper officers of the City are hereby authorized to enter into an Interlocal Agreement with the Port of Tacoma for mutual cooperation and support regarding agency stormwater management, said Interlocal Agreement to be substantially in the form of the document on file in the office of the City Clerk.

Section 2. That the City Manager, or designee, is hereby authorized to take and execute any additional measures or documents that may be necessary to complete this transaction which are consistent with the approved form of documents referenced by this Resolution and the intent of this Resolution.

Adopted September 22, 2020



Mayor

Attest:



City Clerk

Approved as to form:



Chief Deputy City Attorney



City of Tacoma

City Council Action Memorandum

TO: Elizabeth A. Pauli, City Manager
FROM: Merita Trohimovich, P.E., Environmental Programs Group, Environmental Services
 Michael P. Slevin III, P.E., Director, Environmental Services *M. Slevin*
 John Burk, P.E., Division Manager, Science and Engineering
COPY: City Council and City Clerk
SUBJECT: Resolution for an Interlocal Agreement with the Port of Tacoma for Mutual Cooperation & Support Regarding Agency Stormwater Management – September 22, 2020
DATE: August 20, 2020

SUMMARY AND PURPOSE:

A resolution authorizing the execution of an Interlocal Agreement with the Port of Tacoma for Mutual Cooperation and Support Regarding Agency Stormwater Management.

BACKGROUND:**This Department's Recommendation is Based On:**

A previous Interlocal Agreement (ILA) with the Port of Tacoma for stormwater cooperation was adopted in 2013 under Resolution No. 38724. Since the 2013 ILA, the ILA has been extended through two City Council approved amendments (Resolution Nos. 40073 and 40430). The most recent amendment will expire in September 2020. The Port of Tacoma and Environmental Services have updated the ILA as appropriate for changes related to the 2019 NPDES Phase I Municipal Permit and current practices. This agreement will increase efficient operations for stormwater management for both the Port and the City.

COMMUNITY ENGAGEMENT/ CUSTOMER RESEARCH:

The Customer for this agreement is the Port of Tacoma and their tenants. The proposed ILA has been developed cooperatively with the Port of Tacoma and the Port of Tacoma has considered the needs and feedback of their tenants in the development of the ILA.

2025 STRATEGIC PRIORITIES:**Equity and Accessibility: (Mandatory)**

The proposed ILA will help businesses on Port-owned properties to operate with less inspection disruptions from regulatory staff. It will build an enhanced partnership for stormwater management between the City and the Port, and it will allow easier construction permit issuance for businesses on Port-owned property. This may allow businesses on Port-owned properties to be more efficient and competitive and increase their ability to be stable employers.

Economy/Workforce: Equity Index Score: The Economic Opportunity Index ranges from very low to moderate in this area.

Indicator: Increase positive public perception related to the Tacoma economy.

Explain how your legislation will affect the selected indicator(s).

Continued and enhanced cooperation between the City and the Port will increase efficiency of operations and decrease time spent by businesses within the Port to escort inspection staff thorough their sites. The agreement also includes a form for a Maintenance Covenant and Access Agreement for Port Owned properties. This Agreement is required for new and redevelopment projects that install or improve their stormwater facilities. Having a pre-approved Maintenance Covenant and Access Agreement will allow construction permits to be issued more quickly. Through cooperation between the City and the Port, the Public will see that Tacoma is interested in helping businesses be more productive.



City of Tacoma

City Council Action Memorandum

ALTERNATIVES:

| Alternative | Positive Impact(s) | Negative Impact(s) |
|-------------------------------------|---------------------------|---|
| 1. Do not enter into the agreement. | None | Increased difficulty by City staff in conducting certain business inspections. Less efficient collaboration with the Port of Tacoma for stormwater management. |

EVALUATION AND FOLLOW UP:

The ILA has requirements for the administrators of the agreement for both the City and the Port to meet annually to coordinate. The administrators will check in with affected staff to ensure that the actions outlined in the agreement are occurring.

STAFF/SPONSOR RECOMMENDATION:

Approval to enter into an Interlocal Agreement with the Port of Tacoma for Mutual Cooperation and Support Regarding Agency Stormwater Management.

FISCAL IMPACT:

No cost to the City of Tacoma.

What Funding is being used to support the expense?

N/A

Are the expenditures and revenues planned and budgeted in this biennium's current budget?

N/A

Are there financial costs or other impacts of not implementing the legislation?

YES

Not approving the agreement could impact businesses in the Port, make it less efficient to inspect businesses for Environmental Services Environmental Compliance inspectors, make it more difficult for the City to access some of its specific utility assets.

Will the legislation have an ongoing/recurring fiscal impact?

No

Will the legislation change the City's FTE/personnel counts?

No

ATTACHMENTS:

Proposed 2020 ILA

Executed 2013 ILA