

**INTERLOCAL AGREEMENT AUTHORIZING A FLEXIBLE APPROACH TO
SHORELINE PUBLIC ACCESS PROVISION BETWEEN THE CITY OF TACOMA AND
THE PORT OF TACOMA.**

THIS INTERLOCAL AGREEMENT ("Agreement") made and entered into pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington, on the ___ day of _____, 2013 by and between the City of Tacoma, a municipal corporation of the State of Washington, herein known as "City" and the Port of Tacoma, a port district organized under the laws of the State of Washington hereinafter called "Port" (collectively referred to herein as the "Parties").

RECITALS

WHEREAS, the State Shoreline Management Act and its implementing regulations, specifically Washington Administrative Code 173-26-221 (4)(d)(ii), require shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, to include public access measures as part of each development project; and

WHEREAS, when public access planning, as described in WAC 173-26-221 (4)(c), demonstrates that a more effective public access system can be achieved through alternate means; such as focusing public access at the most desirable locations, local governments may institute master program provisions for public access based on that approach in lieu of site-by-site public access requirements; and

WHEREAS, the City undertook and adopted a Public Access Alternatives Plan consistent with WAC 173-26-221 (4)(c) that seeks to focus future public access in the locations that: are consistent with the community vision, promote public safety and natural resource preservation; and, protect the future land supply and operations of water-oriented industrial uses; and

WHEREAS, the Tacoma Municipal Code 13.10 Shoreline Management has been updated consistent with WAC 173-26-221 (4)(c) to provide alternatives for public agencies to meet their public access requirements comprehensively, in lieu of site-by-site requirements; and

WHEREAS, the Port has developed a public access plan consistent with WAC 173-26-221(4) and the public participation requirements of WAC 173-26-201 (3)(b)(i); and

WHEREAS, Port and Port tenant development is typically market driven, rarely predictable, and often undertaken within constrained timelines; and

WHEREAS, having a streamlined and predictable permitting process can enhance the timeliness of development and improve cost efficiencies; and

WHEREAS, the Parties have agreed upon a flexible approach to shoreline public access provisions that the Port and its tenants, may use at their sole discretion to fulfill the public access permit requirements of the City's adopted Shoreline Master Program, in lieu of site-by-site requirements; and

WHEREAS, the Parties wish to make this flexible approach to public access provision available to private parties in addition to the Port and Port tenants so that 1) the community may better leverage Port of Tacoma, City of Tacoma and private party public access investment dollars for grants and 2) obtain sufficient funds to complete key public access facilities as identified in Section 5.1; and

WHEREAS, Chapter 39.34 of the Revised Code of Washington allows local governments to enter into interlocal agreements to make the most efficient use of their powers by enabling them to work with other local jurisdictions on a mutually advantageous basis.

NOW, THEREFORE, pursuant to Chapter 39.34 RCW, and in consideration of the mutual benefits and covenants described herein, the Parties agree to cooperate in providing public access as follows:

1. INCORPORATION OF RECITALS

Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein.

2. PURPOSE

The purpose of this Agreement is to set forth a flexible approach to shoreline public access provision that the Port and its tenants may use at their sole discretion to fulfill the public access requirements of the City's adopted Shoreline Master Program, in lieu of site-by-site requirements.

3. PROJECT AREA

All properties owned or leased by the Port or Port tenants within the City of Tacoma at the time of City shoreline permit issuance.

4. FEE-IN-LIEU METHODOLOGY AND PUBLIC ACCESS FUND

The fee-in-lieu contribution shall be based on the fair market value of the portion of the project that is subject to a shoreline permit, with the following exceptions:

- Activities exempt under Section 2.3.3 of the City's Shoreline Master Program
- Interior remodeling
- Environmental remediation and mitigation
- Dredging
- New terminal cranes and/or upgrades to wharves, but not the wharves themselves, to accommodate increased size of container terminal cranes

4.1 "Fair market value" pursuant to WAC 173-27-030(8) and as used herein of a development is the open market bid price of the portion of the project within shoreline jurisdiction for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development as of the date of shoreline permit application. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.

4.2 Projects with a fair market value of \$10,000,000 or less will be assessed a 2% public access fee. For projects exceeding \$10,000,000 in fair market value, a 2% fee will be assessed for the first \$10,000,000 in value with an additional 0.5% fee assessed for the fair market value exceeding the initial \$10,000,000. The total fee shall not exceed \$500,000 on any individual permit application. For example, a \$12 million project would be assessed as follows: \$10 million X 0.02 = \$200,000, plus \$2million X 0.005 = \$10,000, for a total fee of \$210,000.

4.3 Fee-in-lieu payments may include in-kind contributions by mutual agreement of the Parties.

4.4 The Port may designate fee-in-lieu contributions for Priority Public Access Projects identified in this Agreement at Section 5.1 or 6.1.

4.5 Fee-in-lieu funds that have been designated by the Port for specific projects described in Section 5.1 herein may be reallocated by the Port except where the City has made binding commitments.

4.6 All payments of fee-in-lieu funds received by the City shall be deposited in an interest bearing City Public Access Fund that may only be accessed by the City pursuant to the terms of this Agreement.

5. PRIORITY PUBLIC ACCESS PROJECT LOCATIONS—PARTNERSHIPS

5.1 After consultation with the City, the Port and its tenants may direct any fee-in-lieu payment associated with a particular shoreline permit to any of the following projects, and the City shall expend those payments as the Port so directs:

- Chinese Reconciliation Park
- West Foss Central Park
- Waterway Park
- Balfour Dock Esplanade

- Schuster Corridor Multi-Use Trail
- 11th Street Public Boat Launch
- Or other sites as mutually agreed upon by both parties

5.2 Payment of fee-in-lieu funds shall be a condition of the shoreline permit and made to the City prior to final inspection or permit closeout.

5.3 The City will use its best efforts to expend all Port fee-in-lieu of funds within twelve (12) months of receipt.

5.4 The Port and/or its tenants may make advance payment(s) of the fee-in-lieu to the City Public Access Fund at any time at their sole discretion and then secure a credit against these payment(s) as particular shoreline permits are issued, plus the interest accrued.

5.5 The City will amend its permit fee schedule to allow private applicants at their sole discretion to use the terms set forth in sections 4, 4.1, 4.2, 5.1, 5.2 and 6.1.

5.6 The Port will be recognized as a partner in any public access project listed in paragraph 5.1 utilizing Port funds or in-kind contributions. Recognition will be proportional to the Port's contribution, approved in writing by the City and the Port, and will include but is not limited to signage at the public access site.

6. PRIORITY PUBLIC ACCESS PROJECT LOCATIONS—PORT-OWNED PROPERTY

6.1 The Port and its tenants at their sole discretion may direct any fee in-lieu payment associated with a particular shoreline permit in the form of public access investments to any Port owned sites at the following locations:

- Dick Gilmur Kayak Launch and the associated Saltchuck mitigation site
- Julia's Gulch and NE Tacoma Trail Network
- Youth Marine Foundation
- Or other sites as mutually agreed upon by both Parties

6.2 Such Port and or Port tenant fee-in-lieu payment investments shall be a condition of the shoreline permit and the improvements to Port-owned property shall be committed to prior to final inspection or permit closeout.

7. CREDIT FOR EXISTING PUBLIC ACCESS SITES

7.1 The Port shall be granted public access fee-in-lieu credit for the following site improvements:

- Place of Circling Waters
- Dick Gilmur Kayak Launch

7.2 These Port created sites are currently publicly accessible and have not been used previously to fulfill the public access requirements of past shoreline permits.

7.3 The Port's credit for the Place of Circling Waters shall be applied to City shoreline permit(s) associated with the development of the East Blair Terminal on the Blair Waterway. See Exhibit A.

7.4 The Port's credit for the Dick Gilmur Kayak Launch (in its current state of development as of the date of this agreement) shall be applied to City shoreline permits for Piers 3 and 4 on the General Central Peninsula. See Exhibit A.

8. REPORTING

8.1 The City shall report annually to the Port on the status of expenditures made from the City Public Access Fund defined in Section 4.6.

8.2 The Port shall report annually to the City on the status of the public access provisions implemented in accordance with the Port of Tacoma Public Access Plan and this Agreement.

9. DESIGNATED CITY AND PORT REPRESENTATIVES

9.1 City Representative: City Manager
City of Tacoma
747 Market Street, 12th floor
Tacoma, WA 98402

9.2 Port Representative: Chief Executive Officer
Port of Tacoma
PO box 1837
Tacoma, WA 98401

10. NO SEPARATE ENTITY CREATED

This Agreement does not create any separate or administrative entity. This Agreement shall be administered by the Parties' representatives defined in Section 9.1 and 9.2 herein.

11. MODIFICATION OF AGREEMENT

This Agreement may be amended at any time by written agreement of the Parties, and upon approval of each Parties' respective legislative body.

12. DISPUTE RESOLUTION

The designated representatives herein 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.

13. DURATION OF AGREEMENT AND TERMINATION

This Agreement shall continue for a term of 10 years from the execution date of this Agreement, and may be extended by mutual agreement of the Parties and upon approval of each Parties' respective legislative body, provided however, that any Project for which a completed Shoreline permit application was filed prior to termination of this Agreement shall be vested to the terms of this Agreement as it exists at the time of permit application.

14. HOLD HARMLESS AND INDEMNITY AGREEMENT

Each party (the Indemnitor) agrees to defend, indemnify and hold harmless the other (the Indemnitees), its board or council members, officers, agents and employees, from and against all loss or expense including, but not limited to, judgments, settlements, attorney's fees and costs by reason of any and all claims for damages, penalties or other relief based upon the Indemnitor's alleged negligence, or wrongful conduct, except for the injuries, penalties and damages caused by the sole negligence or wrongful conduct of the Indemnitor. Such claims for damages or other relief include, but are not limited to, those for personal or bodily injury including death from such injury, property damage, torts, defamation, penalties imposed by any agency of the state or federal government for failure to comply with applicable law in the performance of this Agreement. If the claim, suit or action involves concurrent negligence of the Parties, the indemnity provisions provided herein shall be applicable only to the extent of the percentage of each party's negligence. It is further and expressly understood that the indemnification provided herein constitutes each party's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

15. NOTIFICATION

Any notice required or permitted to be given pursuant to this Agreement shall be in writing, and shall be sent postage prepaid by U.S. Mail, return receipt requested, or by electronic mail to the Parties' representatives defined in Section 9.1 and 9.2 herein, unless otherwise indicated by the Parties to this Agreement.

16. RECORDS RETENTION AND AUDIT

During the progress of the work on the Project and for a period not less than three (3) 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 three year retention period. This provision is not intended to alter or amend records retention requirements established by applicable state and federal laws.

17. 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.

18. PROJECT FINANCING

Except as provided above, the Parties shall finance its own conduct of responsibilities under this Agreement.

19. PROPERTY OWNERSHIP

No ownership of property will transfer as a result of this Agreement.

20. 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.

21. 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.

22. LEGAL OBLIGATIONS

This Agreement does not relieve either Party of any obligation or responsibility imposed upon it by law.

23. COPIES FILED WITH COUNTY AUDITOR OR POSTED ON PARTIES' WEB SITE

Copies of this Agreement shall either be filed with the Pierce County Auditor's Office after execution or posted on each parties' website listed by subject or other electronically retrievable public source, as allowed by RCW 39.34.040, and shall be filed with the respective party authorities.

IN WITNESS WHEREOF, the Parties have executed this Agreement this ___day of _____, 2013.

City of Tacoma
By
T.C. Broadnax
City Manager

Port of Tacoma
By
John Wolfe
CEO

APPROVED AS TO FORM:

City Attorney

Date: _____

ATTEST:

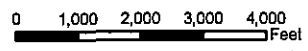
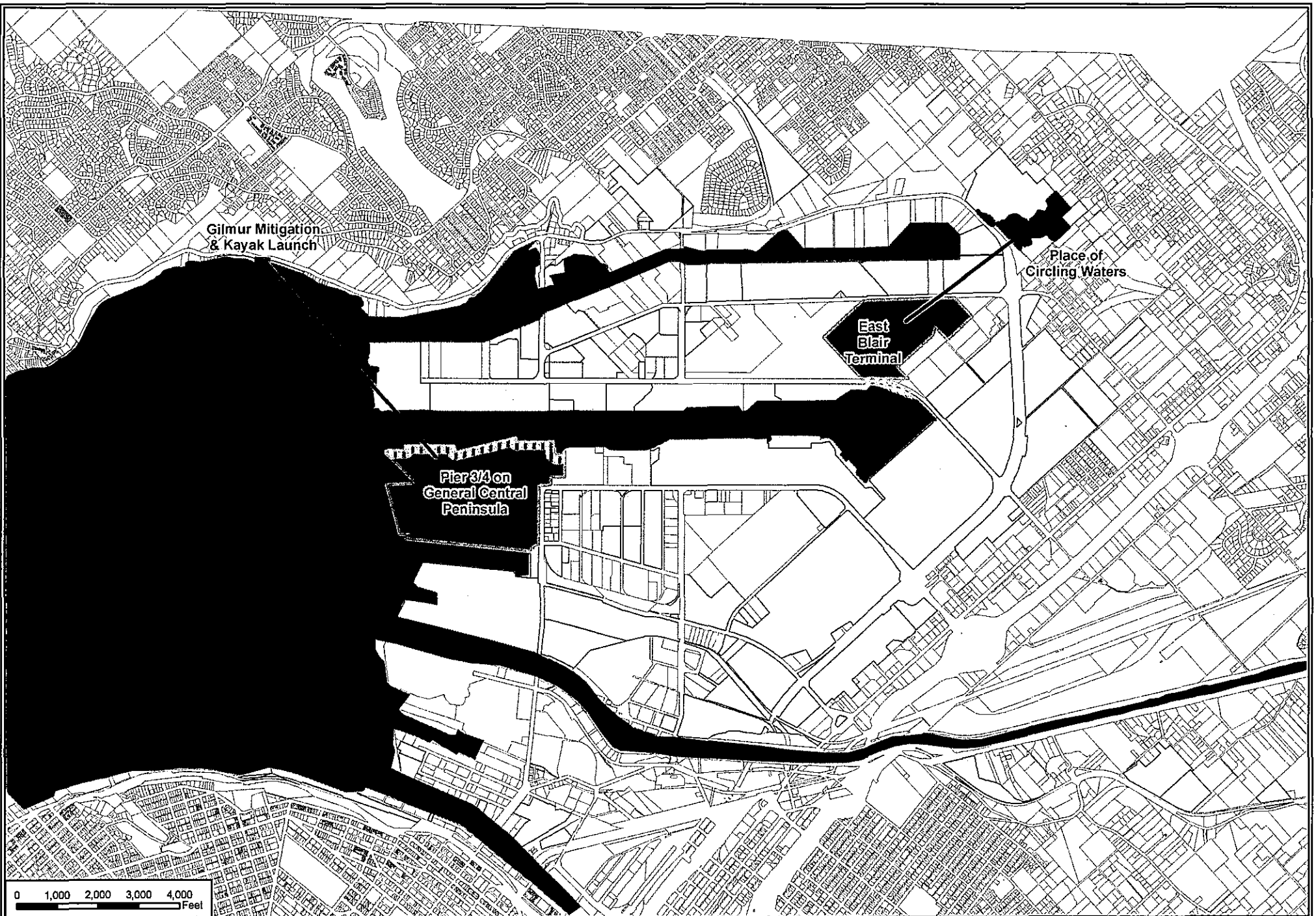
City Clerk

Date: _____

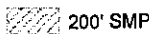



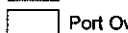
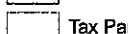
APPROVED AS TO FORM:

Port Legal Counsel

Date: _____



Credit for Existing Sites Exhibit A

-  200' SMP
-  Capital Project
-  Public Access
-  Water
-  Port Owned Parcels
-  Tax Parcels

Map Date: 5/15/2013
 Author: Jen Radcliff



Data Credits:
 Parcel data is from Pierce County.
 All other data from Port of Tacoma.

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