

**INTERLOCAL AGREEMENT BETWEEN PORT OF TACOMA AND
CITY OF TACOMA
PORT OF TACOMA ROAD RECONSTRUCTION PROJECT**

Parties Defined. This Interlocal Agreement ("Agreement") is made and entered into by the City of Tacoma, a municipal corporation of the State of Washington, hereinafter called the "City" and the Port of Tacoma, a port district organized under the laws of the State of Washington, hereinafter called the "Port." The Port and the City are also referred to in this Agreement collectively as "the Parties," and individually as a "Party."

Project Defined. As used in this Agreement, "Project" means the construction of those elements associated with the Port of Tacoma Road Reconstruction Project, to benefit the movement of freight and goods as further described in Section 1, herein.

Prior Agreements Superseded. This Agreement supersedes and replaces all prior interlocal agreements between the Port of Tacoma and City of Tacoma for the Port of Tacoma Road Reconstruction Project, effectively terminating said former agreements.

RECITALS

WHEREAS, the assurance of continuing freight movement throughout Puget Sound is an issue of critical strategic importance to the City and to the Port;

WHEREAS, the Port and the City have collectively committed approximately Nine Million One Hundred Sixty Five Thousand and Eight Hundred and Eighty Dollars (\$9,165,880) towards the reconstruction of Port of Tacoma Road between East 11th Street and Marshall Avenue (See **Exhibit A**), which sum includes grant funding;

WHEREAS, the Project provides mutual benefit to the City and the Port (see **Exhibit B**);

WHEREAS, the Project has been awarded partial funding by the Pierce County Regional Council through regionally-managed funds in the amount of Four Hundred Twenty Nine Thousand Forty Dollars (\$429,040) for the Project's design phase which is currently underway (See **Exhibit C**);

WHEREAS, the Project has been awarded partial funding for construction in the amounts of One Million Dollars (\$1,000,000) from the Freight Mobility Strategic Investment Board and Five Million Nine Hundred Forty Thousand Seven Hundred Dollars (\$5,940,700) from the Transportation Improvement Board (See **Exhibits D and E**);

WHEREAS, the City agrees to provide Eight Hundred Seventy Thousand Eight Hundred Dollars (\$870,800) of secured local grant match support, and the Port agrees to provide Eight Hundred Sixty Six Thousand Dollars (\$866,000) of secured local match, satisfying the funding agencies' required local funding contribution;

WHEREAS, the City shall be assigned all duties of Project Management and perform all phases of Project work, including design, permitting and construction, as the Project falls under the City's jurisdiction and ownership.

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NOW, THEREFORE, the Parties agree as follows:

1. PROJECT SCOPE OF WORK

- 1.1. Title: Port of Tacoma Road Reconstruction
- 1.2. Description: The proposed Project scope:
 - Removes all surface pavement between the curb lines on Port of Tacoma Road from East 11th Street to just south of Marshall Avenue (approximately 7,800 LF).
 - Replaces the pavement section with cement concrete to be consistent with the approved City of Tacoma Pavement Design Standards for Heavy Haul Industrial Corridors.
 - Installs cement concrete sidewalk to provide continuous ADA compliant pedestrian access along the project corridor.
 - Replaces only existing curb and gutter sections that are damaged.
 - Provides the design and installation of conduit for future ITS Implementation.
 - Replaces the temporary traffic signal at Washington United Terminal truck queuing location with permanent signal and constructs a new traffic signal at Lincoln Avenue.
 - The roadway will be restriped per the original channelization.
- 1.3. Schedule: The City will advertise the Project for bid in January 2015, with construction starting in spring 2015. Construction completion is scheduled by the end of 2015, at which time the roadway corridor will be fully operational.
- 1.4. Phases: The Project is fully funded for design and construction. Cost details are provided in the following Table.

Phase	Port Contribution	City Contribution	Tacoma Rail Contribution	STP, FMSIB & TIB Grant Awards	Total Cost
Design	\$75,000	\$73,280	\$0	\$429,040	\$577,320
Construction	\$790,970	\$797,490	\$59,400	\$6,940,700	\$8,588,560
Total	\$865,970	\$870,770	\$59,400	\$7,369,740	\$9,165,880

2. TERMS AND CONDITIONS

- 2.1. Lead Agency: The City shall be the lead agency for the Project with regard to State Environmental Policy Act (SEPA) and National Environmental Policy Act (NEPA) compliance and shall be responsible for obtaining all necessary permits and/or agreements. As lead agency, the City shall be responsible for accomplishing all aspects of the Project scope.
- 2.2. Contact Persons: The Parties to this Agreement have designated person(s) to act as liaison(s) for the Project, as contained in Section 5 herein. The contact persons shall meet on a scheduled basis at a frequency appropriate to the phase and status of the Project.

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- 2.3. Schedule/Scope: The scope and schedule for the Project, as set forth herein, are mutually agreed upon by the City and Port. All scope and schedule changes shall be agreed to by the Parties and coordinated by the City using its formal documentation process; provided however, Construction change orders that do not change the overall scope or general schedule of the Project will not require coordination with the Port.
- 2.4. Traffic Control Plans: The City will review all contractor traffic control submittals giving strong consideration to the interests of freight traffic. The City will, to the extent feasible, work to minimize the impact of any traffic control plans that could negatively affect freight traffic.
- 2.5. Progress Report: Regular staff briefings illustrating Project status throughout the Project's delivery will be scheduled monthly by the City (or as the Project Manager deems appropriate) with the Port.
- 2.6. Design Changes: The City shall not order or approve any Project design changes that materially, negatively affect the traffic level of service or reduce the benefits of the Project for the Port without first obtaining the Port's written approval of these design changes. The City shall inform the Port of any design change that may materially reduce the Port's anticipated benefit of improved freight traffic flow. The City shall provide the Port with copies of the proposed design change for the Port's review, comment and approval. The Port, at its sole option, may provide the City with comments within two weeks of its receipt of the proposed design changes. If the Port offers comments or exceptions to the proposed plans, the Port further agrees to participate in meetings scheduled by the City to resolve the Port comments and exceptions. The City agrees to evaluate and consider incorporating appropriate changes proposed by the Port necessary to address the Port's concerns and exceptions.
- 2.7. Construction Changes: The City shall not approve any Project construction changes that materially modify the Project design or schedule without the Port's written approval of these construction changes, such approval to not be unreasonably withheld, conditioned or delayed. The City will notify the Port in the Progress Report (Section 2.5) of any other construction change orders that do not change the overall scope or general schedule of the Project.
- 2.8. Public Involvement: The City shall be responsible for the public involvement and/or community outreach process for the Project. The City shall give the Port at least two weeks' written notice of any scheduled public meetings.
- 2.9. Ownership and Maintenance: Except for those Project improvements owned by Tacoma Rail or other private parties, the City shall own all Project improvements and shall be responsible for the reasonable maintenance of the Project.

3. COST REIMBURSEMENT AND FUNDING

The Port agrees to contribute no more than Eight Hundred Sixty Six Thousand Dollars (\$866,000) toward the design, permitting and construction of the Project, subject to the following:

1. Payment for the Construction Engineering and Construction phase of the Project is to be made after all environmental review and permitting is completed by the City, and at conclusion of any appeal or legal challenge;

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2. The Port and City continue to work together to ensure that the Project developments during construction meet the needs of both Parties including, but not limited to, construction staging and local freight circulation;
3. The Port is satisfied that the Project, as designed, provides the benefits to the Port identified in **Exhibit B**;
4. The City shall submit to the Port evidence that the Construction Engineering and Construction of the Project is underway as a condition precedent to justify payment;
5. The Port Commission authorizes the execution of this Agreement and the payment of up to Eight Hundred Sixty Six Thousand Dollars (\$866,000) for the Project costs;
6. If the total Project costs are less than the estimate provided in the table in Section 1.4, the City and the Port shall proportionately share in the reduction in Project costs, accounting for grant distributions that are tied to total Project costs; and
7. If the construction bids received by the City exceed the estimated contractor construction cost used in the calculation of the total Project cost in Section 1.4, the City will work together with the Port to evaluate actions to implement which may involve changes in scope, rebidding the Project, or identifying additional sources of funding.

The Port shall make payments as follows:

Four payments in total not to exceed \$866,000. The first payment of \$75,000 has been invoiced and paid. The second payment of \$265,000 shall be paid after award of a construction contract by the City and issuance of the Notice to Proceed. The final two payments of \$263,000 each shall be made during construction at intervals requested by the City's Project Manager and approved by the Port's representative as required for meeting Project match funding.

To receive payment, the City shall submit to the Port a detailed numbered invoice showing description of work items being invoiced, this Interlocal Agreement number, Project number, and work title of the Project.

The invoice shall be mailed "Attention: Port Contracts Department." Alternatively, the invoice may be emailed to procurement@portoftacoma.com. The email must include the required supporting documentation. An incomplete or improperly prepared invoice will be returned for correction without processing or payment. The Port shall pay the complete and properly prepared invoice within 30 days of receipt of the invoice.

No later than thirty days of reaching Project Substantial Completion, the City shall certify the Project has reached Substantial Completion by sending the Port a copy of the letter from the City's Engineer to the Contractor establishing the Substantial Completion date. Upon receipt of the letter, the Port reserves, at its sole option, the right to request an inspection of the Project, to confirm the Project Improvements, as defined in Section 1, Scope of Work, and in **Exhibit B**, Elements of Mutual Benefits, are in place and fully operational. To allow the City to proceed with the construction contract approval process in a timely manner, if the Port has not conducted said inspection and provided the City with any comments within seven (7) days of the established Substantial Completion date, the Port waives the right to request and perform said inspection.

4. AMENDMENT

Either Party may request changes to the provisions contained in this Agreement. Any change to this Agreement must be mutually agreed to by both Parties, in writing and executed with the same formalities as the original Agreement.

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5. NOTIFICATION

Any notice required or permitted to be given pursuant to this Agreement shall be in writing, and shall be sent by email followed by postage prepaid by U.S. Mail, return receipt requested, to the following addresses unless otherwise indicated by the Parties to this Agreement:

To the CITY:	Tom Rutherford, Project Manager Tacoma Public Works/Engineering Tacoma Municipal Building 747 Market Street, Room 544 Tacoma, WA 98402-3769 trutherford@cityoftacoma.org
To the PORT:	Evette Mason, Government Affairs Manager Pedro Reyes, Project Manager II Port of Tacoma PO Box 1837 Tacoma, WA 98401-1837 emason@portoftacoma.com preyes@portoftacoma.com

6. RECORDS RETENTION AND AUDIT

During the progress of the work on the Project and for a period not less than six (6) years from the date of final payment by the Port to the City, the records and accounts pertaining to the Project and accounting thereof are to be kept available for inspection and audit by the Port and the City shall provide the Port with copies of all records, accounts, documents, or other data pertaining to the Project upon the Port's request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claims, or audit finding has been resolved, even though such litigation, claim, or audit continues past the typical six-year retention period. This provision is not intended to alter or amend records retention requirements established by applicable state and federal laws.

7. DISPUTES

The designated representatives herein under section 5.0, NOTIFICATION, shall use their best efforts to resolve disputes between the Parties. If the designated representatives are unable to resolve a dispute, then the responsible Project directors for each Party shall review the matter and attempt to resolve it. If the Project directors are unable to resolve the dispute, the matter shall be reviewed by the department director or chief executive officer of each Party or his or her designee. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

8. EFFECTIVENESS AND DURATION

This Agreement is effective upon the date of execution by both Parties or upon posting on each parties' website listed by subject or other electronically retrievable public source, as allowed by RCW 39.34.040 and will remain in effect until completion of the Project, unless otherwise stated herein or unless amended or terminated.

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9. TERMINATION

This Agreement shall terminate five years from the date of execution, unless mutually extended by the Parties, and provided however, that either Party may terminate this Agreement at any time upon thirty (30) days' written notice to the other Party, provided however, if the Port decides to terminate this Agreement, the Port shall reimburse the City for all costs payable under this Agreement and all non-cancelable obligations that the City incurred prior to receiving the Port's notice of its intent to terminate this Agreement. For the purposes of this Agreement, "non-cancelable obligations" are defined as those costs that the City is obligated to pay as of the day that the Port provides notice that it is terminating this Agreement, not to exceed the Port's percentage of the total cost of any phase of the Project that the City has commenced prior to the Port's notice of termination, whether or not such a phase has reached Completion.

10. INDEMNIFICATION AND HOLD HARMLESS.

- 10.1. To the maximum extent permitted by law, the City shall protect, defend, indemnify, and hold harmless the Port, its officers, officials, employees, and agents from any and all costs, claims, demands, suits, actions, judgment, and/or awards of damages, including but not limited to reasonable attorney's fees, to the extent arising out of, or in any way resulting from the City's negligent or intentional acts or omissions in the performance of its obligations under this Agreement.
- 10.2. To the maximum extent permitted by law, the Port shall protect, defend, indemnify, and hold harmless the City, its officers, officials, employees, and agents from any and all costs, claims, demands, suits, actions, judgment, and/or awards of damages, including but not limited to reasonable attorney's fees, to the extent arising out of, or in any way resulting from the Port's negligent or intentional acts or omissions in the performance of its obligations under this Agreement.
- 10.3. The Parties agree that their respective obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Parties hereby waive, with respect to the other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provision of Title 51 RCW to the extent necessary to provide indemnification as required under this Agreement.
- 10.4. The indemnification, hold harmless, and/or waiver obligations described in this Agreement in Section 10 shall survive the termination of this Agreement.

11. VENUE

This Agreement shall be deemed to be made in the County of Pierce, State of Washington, and the legal rights and obligations of the City and Port shall be determined in accordance with the laws of the State of Washington. All legal actions in connection with this Agreement shall be brought in the County of Pierce, State of Washington.

12. PROJECT FINANCING.

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

13. PROPERTY OWNERSHIP.

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

14. NO THIRD PARTY BENEFICIARIES

This Agreement is entered into solely for the mutual benefit of the Parties. This Agreement is not entered into with the intent that it shall benefit any other person or entity and no other such person or entity shall be treated as a third-party beneficiary of this Agreement.

15. SEVERABILITY

The provisions of this Agreement are hereby declared to be separate and severable, and the invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Agreement or the invalidity of its application to any person or circumstance shall not affect the validity of its application to other persons and circumstances.

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16. ENTIRE AGREEMENT / INTERGRATION.

This Agreement contains the entire agreement between the parties. Should any language in any exhibit conflict with any language contained in this Agreement, the terms of this Agreement shall prevail. Written provisions and terms of this Agreement, together with any attached exhibits, supersede all prior verbal statements by any representative of either party, and those statements shall not be construed as forming a part of or altering in any manner this Agreement


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

PORT OF TACOMA



John Wolfe, Chief Executive Officer 1/26/15 Date

APPROVED AS TO FORM:



Carolyn Lake, Port Legal Counsel 1/27/15 Date

CITY OF TACOMA



T.C. Broadnax, City Manager 3/9/15 Date




Kurtis D. Kingsolver, P.E.
Public Works Director/City Engineer 2/27/15 Date

APPROVED:



Andrew Cherullo, Finance Director 3-7-2015 Date

APPROVED AS TO FORM:



Jeff Capell, Deputy City Attorney 3-3-15 Date



Saada Geoux, Risk Manager 3/9/15 Date



Doris Sorum, City Clerk 3-10-15 Date

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Exhibit A – Vicinity Map

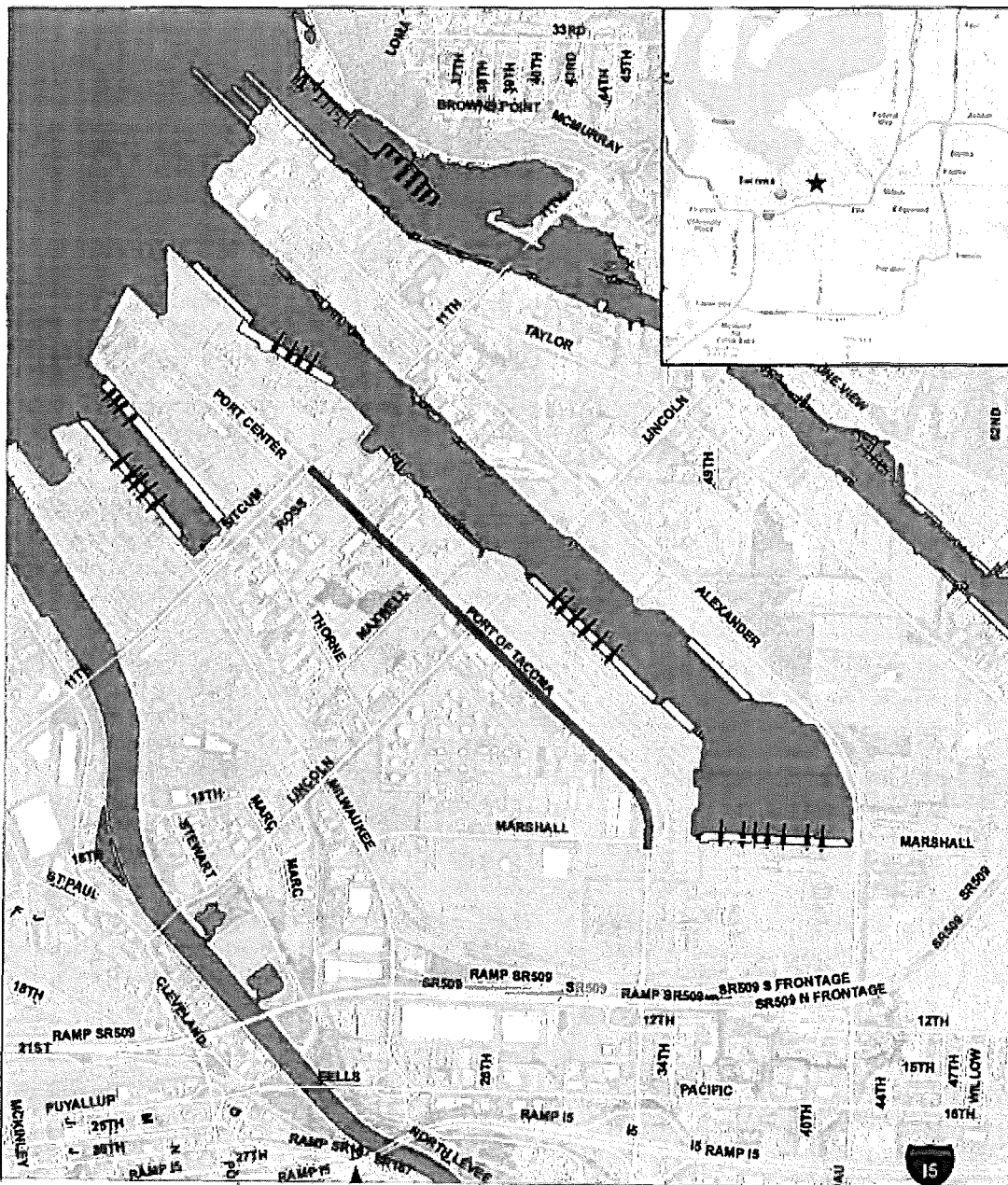


EXHIBIT A
 SHEET: 1 OF 1
 PURPOSE: VICINITY MAP
 DATE: 01/30/2014

**PORT OF TACOMA ROAD
 RECONSTRUCTION
 VICINITY MAP**

**PORT OF TACOMA ROAD
 +/- 1.48 MILES OR 7,800 FT**



Exhibit B—Elements of Mutual Benefit

Scope Summary and Benefits

Scope Elements	Benefits
<p>Removes all surface pavements between the curb lines on Port of Tacoma Road from East 11th Street to just south of Marshall Way (approximately 7,800 LF).</p>	<p>The existing pavement is a patchwork of asphalt concrete pavement. Over time, and with the high volume of loaded truck traffic, the pavement condition has experienced multiple and significant failures, including: alligator cracking with broken surfaces, edge cracks with surface distortion and broken surfaces, joint cracks at lane joints and pavement edges, transverse cracking, pavement upheaval, channels/rutting and potholes. These failures create safety issues as truck drivers and commuters swerve to avoid problem areas, create damage to vehicles/ equipment and cargo, and ultimately adversely impact the reliability and efficiency of the Port of Tacoma's core arterial connection between marine terminals, intermodal facilities, and the regional roadway network of SR 509 and Interstate 5. Removing the failed asphalt section allows for a full pavement reconstruction.</p>
<p>Replaces the pavement section with cement concrete to be consistent with the approved City of Tacoma Pavement Design Standards for Heavy Haul Industrial Corridors.</p>	<p>As a Heavy Haul corridor, Port of Tacoma Road will implement a 10-inch concrete paving section to withstand the demands of a heavily utilized T-1 corridor. The proposed reconstruction project endeavors to correct the current roadway condition, and better enable durable, safe and efficient over-the-road travel within the Port of Tacoma's industrial development district.</p>
<p>Installs cement concrete sidewalk to provide continuous pedestrian access (will not have sidewalks on both sides of the road in some areas).</p>	<p>Supports a complete street profile, accommodating pedestrians and vehicles alike. Pedestrian traffic is a significant component of the arterial's overall traffic.</p>
<p>Replaces only existing curb and gutter that is damaged.</p>	<p>Supports Right-of-Way certification and minimizes impacts to adjacent properties, easements and franchises.</p>
<p>The roadway will be restriped per the original channelization.</p>	<p>Provides safe, conventional vehicle operations within the roadway.</p>

Exhibit C – PSRC Award Letter (Design Phase grant funds)



February 26, 2013

Commissioner Don Meyer, President
Port of Tacoma Board of Commissioners
P.O. Box 1837
Tacoma, WA 98401

Dear Commissioner Meyer:

Congratulations! The Puget Sound Regional Council has approved \$429,040 in federal funding to support transportation in your community for the following project:

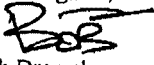
- *Port of Tacoma Road Rehabilitation*

The PSRC Executive Board voted in December to approve priority projects that will improve local and regional mobility and help achieve our long-range regional transportation plan, Transportation 2040. Final approval by the Governor and federal funding agencies is expected in early 2013.

Thanks to your leadership and excellent work by your staff, our region is advancing a better system that gets people and goods where they need to go, provides transportation choices, and helps grow jobs in the region.

At PSRC we are deeply committed to the future of this region, and we look forward to continuing to partner with you to find transportation, economic development and land use solutions that work locally and regionally.

Warm regards,


Bob Drewel
Executive Director

cc: John Wolfe, Chief Executive Officer

EXHIBIT D



STATE OF WASHINGTON

FREIGHT MOBILITY STRATEGIC INVESTMENT BOARD

1063 Capitol Way, Rm. 201 • PO Box 40965 • Olympia, WA 98504-0965 • (360) 586-9695 • FAX (360) 586-9700

Dan Gatchet,
Chair

June 4, 2014

Karen Schmidt,
Executive Director

T.C. Broadnax
City Manager

Ashley Probart,
Deputy Director

City of Tacoma
747 Market Street
Tacoma WA 98402-3769

Board Members

Sheri Call

Dear Mr. Broadnax:

John Creighton

The Freight Mobility Strategic Investment Board (FMSIB) would like to thank you for submitting a project for consideration during the FMSIB 2014 Call for Projects and for meeting with the project selection teams. The Port of Tacoma Road Rehabilitation project was presented to the full Board on Friday, May 30, 2014.

Terry Finn

Pat Hulcey

Mark Knudsen

The Board voted on May 30, 2014, to add your project to our active project list.

Larry Paulson

Lynn Peterson

The project will be listed as #86 on the FMISB list and has been included as follows:

Robin Rettew

Tom Trulove

Project Name:	Total Project Cost	FMSIB Share
Port of Tacoma	\$8.86M	\$1.0M (11.2%)

Brian Ziegler

Web Site
www.fmsib.wa.gov

By statute, the Board funds are required to leverage other funds to the greatest extent possible. The FMSIB funds are also committed to the project by the dollar amount and project percentage. If the total project cost increases, FMSIB's contribution is limited to the Board award. If the project cost decreases, the FMSIB percentage share will be applied. This is also contingent upon projected FMSIB revenues and funding authorization from the state legislature.

Thank you again for submitting your application, and congratulations on your selection. We are pleased to be able to work with you on this important project.

Sincerely,

Handwritten signature of Ashley Probart in black ink.

Ashley Probart
Deputy Director

cc: Kurtis Kingsolver, Public Works Director



Washington State Transportation Improvement Board

TIB Members

Councilmember Sam Crawford, Chair
Whatcom County

Jim Albart
Office of Financial Management

Patco Bakotich, P.E.
WSDOT

Wendy Clark-Gates, P.E.
Clallam Transit

Gary Ekstedt, P.E.
Yakima County

Mayor James Irish
City of La Center

John Klekotka, P.E.
Port of Everett

Commissioner Robert Koch
Franklin County

Colleen Kuhn
Human Services Council

Mayor Patty Lent
City of Bremerton

Mick Matheson, P.E.
City of Sultan

Councilmember R.E. Bob Olson
City of Kennewick

Laura Philpot, P.E.
City of Sammamish

David Ramsey
Feet First

Amy Scarton
WSDOT

Heidi Stamm
HS Public Affairs

Commissioner Richard Stevens
Grant County

John Vodopich
City of Bonney Lake

Jay Weber
County Road Administration Board

Clay White
Snohomish County

Stevan E. Gorcester
Executive Director

P.O. Box 40901
Olympia, WA 98504-0901
Phone: 360-586-1140
Fax: 360-586-1165
www.tib.wa.gov

November 24, 2014

The Honorable Marilyn Strickland
Mayor
City of Tacoma
747 Market Street, Suite 408
Tacoma, WA 98402-3769

Dear Mayor Strickland:

Congratulations! We are happy to announce the selection of your project, Port of Tacoma Road, E 11th Street to Marshall Avenue, TIB project number 8-1-128(093)-1. TIB funds granted to this project total \$5,940,700.

This year, we received requests to fund 255 different projects, totaling more than \$294 million. We are pleased to provide \$95 million in transportation investments to cities and counties like yours throughout the state.

If you have questions, please contact Chris Workman, TIB Project Engineer, at (360) 586-1153 or e-mail ChrisW@TIB.wa.gov.

Sincerely,

Stevan Gorcester
Executive Director

O: Mayor
cc: Sarah Moore
cc: KDX
cc: CEL