

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF FIFE AND THE PORT OF TACOMA REGARDING THE
SR 99 PEDESTRIAN AND STORMWATER IMPROVEMENT - 54TH AVE EAST TO
65TH AVE EAST PROJECT**

1. Date and Parties. This agreement, for reference purposes only, is dated the _____ day of December, 2017, and is entered into between the City of Fife (hereinafter “City”) and the Port of Tacoma (hereinafter the “Port”) (collectively “Parties”) under authority of the Interlocal Cooperation Act (Chapter 39.34 RCW) and the laws governing non-charter code cities and port districts (“Agreement”).

2. Project Description, Purpose and Term.

2.1 The City is moving forward with the SR 99 Pedestrian & Stormwater Improvement - 54th Avenue East to 65th Avenue East Project (the “Project”). The purpose of the Project is to improve public safety, and to improve freight mobility and general traffic flow to and from the Port of Tacoma and the 54th Avenue East/SR 99 intersection. See attached Exhibit A.

2.2 The Project will include adding a second left turn lane from westbound SR 99 to southbound 54th Avenue East. The additional left turn lane will increase the capacity of the intersection, reducing the time necessary to clear queues for this heavily-trafficked movement. See attached Exhibit B.

2.3 In recognition of the Project’s benefits to the Port, the Port wishes to contribute to the Project’s construction costs associated with adding the second left turn lane.

2.4 The purpose of this Agreement is to set forth the terms and conditions to effectuate the Port’s monetary contribution to the Project.

2.5 This Agreement is effective upon the signature of both Parties and will terminate upon the sooner of December 31, 2018, or until Project completion, unless mutually extended by the Parties.

3. Port Contribution. The Port shall budget for and contribute to the City \$250,000 to help pay for the construction cost associated with adding the second left turn lane from westbound SR 99 to southbound 54th Avenue East, including, but not limited to, grading, drainage, curb, paving, striping, signalization, signage, and center median (The “Port Contribution”). The City shall provide the Port with written notice of commencement of the Project’s construction at least thirty days prior to the commencement date. The Port Contribution shall be paid by the Port to the City as a contribution for construction costs associated with adding the second left turn lane incurred by the City. The funds shall be paid by the Port within thirty days of receiving the City’s invoice for payment, which the City will provide to the Port with evidence that payment of at least \$250,000 has been made by the City for the construction.

4. Contract Administration. The parties do not by this Agreement create any separate legal or administrative entity. The City’s Manager or his designee and the Port CEO, or his

designee shall be responsible for working with each other to administer the terms of this Agreement. The Parties do not intend to jointly own any real or personal property as part of this undertaking. The Parties will cooperatively work together to further the intent and purpose of this Agreement.

5. Indemnification.

5.1 City shall defend, indemnify and hold the Port, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, to the extent caused by the negligence or willful misconduct of City, its officers, employees, agents or volunteers.

5.2 The Port shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, to the extent caused by the negligence or willful misconduct of the Port, its officers, employees, agents or volunteers.

5.3 In the event of a claim, loss, or liability based upon the alleged concurrent or joint negligence of the parties, the Parties shall bear their respective liability, including cost, in accordance with their respective liability established in accordance with the laws of the State of Washington.

5.4 FOR PURPOSES OF INDEMNIFICATION ONLY, THE PARTIES, BY MUTUAL NEGOTIATION, HEREBY WAIVE, AS RESPECTS THE OTHER PARTY ONLY, ANY IMMUNITY THAT WOULD OTHERWISE BE AVAILABLE AGAINST SUCH CLAIMS UNDER THE INDUSTRIAL INSURANCE PROVISIONS OF TITLE 51 RCW.

5.5 The provisions of this Section 5 shall survive the expiration or termination of this Agreement with respect to acts and omissions occurring during the term hereof.

6. Assignment. Neither party may assign this Agreement or any interest, obligation or duty therein without the express written consent of the other party.

7. Venue and Attorneys' Fees. This Agreement shall be governed in all respects by the laws of the State of Washington. The venue for any dispute related to this Agreement shall be with the Pierce County Superior Court, Tacoma, Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys' fees from the other party.

8. Notice. Any notice or information required or permitted to be given to the Parties under this Agreement may be sent to the following addresses unless otherwise specified:

City of Fife
Attn: Russ Blount

Port of Tacoma
Attn: Evette Mason

Public Works Director
5411 23rd Street East
Fife, WA 98424

Government Affairs Manager
1 Sitcum Way
Tacoma, WA 98421

9. Modification. This Agreement constitutes the complete and final agreement of the parties, and replaces and supersedes all oral and/or written proposals and agreements heretofore made by the parties on the subject matter. No provision of this Agreement may be amended or added to except by agreement, in writing, signed by both Parties.

10. Signature Authority

10.1 The Fife City Manager was authorized to execute this agreement by Resolution No. _____ adopted by the City Council on the _____ day of _____, 2017, at a regularly scheduled Council meeting.

10.2 The Port CEO was authorized to execute this agreement by Resolution No. _____ adopted by the Port Commission on the _____ day of _____, 2017, at a regularly scheduled Commission meeting.

11. No Third-Party Beneficiaries. This Agreement is executed for the sole and exclusive benefit of the signatory Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any right, remedy or other entitlement upon any person other than the Parties hereto, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third party, nor shall any provision herein give any third party any right of action against any party hereto.

12. Severability. Should any clause, phrase, sentence or paragraph of this Agreement or its application be declared invalid or void by a court of competent jurisdiction, the remaining provisions of this Agreement or its applications of those provisions not so declared shall remain in full force and effect.

13. Recording. A copy of this Agreement shall be recorded in the Office of the Pierce County Auditor as provided by law, or shall be posted to each Parties' web site.

14. Abandonment. If the Project is abandoned, then this Agreement shall be of no further force or effect

SIGNATURES APPEAR ON NEXT PAGE

CITY OF FIFE

PORT OF TACOMA

By: _____
Hyun Kim
City Manager

By: _____
John Wolfe
CEO

Approved as to form:

Approved as to form:

Gregory F. Amann
Assistant City Attorney

Port Attorney Carolyn A. Lake

Exhibit A: Vicinity Map

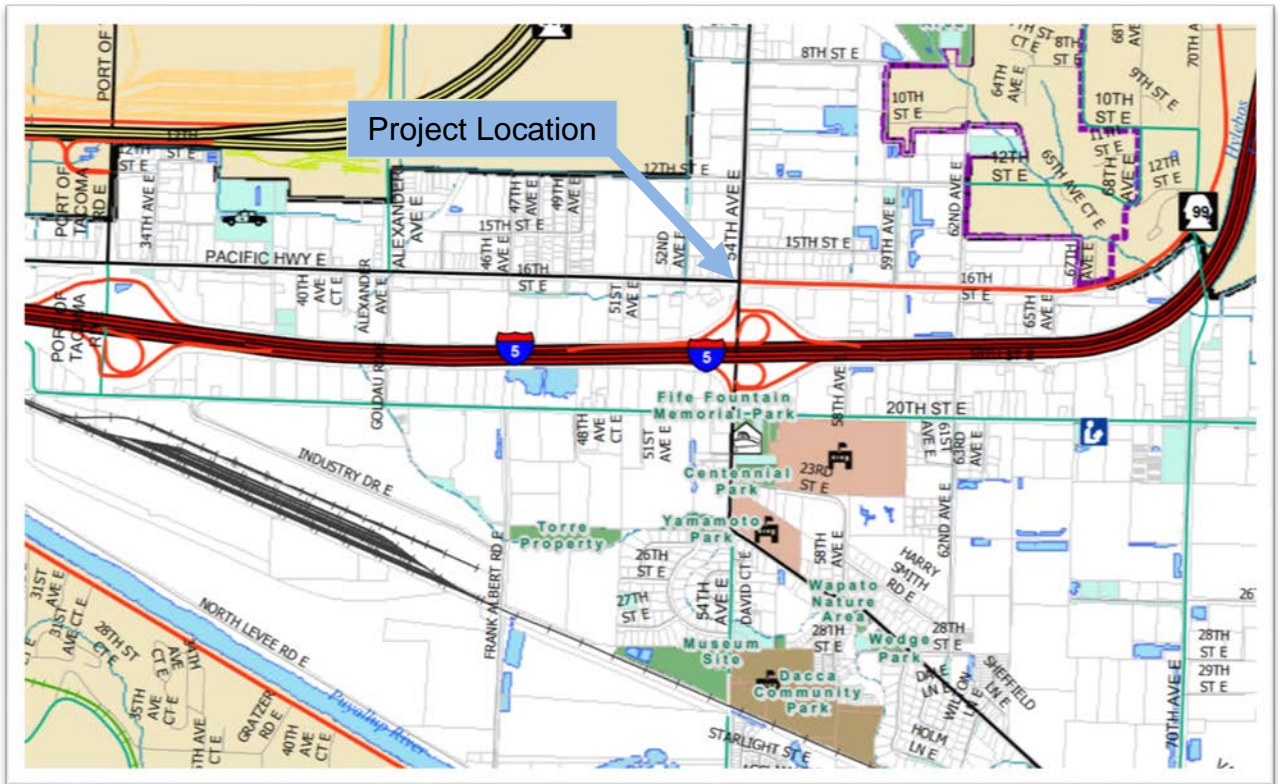


Exhibit B: Proposed Intersection Improvements

