

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF TACOMA AND THE PORT OF TACOMA REGARDING THE
EAST ELEVENTH STREET VIADUCT DEMOLITION PROJECT**

This agreement, for reference purposes only, is dated the _____ day of _____ 2022, and is entered into between the City of Tacoma (hereinafter “City”), a Washington municipal corporation, and the Port of Tacoma, a Washington public port district, (hereinafter the “Port”) (collectively “Parties”) as of the Effective Date below under authority of the Interlocal Cooperation Act (Chapter 39.34 RCW) and state laws governing first class cities and port districts (“Agreement”). The Parties hereby recite and agree as follows.

RECITALS

Whereas, the City owns right of way comprising the East Eleventh Street Bridge and Viaduct and the areas under the Bridge and Viaduct, east of Milwaukee Avenue, which bisects the Port’s international marine cargo terminal (“collectively referred to as the “Viaduct”, as depicted on **Exhibit A** hereto; and

Whereas, the City owned Viaduct is currently unused and in disrepair, posing a threat to safety; and

Whereas, the City has undertaken emergency work on the Viaduct to address imminent hazards; and

Whereas, the City’s funding for the Viaduct work will only allow addressing the most urgent Viaduct issues, and the City and the Port agree that the more extensive work on the Viaduct described in this Agreement will have mutual benefit; and

Whereas, in addition the Port has historically used the area beneath the Viaduct for vehicle parking as well as access to and from the Port’s international marine cargo terminal; and

Whereas, the Port recognizes the benefit to public safety and international marine cargo terminal operations which will result from the more extensive work on the Viaduct described in this Agreement and desires to contribute to the City’s project, and to secure a permit for the Port’s continued future use of the City’s right of way beneath the Viaduct.

AGREEMENT

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

1. Project and Term of Agreement.

1.1 Project. The City will remove the viaduct portion of East Eleventh Street Bridge and Viaduct, from the west side of Stewart Road to the landing east of Milwaukee Way, and install a catchment (a protective barrier to catch falling debris) under the bridge

over the Tribal fisheries access as referenced in Land Claims Settlement Agreement Technical Document 4, page 23, section C.2 (the “Project”). The purpose of the Project is to improve public safety. A map of the Project Area is attached as **Exhibit A**. The Project Site is located on public right of way of East 11th Street on the Central Peninsula in the Tacoma Tideflats. A graphic depicting the Project Site is attached as **Exhibit B**. Column footings from the Viaduct will be removed within the Project Area to the extent it is feasible for the City to do so without exceeding the Project budget. The City will consult with the Port to prioritize removal of columns associated with the Project.

1.2 Term. This Agreement shall be effective as of the Effective Date and will terminate upon the sooner of June 30, 2023, or at Project completion, unless mutually extended by the Parties in writing.

2. Port Contribution; Reimbursement of City Expenses.

2.1 Port Contribution. The Port agrees to reimburse Tacoma up to \$3,500,000 (Three Million, Five Hundred Thousand Dollars) toward the City’s Project costs incurred in excess of \$3,000,000 (Three Million Dollars). The Port Commission has budgeted \$3,000,000 in fiscal year 2022, with an additional amount up to \$500,000 available in 2023 if the cost of demolition exceeds \$6,000,000.

2.2 Reimbursement of City Expenses. The City shall notify the Port once Project costs incurred exceed \$3,000,000 (Three Million Dollars). For costs incurred after that point, the City shall submit to the Port or its designee Project invoices accompanied by an itemized explanation of the charges for reimbursement within sixty (60) days after such invoices are issued. The Port or its designee shall review invoices and make payment to the City within thirty (30) days.

3. Temporary Project Access. For the duration of the Project, the Port will, by separate agreement, provide access to the City and its agents, contractors and subcontractors temporary rights of entry and access onto and/or through Port owned real property as needed to access and/or transport vehicles, people, equipment and materials to and from the Project site.

4. Port Use of Project Site; Submittal and Review of Right-of-Way Use Permit Application; Terms and Conditions of Permit.

4.1 As additional consideration for the Port’s participation in Project costs as provided for in this Agreement, the City agrees that the Port will be able to continue use of the Project Site pursuant to the terms and conditions set forth below.

4.2 The City agrees that the Port will be able to use the Project Site for Port maritime industrial purposes provided that the Port submits an application to the City, for a Right of Way Occupancy Permit (ROCC), pursuant to Tacoma Municipal Code Ch. 9.08 to secure an exclusive use permit for the Project Site area within thirty (30) days of completion of demolition associated with the Project. The City understands that the Port

requires exclusive use for the Project Site in order for the Port's international marine cargo terminal to meet federal Homeland Security and Customs and Border Protection laws and regulations restricting access. Provided that the Port applies for the ROCC by the deadline provided for herein, the City will allow the Port to use the Project Site for Port maritime industrial purposes immediately upon completion of the Project while the ROCC permit is in review. The City further agrees that the Port may continue its existing use of the Project Site during the Project with temporary interruptions as needed and agreed to by the Parties in order to accommodate Project demolition.

4.3 The City agrees to complete review and issue the ROCC permit within 180 days of complete application by the Port, so long as the Port has complied with all requirements for permit approval in TMC 9.08. The Port agrees to comply with necessary requirements in order to complete the Permit in a timely manner. The timelines for Port submittal and City review of the permit may be extended by agreement of the Parties.

4.4 The City understands that due to marine terminal access restrictions, a gate and fencing will be required as part of the Port's right-of-way use permit. The Port will submit a proposed gate and fencing plan to the City for review and approval as part of the permit application.

4.5 The Port understands that pursuant to City code, the City will charge the Port an annual fee for the right of way use permit following issuance. The City agrees that if requested by the Port, the City will accept use of existing Port credit for payment of the annual ROCC permit fee, with a present balance of \$7,990,417.00, which was deposited pursuant to Interlocal Agreement, Supplement & Amendment to Alexander Avenue Agreement, Auditor File No. 200812310923, signed on January 6, 2009, if requested by the Port, until the existing credit funds are exhausted.

4.6 Unlike a standard ROCC which is terminable at any time by the City, the ROCC permit issued under this Agreement will secure the Port's right to use the Project Site for an initial term of twenty (20) years. During the initial 20-year term, the City will retain the right to enter the permitted area for purposes of maintenance, including utility maintenance, and construction, including reconstruction of the viaduct. The scope and conditions of City access will be established as part of the ROCC permit.

4.7 At the expiration of the initial 20-year term, the ROCC permit will terminate. The City and Port may agree to renew and extend the ROCC permit for some additional term, including modifications to its terms. The Port may also elect to terminate the ROCC permit, or petition for vacation of the right of way as provided for in Section 5. By issuing, or extending the ROCC, the City does not forgo its right upon the expiration of the initial or any extended ROCC permit term to determine in its discretion that it is in the public interest to reopen the Project Area to vehicular traffic.

5. Future Street Vacation

5.1 The Parties agree that completion of the Project does not obligate the Port to apply for vacation of the underlying street right of way comprising the Project Site.

5.2 As the abutting property owner, the Port may choose to apply to the City for a street vacation of the right of way at some point in the future of the Project Site.

5.3 If the Port applies to vacate the underlying right-of-way abutting Port-owned real property, then the City acknowledges that the Port may use the existing Port credit, with a present balance of \$7,990,417, pursuant to Interlocal Agreement (ILA), Supplement & Amendment to Alexander Avenue Agreement, reference number 200812310923, signed on January 6, 2009.

6. Project Coordination. The City will draft a demolition design, sequencing, and timing approach for the Project that minimizes impacts on the Port's operations and property to the extent possible while still addressing the urgency of current safety issues. The City will continue to update and discuss all potential impacts with the Port.

6.1 Power Lines. The City will install any signs and/or devices necessary to warn the Port, its officers, officials, employees and agents about any utilities, such as power transmission lines, that will no longer be protected by the viaduct once it is demolished.

6.2 Stormwater System. The City will implement measures to protect the Port's stormwater system from construction impacts associated with the Project. The City will submit to the Port a construction SWPPP for review prior to the start of the Project. During the Project, the City will implement all BMPs described in the SWPPP (to include cleaning the media system lines to clear high pH dust). At the end of the Project, the City will thoroughly sweep the project area and adjacent, impacted surfaces.

6.3 Remediation Sites. The Port is aware of four remediation sites that are either immediately adjacent to or pass beneath the Viaduct, which are described as follows and depicted on **Exhibit C** hereto: 1) tax parcel 8950000221 has a petroleum contamination in soil and groundwater, 2) tax parcel 5000350690 has petroleum contamination in soil and groundwater related to the former UP railyard, and 3) Milwaukee Waterway Nearshore Confined Disposal Facility (NCDF), tax parcels 8950000121 and 8950000050, is part of the Commencement Bay Nearshore Tidelands Superfund Site, and 4) tax parcel 2275200661 contains a solvent groundwater plume. The City will be responsible for repair or replacement of any associated monitoring wells adjacent to the Project site, should they be affected by the Project. The City will also be responsible should activities associated with the Project contribute to, exacerbate, or expose hazardous substances present at the remediation sites.

7. Contract Administration. The Parties do not by this Agreement create any separate legal or administrative entity. The City Manager or her designee and the Port Executive Director 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. The Parties designate the following points of contact for this Agreement:

City of Tacoma
Attn: Chris Storey, P.E., Project Manager
747 Market St, Rm 504
Tacoma, WA 98402
CStorey@cityoftacoma.org

Port of Tacoma
Attn: Christine Wolf, Senior Planner
PO Box 1837
Tacoma, WA 98421
cwolf@nwseaportalliance.com

8. Indemnification.

8.1 The City shall defend, indemnify and hold the Port, its officers, officials, employees, licensees, and agents 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 City, its officers, employees, agents, or volunteers.

8.2 The Port shall defend, indemnify and hold the City, its officers, officials, employees and agents 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.

8.3 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.

8.4 The indemnification provisions of this Agreement shall not be limited by any worker's compensation, benefit or disability laws, and each indemnifying party hereby waives (solely for the benefit of the indemnified party) any immunity that said indemnifying party may have under the Industrial Insurance Act, Title 51 RCW and similar worker's compensation, benefit or disability laws.

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

9. 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.

10. 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 Tacoma
Attn: Chris Storey
747 Market St, Rm 504
Tacoma, WA 98402
253-573-2484

Port of Tacoma
Attn: Eric Johnson, Executive Director
PO Box 1837
Tacoma, WA 98421
253-428-8604

11. Amendment. 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.
12. 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.
13. 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.
14. Termination. Either Party may terminate this Agreement upon thirty (30) days prior written notification to the other Party. If this Agreement is so terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.
15. Dispute Resolution. In the event a dispute arises between the Parties regarding the performance of an obligation under this Agreement or an alleged violation of the terms and conditions of this Agreement, the aggrieved party will give the other party written notice of such dispute or violation. The other party will have fifteen (15) business days to respond and/or cure the alleged violation. Compliance with this provision shall be a condition precedent to terminating the Agreement for cause and/or filing suit or action to enforce its terms.
16. Filing of Agreement. A copy of this Agreement shall be recorded in the Office of the Pierce County Auditor or listed on each Parties' website or other electronically retrievable source as provided for by RCW 39.34.040.
17. Abandonment. If the Project is abandoned, then this Agreement shall be of no further force or effect.
18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. Effective Date. This Agreement shall be effective as of the date of the last signature below.

CITY OF TACOMA

PORT OF TACOMA

By: _____
Elizabeth Pauli
City Manager

By: _____
Eric Johnson
Executive Director

Date: _____

Date: _____

Approved as to form:

Approved as to form:

By: _____
Assistant City Attorney

By: Heather L. Burgess
General Counsel, Port of Tacoma

Approved By:

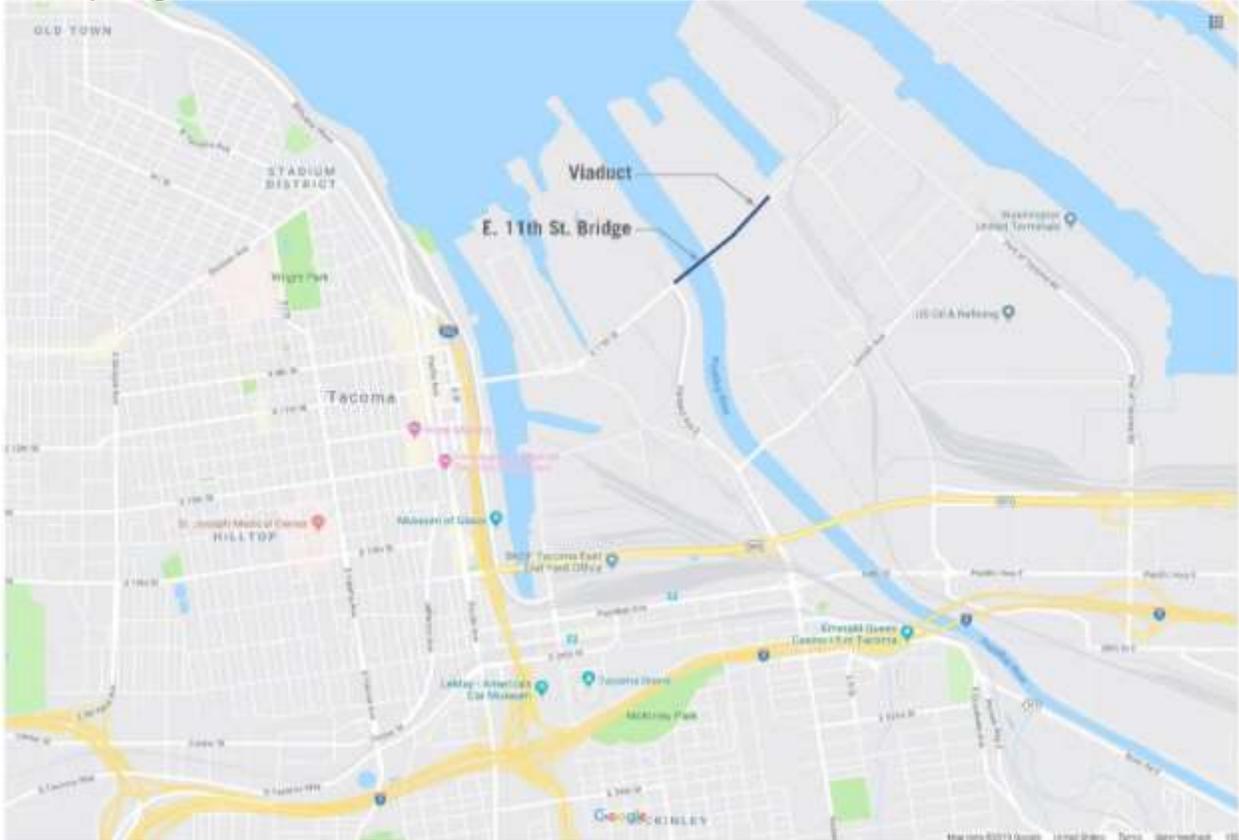
Jeffrey A. Jenkins
Interim Public Works Director

Saada Gegoux
Risk Manager

Andrew Cherullo
Finance Director

Exhibit A:

Vicinity Map



Project Site Details



Exhibit B:

Project Site and Phasing

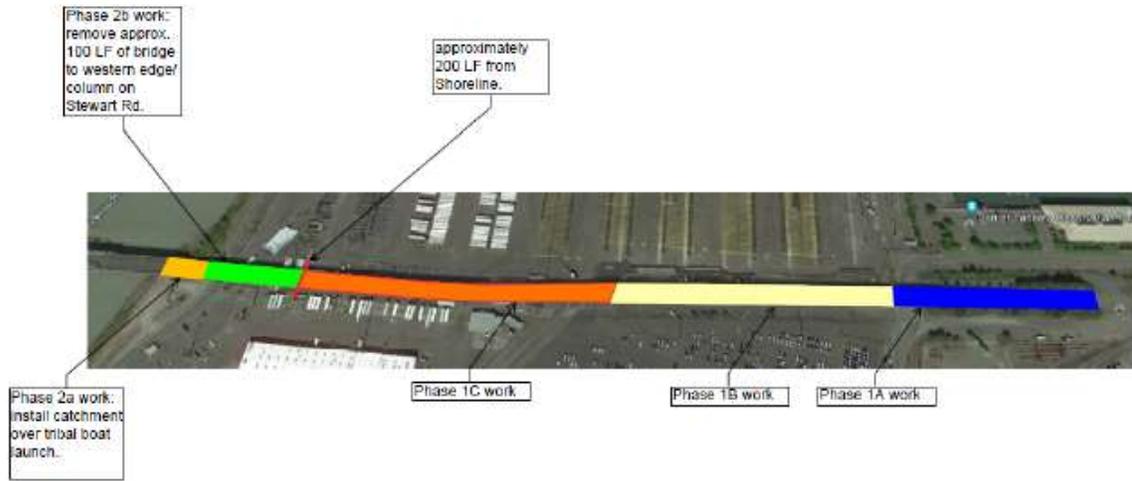


Exhibit C:

Remediation Sites

