GCB 3063
INTERLOCAL AGREEMENT BETWEEN
WSDOT / PORT OF TACOMA

This Agreement, hereinafter "Agreement", is made and entered by and between the Washington State Department of Transportation, hereinafter "WSDOT," and the Port of Tacoma, hereinafter the "PORT," collectively referred to as "Parties" and individually, as the "Party."

RECITALS

A. WSDOT has a project to replace the 70th Avenue East overpass of I-5 in Fife, hereinafter the "Project." The purpose of the Project is to improve freight mobility and general traffic flow to and from the Port of Tacoma and the East Fife Industrial Zone and to prepare for the eventual construction of the State Route 167/Interstate 5 interchange.

B. The PORT in recognition of the Project's benefits for freight mobility at the Port of Tacoma, will contribute to the Project's construction costs.

Now, Therefore, pursuant to chapter 39.34 RCW, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, and the attached Exhibits A and B, and incorporated and made a part hereof, the Parties agree as follows:

It Is Mutually Agreed as Follows:

1.   General

1.1   The Project will relocate and widen the 70th Avenue E. bridge over Interstate-5 (I-5) to 4 lanes with a protected shared-use non-motorized trail on the east side. This is the final segment of major widening from Valley Avenue to Pacific Highway E. (SR 99) and the first stage of the SR 167 Completion group of projects.

1.2   This Agreement is effective upon the signature of both Parties and will terminate upon the sooner of Project completion, or December 31, 2021 until, unless mutually extended by the Parties.

1.3   WSDOT shall provide the PORT with written notice of commencement of the Project's construction at least thirty days prior to the commencement date.

2.   Payment

2.1   The PORT shall contribute Three Million Dollars ($3,000,000) to WSDOT for the construction cost associated with the Project. These funds are considered obligated upon execution of this agreement, subject to the conditions herein.

2.2   WSDOT will invoice the PORT with evidence that payments of at least Three Million Dollars ($3,000,000) has been made by WSDOT for Project. The PORT will pay the invoice within thirty days of receiving WSDOT's invoice for payment and supporting evidence.

3. Contract Administration

3.1 The Parties do not by this Agreement create any separate legal or administrative entity. The Secretary of Transportation or his/her designee and the Port CEO, or his/her 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.

4. Dispute Resolution

4.1 In the event that a dispute arises under this Agreement, it shall be resolved as follows: The WSDOT and the PORT shall each appoint a member to a disputes board, these two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.

5. Indemnification

5.1 The Parties shall protect, defend, indemnify, and hold harmless each other and their employees, authorized agents, and/or contractors, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, each Party's obligations to be performed pursuant to the provisions of this Agreement. The Parties shall not be required to indemnify, defend, or hold harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the negligence of the other Party; provided that, if such claims, suits, or actions result from the concurrent negligence of (a) WSDOT, its employees, authorized agents, or contractors and (b) the PORT, its employees or authorized agents, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the negligence of each Party, its employees, authorized agents, and/or contractors.

6. Venue

6.1 In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in Thurston County Superior Court. Further, the Parties agree that each will be solely responsible for payment of their own attorneys' fees, witness fees, and costs.

7. Contacts and Notices

7.1 Contact between the Parties, including but not limited to invoicing, agreement administration, and notices will be directed to the below identified contacts as follows

or his/her designee or such other addresses as either Party may, from time to time, designate in writing:

Port of Tacoma
Sean Eagan
Government Affairs Director
PO Box 1837
Tacoma, WA 98401

WSDOT Project Manager shall be:
Steve Fuchs
PO Box 47440
Olympia, WA 98503
Phone (360) 357-2623
Email: fuchss@wsdot.wa.gov

8. Amendment

8.1 This Agreement may be amended by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless they are in writing, approved as required by each Parties' authorizing entity/person(s) and signed by persons authorized to bind each of the Parties.

9. Severability

9.1 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.

10. No Third-Party Beneficiaries

10.1 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.

11. Audits/Records:

11.1 All Project records for the Project in support of all costs incurred shall be maintained by WSDOT for a period of six (6) years. The PORT shall have full access to and right to examine said records, during normal business hours and as often as it deems necessary. Should the Port require copies of any records, it agrees to pay the costs thereof. The Parties agree that the Work performed herein is subject to audit by either or both Parties and/or their designated representatives, and/or the federal/state government.

12. Port Signature Authority

12.1 The PORT CEO was authorized to execute this Agreement by majority vote of the Port Commission on the _____ day of _____, 2018, at a regularly scheduled, public Commission meeting.

13. Recording

13.1 PORT will record a copy of this Agreement in the Office of the Pierce County Auditor as provided by law.

14. Working Days

14.1 Working days for this Agreement are defined as Monday through Friday, excluding Washington State furlough days or state holidays pursuant to RCW 1.16.050.

In Witness Whereof, the Parties hereto have executed this Agreement as of the date last written below.

Port of Tacoma   Washington State
                                                      Department of Transportation

By_____   By _____
   John Wolfe CEO

Date: _____   Date: _____

        Approved as to Form   Approved as to Form

By_____   By _____
   Port Attorney Carolyn A. Lake   Assistant Attorney General

Date: _____   Date: _____