

**GCB 3338**  
**INTERLOCAL AGREEMENT BETWEEN**  
**WSDOT / PORT OF TACOMA REGARDING TERMINATION OF GCB 3736 AND**  
**FINANCIAL CONTRIBUTION TO SR 167 STAGE 2**

This INTERLOCAL AGREEMENT (Agreement) is between the Washington State Department of Transportation (WSDOT) and the Port of Tacoma (PORT), each individually referred to as a "Party" and collectively referred to as the "Parties."

**RECITALS**

- A. In 2015 the Legislature funded the construction of the Puget Sound Gateway Program (PROGRAM) through the Connecting Washington revenue package. The Legislature directed that \$130 million of the \$1.875 billion PROGRAM funding is to come through local funding sources.
- B. The PORT has entered into a Local Funding and Phasing Memorandum of Understanding (MOU) with WSDOT (Exhibit A), commencing on July 1, 2018, acknowledging that the PORT is one of eighteen (18) Local Agency Partners committed to provide matching funds/contributions commensurate with the benefits accrued from the PROGRAM at a local level, estimated to total \$30 million.
- C. The east segment of the State Route (SR) 167 Completion Project (PROJECT) is part of the PROGRAM, where WSDOT will construct a new highway from Interstate 5 to the existing terminus of SR 167 in Puyallup as shown and described in Exhibit B.
- D. The PORT, in recognition of the PROJECT's benefits for freight mobility at the Port of Tacoma, will contribute a total of \$30 million in matching funds and in-kind equivalent contributions to the PROJECT's costs, consistent with Engrossed Senate Bill 5096 § 306(20)(b).
- E. The PORT and WSDOT have, to date, entered into three other Interlocal Agreements contributing funds or in-kind value towards, as follows:
  - a. GCB 3063 (dated December 28, 2018) (70<sup>th</sup> Avenue E. Bridge), \$3,000,000.
  - b. GCB 3208 (Parts 1 and 2, dated April 9, 2021) (contribution of real property), \$11,201,974.
  - c. GCB 3736 (dated August 22, 2022) (in kind contribution of up to two Mitigation Bank Credits), \$3,866,666, if used.
- F. WSDOT has now determined that the two Mitigation Bank credits which the Port agreed to provide under Interlocal Agreement GCB 3736 are not required for the PROJECT, and the PORT and WSDOT desire to terminate their respective obligation under GCB 3736.
- G. With termination of GCB 3736, the PORT's remaining funding obligation for the Project is \$15,798,026.

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 mutual benefits and performances contained herein, and the attached Exhibits A and B incorporated and made a part hereof, it is mutually agreed as follows:

## **1. GENERAL**

1.1 This Agreement quantifies certain contributions of the PORT to be applied towards the PROJECT component of the PROGRAM as well as a credit towards the PORT's PROJECT contribution as described in this Agreement and defines the roles and responsibilities between the Parties with respect to such contributions.

1.2 As part of the east segment of the PROJECT from I-5 to the current terminus of SR 167 in Puyallup, known as the "Stage 2 Project", WSDOT will build 4 miles of new highway to complete the unfinished segment of SR 167 in Pierce County. The Stage 2 project will be constructed in two subprojects, Stage 2a, and Stage 2b, as generally shown in Exhibit B hereto. The Stage 2a and 2b Projects will complete the SR 167 Completion Project by building a four-lane highway between SR 161 (North Meridian Avenue) and I-5, two new interchanges at Valley Avenue and I-5, improvements on several local streets such as Freeman Rd., N. Levee Rd., Valley Avenue, and 20th St., and construction of riparian restoration sites in the Wapato Creek and Hylebos Creek basins together with other environmental mitigation and enhancements.

1.3 This Agreement is effective upon the signature of both Parties and will terminate upon the sooner of PROJECT completion, or December 31, 2024, if WSDOT has not issued a request for qualifications for the Stage 2b subproject, or by December 31, 2025, if WSDOT has not entered into a contract for construction for the Stage 2b subproject, unless mutually extended by written agreement of the Parties.

## **2. TERMINATION OF INTERLOCAL AGREEMENT GCB 3736**

WSDOT has determined that it does not require the PORT's contribution of mitigation bank credits for development of the PROJECT. The Parties' respective duties and obligations under GCB 3736 shall terminate upon execution of this Agreement.

## **3. PAYMENT**

3.1 The PORT shall contribute \$15,798,026 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.

3.2 WSDOT will invoice the PORT with evidence that payments of at least \$15,798,026 have been made by WSDOT for Stage 2b. The PORT will pay the invoice within sixty days of receiving WSDOT's invoice for payment and supporting evidence.

## **4. CONTRACT ADMINISTRATION**

The Parties do not by this Agreement create any separate legal or administrative entity. The Secretary of Transportation or his designee, and 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.

## **5. DISPUTE RESOLUTION**

In the event that a dispute arises under this Agreement, it shall be resolved as follows: The Parties 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 the 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 their own costs and fees.

## **6. INDEMNIFICATION**

6.1 Each Party to this Agreement will protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, 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 property), arising out of, or in any way resulting from, each Party's negligent acts or omissions with respect to the provisions of this Agreement. Neither Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their agents, officials, or employees, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials, or employees.

6.2 The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees, or agents. For this purpose, only, the Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

6.3 This indemnification and waiver will survive the termination of this Agreement.

## **7. VENUE**

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.

## **8. CONTACTS AND NOTICES**

Contact between the Parties, including but not limited to 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  
Phone (253) 428-8663  
Email: [seagan@portoftacoma.com](mailto:seagan@portoftacoma.com)

### **WSDOT**

Steve Fuchs  
Project Manager  
PO Box 47440  
Olympia, WA 98504  
Phone (360) 701-9413  
Email: [fuchss@wsdot.wa.gov](mailto:fuchss@wsdot.wa.gov)

**9. AMENDMENT**

This Agreement may be amended or modified only by the mutual agreement of the Parties, in accordance with each Party's respective processes. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

**10. 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.

**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. AUDITS/RECORDS**

All records for the PROJECT in support of all costs incurred shall be maintained by WSDOT for a period of six (6) years after the termination of this Agreement. 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.

**13. SIGNATURE OF AUTHORITY**

The PORT Executive Director was authorized to execute this Agreement by the Port of Tacoma Commission on the            day of            , 2024.

**14. RECORDING**

In accordance with RCW 39.34.040, prior to its entry into force, this Agreement shall be filed with the county auditor or, alternatively, listed by subject on each Party's website or other electronically retrievable public source.

**15. COUNTERPARTS**

This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each Party, for all purposes. Electronic signatures or signatures transmitted via e-mail in portable document format ("PDF") may be used in place of original signatures on this Agreement. Each Party intends to be bound by its electronic or PDF signature on this Agreement and is aware that the other Party is relying on its electronic or PDF signature.

In witness whereof, the Parties hereto have executed this Agreement as of the Party's date last signed below.

<b>PORT OF TACOMA</b>	<b>WASHINGTON STATE DEPARTMENT OF TRANSPORTATION</b>
By:	By:
Printed: Eric Johnson	Printed: John White
Title: Executive Director	Title: Program Administrator
Date:	Date:
<b>Approved as to Form for Port of Tacoma</b>	<b>Approved as to Form for Washington State Department of Transportation</b>
By:	By: <i>Ryan Singh-Kundy</i>
Printed: Heather Burgess	Printed: <i>Ryan Singh-Kundy</i>
Title: Port Legal Counsel	Title: Assistant Attorney General
Date:	Date: <i>10/13/2023</i>