

COMMISSION AGENDA

Item No: 10E

Meeting: 01/21/2021

DATE: January 13, 2021

TO: Port Commission

FROM: Eric Johnson, Executive Director
Sponsor: Jason Jordan, Director Environmental Programs
Project Manager: Evette Mason, Government Affairs Manager

SUBJECT: INTERLOCAL AGREEMENT WITH THE CITY OF FIFE REGARDING 12TH STREET EAST RIGHT OF WAY

A. ACTION REQUESTED

Request authorization for the Port's Executive Director or his designee to enter into an Interlocal Agreement (ILA) with the City of Fife per Resolution No. 2020-11-PT First Amendment, Exhibit A, Delegation of Authority Master Policy, Paragraph IV.A. requires Commission authorization to enter into ILAs with other public agencies.

Specifics to this ILA:

- Replacing 12th Street East Wapato Creek culverts with a bridge
- Filling the creek ditch along 12th Street East
- Conveyance of a strip of Port property along 12th Street East for street right of way and utility purposes
- Confirmation of the permitting agencies
- Coordination of review and inspection fees

B. BACKGROUND

Resolution No. 2020-11-PT First Amendment, Exhibit A, Delegation of Authority Master Policy, Paragraph IV.A. requires Commission authorization to enter into ILAs with other public agencies.

This proposed ILA is related to the Port's Lower Wapato Creek Habitat Project (Project). The Port Commission approved the design authorization for the Project on September 10, 2019 and July 16, 2020. At the January 21, 2021 Commission meeting, in addition to considering this ILA request, the Commission is also scheduled to consider a project authorization for Phase 1 construction of the Project, related mitigation agreements and utility easements, and a surplus action associated with the proposed conveyance of a strip of Port property along 12th Street East to the City of Fife for right of way and utility purposes pursuant to the ILA.

The Project is located on a portion of the Port's Parcel 14 west of the Prologis development and bordered by State Route 509, Alexander Avenue and 12th Street East.

The majority of the Project is within the City of Tacoma, but the southern border of the Port property is 12th Street East, which is in the City of Fife.

Should the Port Commission approve project authorization for the Lower Wapato Creek Habitat Project, the City of Fife requests an ILA with the Port of Tacoma to affirm details of the Project (see “Scope” below).

The Port of Tacoma consulted with the Puyallup Tribe of Indians Council and staff on this Project, including the possible transfer of property to the City of Fife for potential future right of way improvements.

C. SCOPE

The scope of the ILA includes:

Replacement of Wapato Creek culverts with a bridge: As part of the Project, the Port will replace the existing Wapato Creek culverts under 12th Street East with a full-span bridge approximately 50-feet wide and approved by the Washington Department of Fish and Wildlife (WDFW). The City of Fife agrees that based on site conditions the bridge will include the following potential variances from applicable code:

- Privacy fence along the southern boundary of the bridge;
- Shortened approach slabs due to the locations of existing driveways;
- Sight distances will be shorter due to locations of existing driveways;
- A minimum clearance for flood/water conveyance will be provided above the 100-year water surface elevation as approved by WDFW;
- Other variances from applicable code that become apparent during final design shall be subject to the City of Fife’s approval.

The City of Fife will accept the bridge upon the bridge opening for general use by the public, and assume all responsibility, maintenance and repair related to the structure (beyond the contractor’s warranty).

Permitting and fees: The City of Fife agrees that Site Development and Land Use (i.e., critical areas) permitting shall be by the City of Tacoma. The City of Fife will review, permit, and complete inspections associated with the bridge and related approach slabs and road repairs.

The Port paid the City of Fife \$6,690 in 2014 for review fees associated with the permit review of a previously planned culvert replacement at this location. The Port never submitted materials for review as the project was cancelled prior to document submittal. The \$6,690 shall be used to cover the City of Fife’s actual costs for utility and right of way coordination related to the Project. The City of Fife will not charge the Port any

amount for this work in excess of the \$6,690 already paid. The Port will pay to the City of Fife the City of Fife's actual costs of review, permits, and inspections associated with the bridge and related approach slabs and road repairs.

Filling of the Wapato Creek ditch: As part of the Project, the Port will fill and grade the Wapato Creek ditch parallel to 12th Street East in accordance with 2020 Washington State Department of Transportation standard specifications for embankment fill.

Conveyance of Right of Way: Upon completion of the Project, the Port will convey to the City of Fife for street right of way and utility purposes, via a quit claim deed (attached to the ILA), the southern approximately 33 feet of the Port property. This strip of land abuts 12th Street East, and the City of Fife's Transportation Element of the City of Fife's Comprehensive Plan includes future widening of 12th Street East to three lanes with sidewalks and bike paths. The Port is not responsible for the cost of any future road improvements. The deed will also include the bridge.

D. DURATION OF AGREEMENT

The City of Fife ILA is effective upon the last date of execution of both parties and will continue through the completion of the Project and the conveyance of the right of way anticipated to be December 31, 2021.

E. FINANCIAL SUMMARY FOR CITY OF FIFE ILA ELEMENTS

ITEM	COST
Replacement of Wapato Creek culverts with bridge	\$2,220,000
Permit/Inspection fees (previously paid to City of Fife)	6,690
Review, permitting, and inspection of bridge	15,000
Appraised value of approximate 33' strip of land (.8 acres)	487,870
TOTAL	\$2,729,560

NOTE: These costs are part of the overall project budget and are itemized above for reference. The appraised value of the land is part of the Surplus Action following the approval of the Fife ILA at the January 21, 2021 Commission Meeting. For additional financial detail, please refer to the Lower Wapato Creek Habitat Project Commission Memorandum for the financial summary for the overall Project.

F. ECONOMIC INVESTMENT / JOB CREATION

The ILA does not impact economic investment or job creation. Refer to previous authorizations for the Lower Wapato Creek Habitat Project for a summary for the overall Project.

G. ENVIRONMENTAL IMPACTS / REVIEW

The ILA has no environmental impacts. Refer to previous authorizations for the Lower Wapato Creek Habitat Project for a summary for the overall Project.

H. ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

Alternatives were considered as part of previous authorizations for the Project. The City of Fife ILA facilitates the previous selected alternative to proceed with the Project. See previous authorization documents for the Project.

I. NEXT STEPS

Below is a summary of next steps in the anticipated order of completion.

- Sign City of Fife ILA upon receipt of the City of Fife's ILA signature.
- Construct bridge to replace Wapato Creek culverts under 12th Street East.
- City of Fife assumes all responsibility and liability related to the bridge (as detailed in the City of Fife ILA) upon the bridge opening for general use by the public.
- Convey right of way and bridge via a quit claim deed at the completion of Phase 1 (bridge construction and grading) of the Port's Project (anticipated by December 31, 2021).

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF FIFE AND THE PORT OF TACOMA
REGARDING 12th STREET EAST RIGHT OF WAY**

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

2. Recitals.

2.1 The Port is the owner of Pierce County Tax Parcel Nos. 0320013157 and 0320013158, legally described and shown in Exhibit A attached hereto (the “Property”). The Port intends to develop a habitat mitigation site referred to as the Lower Wapato Creek Habitat Project (the “Project”) on a portion of the Property, legally described and shown in Exhibit B hereto. The Project also includes replacing the Wapato Creek culverts under 12th Street East with a bridge.

2.2 The Property abuts 12th Street East in the City of Fife. The Transportation Element of the City's Comprehensive Plan includes future widening of 12th Street East to three lanes with sidewalks and bike paths. It is in both parties' interests that the development of the Project not impede the future widening of 12th Street East.

Now, therefore it is hereby agreed by and between the parties hereto as follows:

3. Replacement of Wapato Creek Culverts with Bridge. As part of the Project, the Port will replace the existing Wapato Creek culverts under 12th Street East with a full-span bridge approximately 50 feet wide approved by the Washington Department of Fish and Wildlife (“WDFW”). The City agrees that Site Development and Land Use (i.e., critical areas) permitting shall be by the City of Tacoma. The City of Fife will review, permit, and complete inspections associated with the bridge and related approach slabs and road repairs. The City further agrees that based on site conditions the bridge will include the following potential variances from applicable code:

- 3.1 Privacy fence will be located along southern boundary of bridge;
- 3.2 Approach slabs will be shortened due to locations of existing driveways;
- 3.3 Sight distances will be shorter due to locations of existing driveways;
- 3.4 A minimum clearance for flood/ water conveyance will be provided above the 100-year water surface elevation as approved by WDFW.

The need for other potential variances from applicable code that become apparent during final design shall be subject to the City's approval, which shall not be unreasonably withheld, conditioned, or delayed. The Port paid the City \$6,690 in February 2014 (check number 00196389) for review fees associated with permit review of the culvert. The Port never submitted materials for review since the project was cancelled before submittal. The City has not returned the review fees to the Port. The \$6,690 shall be used to cover the City's actual costs for utility and right of way coordination related to the Project. The City will not charge the Port any amount for this work

in excess of the \$6,690 already paid. The Port will pay to the City the City's actual costs of review, permits, and inspections associated with the bridge and related approach slabs and road repairs. The City will cooperate and coordinate with the Port regarding construction of the bridge. Upon the bridge opening for general use by the public, the City will accept the bridge and will assume all responsibility and liability related thereto, including but not limited to maintenance and repair; provided that the Port's contractors will remain responsible for warranty work under and during the contractor's warranty period, and otherwise for design or construction defects under the design and construction contracts and applicable law, and the Port will assign all such claims against the contractors to the City effective upon the bridge opening for general use by the public.

4. Filling of Wapato Creek Ditch. As part of the Project, the Port will fill and grade the Wapato Creek ditch along the southern boundary of the Property in accordance with current (2020) Washington State Department of Transportation ("WSDOT") standard specifications for embankment fill.

5. Conveyance of Right of Way. Upon completion of the Project, the Port will convey to the City for street right of way and utility purposes, the southern approximately 33 feet of the Property, legally described and shown in Exhibit C attached hereto. Conveyance will be by quit claim deed in the form attached hereto as Exhibit D. Such deed will also include the bridge.

6. Contract Administration. The parties do not by this Agreement create any separate legal or administrative entity. The City Manager of Fife or his 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.

7. Indemnification.

7.1 The 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 resulting from the negligence or willful misconduct or other wrongful act or omission of Fife, its officers, employees, agents, contractors of all levels, consultants of all levels, licensees, invitees, or volunteers, while acting within the scope of their employment, contract, license, or invitation, related to this Agreement or its subject matter.

7.2 The Port shall defend, indemnify and hold Fife, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the negligence or willful misconduct or other wrongful act or omission of the Port, its officers, employees, agents, contractors of all levels, consultants of all levels, licensees, invitees, or volunteers, while acting within the scope of their employment, contract, license, or invitation, related to this Agreement or its subject matter; provided that the Port shall have no duty to defend, indemnify, or hold harmless under this section after the bridge opening for general use by the public regarding any claims, injuries, damages, losses or suits related to the design, construction, or condition of the bridge.

7.3 In the event of a claim, loss, or liability based upon the alleged concurrent or joint negligence, willful misconduct, or other wrongful act or omission of the parties or their officers, employees, agents, contractors of all levels, consultants of all levels, licensees, invitees, or volunteers, while acting within the scope of their employment, contract, license, or invitation, the indemnity provisions herein shall be valid and enforceable only to the extent of each party's own negligence, willful misconduct, or other wrongful act or omission, or the negligence, willful misconduct, or other wrongful act or omission of its employees, agents, contractors, consultants, licensees, or invitees, while acting within the scope of their employment, contract, license, or invitation, related to this Agreement or its subject matter.

7.4 In addition to the foregoing indemnity, from and after the bridge opening for general use by the public, the City shall release, defend, indemnify, and hold the Port, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, costs, losses or suits including attorney fees, including but not limited to any and all costs of operation, maintenance, repair, removal, or reconstruction of the bridge, and including but not limited to any and all claims for death, personal injury, property damage, or other damages, arising out of or resulting from or related to the bridge.

7.5 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, AND ANY AND ALL OTHER APPLICABLE INDUSTRIAL INSURANCE / WORKER'S COMPENSATION ACTS OR THEIR EQUIVALENT, AS APPLICABLE. THIS PROVISION WAS MUTUALLY NEGOTIATED. Further, the indemnification obligations under this Agreement shall not be limited in any way by any limitations on the amount or type of damages, compensation, or benefits payable to or for any third party under worker's compensation acts, disability benefit acts, or other employee benefit acts.

7.6 The provisions of this section shall survive the expiration or termination of this Agreement with respect to acts and omissions occurring during the term hereof. The provisions of Section 7.4 shall survive the expiration or termination of this Agreement and continue indefinitely.

8. Duration. Subject to Section 13 below, this Agreement is effective upon the last date of execution of both parties, and will continue through the completion of the Project and the conveyance of the quit claim deed under Section 5 above, anticipated to be December 31, 2021.

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

10. 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.

11. 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: Hyun Kim
City Manager
5411 23rd Street East
Fife, WA 98424

Port of Tacoma
Attn: Eric D. Johnson
Executive Director
1 Sitcum Way
Tacoma WA 98421

12. 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.

13. Recording. Prior to its entry into force, this Agreement shall be filed with the Pierce County Auditor, or, alternatively, listed by subject on a public agency's website or other electronically retrievable public source.

14. Signature Authority.

14.1 The Fife City Manager was authorized to execute this agreement by Resolution No. ____ adopted by the City Council on the ____ day of ____, 20__, at a regularly scheduled Council meeting.

14.2 The Port Executive Director was authorized to execute this agreement by Resolution No. ____ adopted by the Port Commission on the ____ day of ____, 20__, at a regularly scheduled Commission meeting.

15. 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.

16. 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.

SIGNATURES ARE ON NEXT PAGE

CITY OF FIFE

PORT OF TACOMA

By: _____
Hyun Kim
City Manager

By: _____
Eric D. Johnson
Executive Director

Approved as to form:

Approved as to form:

Gregory F. Amann
City Attorney

Port Attorney

draft

EXHIBIT A

LEGAL DESCRIPTION AND FIGURE OF PROPERTY

Revised Parcels N and O of City of Tacoma BLA No. LU17-0187 recorded September 5, 2019 under Pierce County Auditor's Recording No. 201909055001, Pierce County, Washington.

EXHIBIT B

**LEGAL DESCRIPTION AND FIGURE OF
LOWER WAPATO CREEK HABITAT PROJECT**

EXHIBIT C

**LEGAL DESCRIPTION AND FIGURE OF
PORTION OF PROPERTY TO BE CONVEYED TO CITY OF FIFE**

draft

EXHIBIT D

After Recording Please Return To:

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

QUIT CLAIM DEED

Grantor: PORT OF TACOMA, a municipal corporation

Grantee: CITY OF FIFE, a municipal corporation

Abbr Legal Descr: Ptn Rev. Parcels N and O, BLA LU17-0187, AFN 201909055001

Complete legal description is attached hereto as Exhibit A, pages XX-XX of this document.

Tax Parcel Nos.: Ptn 0320013157, Ptn 0320013158

GRANTOR, Port of Tacoma, a municipal corporation, record owner of the property hereinafter described, as a condition of development of real property, and in consideration of the general public welfare, hereby conveys and quitclaims to the City of Fife, a Washington municipal corporation, for use for public right of way and utilities, all interest in the real property situated in Pierce County, State of Washington, legally described and shown in Exhibit A attached hereto, together with the bridge structure constructed by Grantor and located partly on the property conveyed herein and partly on adjoining City of Fife right of way, together with any after-acquired title of Grantor therein.

From and after the bridge opening for general use by the public, Grantee shall release, defend, indemnify, and hold Grantor, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, costs, losses or suits including attorney fees, including but not limited to any and all costs of operation, maintenance, repair, removal, or reconstruction of the bridge, and including but not limited to any and all claims for death, personal injury, property damage, or other damages, arising out of or resulting from or related to the bridge. Upon the bridge opening for general use by the public, Grantor assigns to Grantee any and all claims and causes of action against Grantor's contractors related to the design and construction of the bridge structure.

If at some future date Grantee determines that some or all of the real property described in Exhibit A is no longer necessary for public right of way purposes, then Grantee shall vacate such right of way and re-convey such property to Grantor at no cost of any kind to Grantor. In the event of such action, Grantee may reserve easements for utilities then located in such right of way area. Grantor may elect to provide substitute easement locations mutually acceptable to Grantor and Grantee, and at Grantor's sole expense relocate such utilities.

The Grantor requests the Assessor-Treasurer of Pierce County to set over to the remainder of tax parcel nos. 0320013157 and 0320013158, the lien of all unpaid taxes, if any, affecting the real estate herein conveyed, as provided in RCW 84.60.070.

It is understood and agreed that delivery of this deed is hereby tendered and that the terms and obligations hereof shall not become binding upon the City of Fife unless and until accepted and approved hereon in writing for the City of Fife by its authorized agent.

Dated this _____ day of _____, 2021

PORT OF TACOMA

By: _____
Print Name: _____
Title: _____

STATE OF WASHINGTON)
)
County of Pierce)

ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument and acknowledged it as the _____ of the Port of Tacoma to be the free and voluntary act of such party for the uses and purposes mentioned in the _____ instrument.

DATED: _____.

NOTARY PUBLIC
Print Name: _____
My appointment expires: _____

Accepted by City of Fife:

By: _____
_____, Public Works Director

Item No.: 10E
Date of Meeting: January 21, 2021

Port of Tacoma City of Fife ILA 12th Street E Right of Way

Presenter: Evette Mason
Manager, Government Affairs

Sponsor: Jason Jordan
Director, Environmental Programs



Action Requested



Request authorization for the Port's Executive Director or his designee to enter into an Interlocal Agreement (ILA) with the City of Fife per Resolution No. 2020-11-PT First Amendment, Exhibit A, Delegation of Authority Master Policy, Paragraph IV.A. requires Commission authorization to enter into ILAs with other public agencies.

Specifics to this ILA:

1. Replacing 12th Street E Wapato Creek culverts with bridge
2. Filling the creek ditch along 12th Street E
3. Conveyance of a strip of Port property along 12th Street E for street right of way and utility purposes
4. Confirmation of the permitting agencies
5. Coordination of review and inspection fees

Background Lower Wapato Creek Habitat

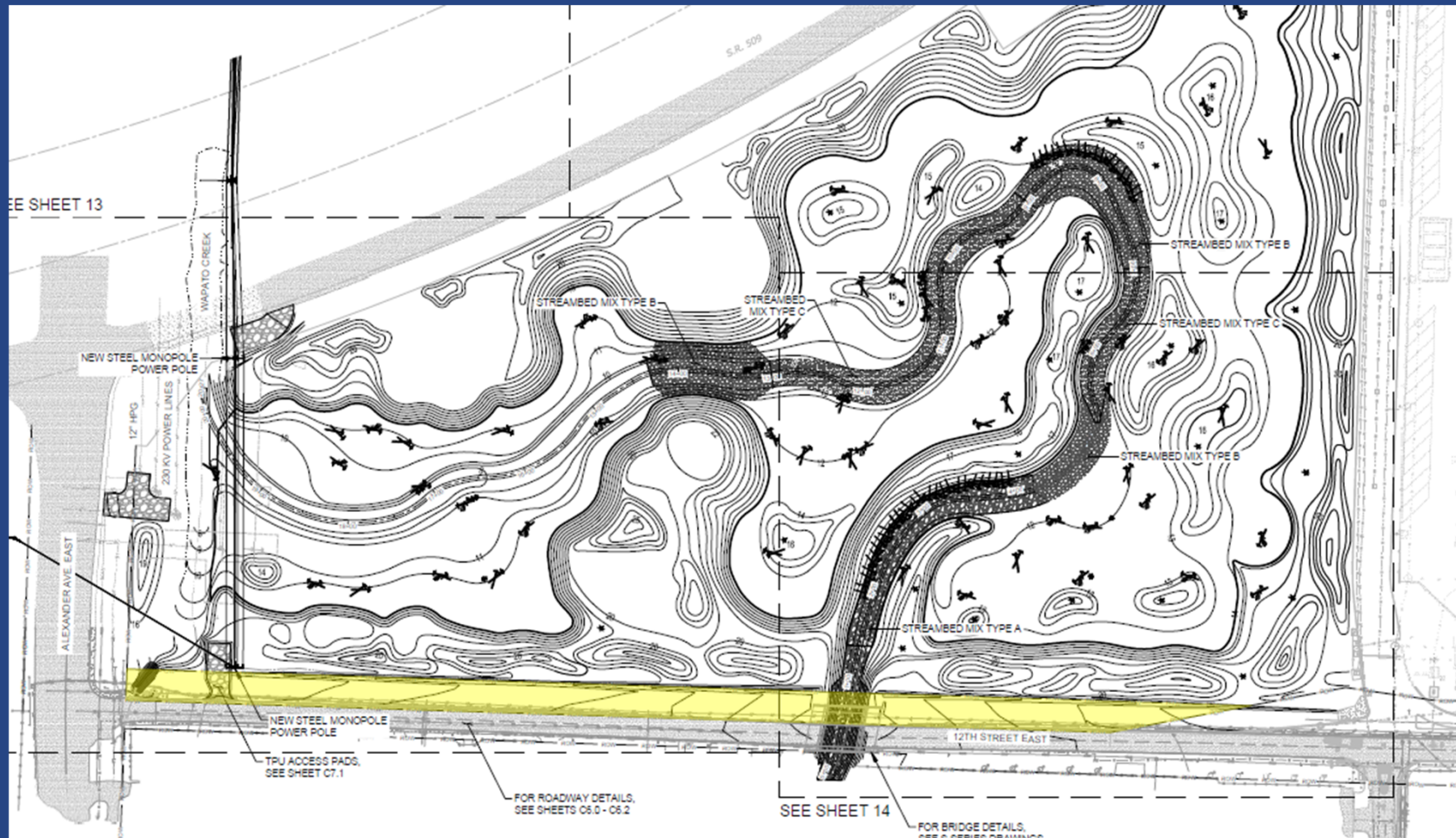


This ILA is related to the Port's Wapato Creek Habitat Project.

Prior Commission authorizations:

- Project Design - September 10, 2019 and July 16, 2020 - approved
- Phase 1 construction, mitigation and utility agreements and surplus actions associated with this ILA – January 21, 2021

Background Lower Wapato Creek Habitat



Right-of-Way dedication to City of Fife

The project is located West of the Prologis development.
The Southern border of the Port property is 12th Street and
is within the City of Fife.





View from 12th Street East and ditch



Scope



Scope includes:

- Replacement of Wapato Creek culverts with a bridge
- Permitting and fees
- Filling of Wapato Creek ditch
- Conveyance of Right of Way

Duration: Effective upon the last date of execution of both parties and will continue through the completion of the Project and the conveyance of the right of way anticipated to be December 31, 2021



Financial Summary of the ILA



NOTE: These costs are included in the previously approved Commission action and are itemized below for ILA reference. The appraised value of the ROW is part of an upcoming surplus action.

ITEM	COST
Replacement of Wapato Creek culverts with bridge	\$2,220,000
Permit/Inspection fees (previously paid to City of Fife)	6,690
Review, permitting, and inspection of bridge	15,000
Appraised value approx. 33' strip (0.8 acres)	487,870
TOTAL	\$2,729,560

Items not impacted by this ILA

- Economic Investment / Job Creation
- Environmental Impacts / Review

Alternatives considered and their implications

- Alternatives considered as part of previous authorizations for the Project

Next Steps

- Sign City of Fife ILA upon receipt of the City of Fife's ILA signature.
- Construct bridge to replace Wapato Creek culverts under 12th Street East.
- City of Fife assumes all responsibility and liability related to the bridge upon the bridge opening for general use by the public.
- Convey right of way and bridge via a quit claim deed at the completion of Phase 1.

Action Requested



Request authorization for the Port's Executive Director or his designee to enter into an Interlocal Agreement (ILA) with the City of Fife per Resolution No. 2020-11-PT First Amendment, Exhibit A, Delegation of Authority Master Policy, Paragraph IV.A. requires Commission authorization to enter into ILAs with other public agencies.

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