

INTERLOCAL AGREEMENT BETWEEN THE CITY OF TACOMA
AND THE PORT OF TACOMA
REGARDING IMPROVEMENTS RELATED TO THE
PUGET SOUND ENERGY LIQUID NATURAL GAS PLANT AT 11TH AND TAYLOR WAY

This Interlocal Agreement (ILA) relates to the development of an LNG plant at 11th and Taylor Way (this "Agreement") is entered into this 21 day of January, 2016 by and between the **CITY OF TACOMA**, a first class municipal corporation of the State of Washington (hereinafter the "City"), and the **PORT OF TACOMA**, a Washington municipal corporation (the "Port"), (collectively "Parties") in consideration of the mutual covenants contained herein. The Parties hereby recite and agree as follows:

RECITALS

1. The Port has entered into a lease with Puget Sound Energy ("PSE") wherein the Port leases to PSE a site to build, and operate a LNG facility (the "Project") on a 28 acre site at the intersection of 11th and Taylor Way in the City of Tacoma.
2. Based on information supplied to the City, the Project will supply cleaner fuel for ships and provide back-up capacity for Tacoma and Pierce County natural gas customers.
3. At the outset of PSE's entitlements process and with the concurrence of the Washington State Department of Ecology ("DOE") the City was designated the Lead Agency under the State Environmental Policy Act (RCW 43.21C, "SEPA"). The City has commissioned an Environmental Impact Statement ("EIS") for the Project.
4. This EIS explicitly identifies City code requirements and mitigations deemed necessary by the City for this Project to be located at the intended location ("Project Costs").
5. Some grant funding has been secured that can go toward the Project Costs and, given a window of opportunity, the Parties reasonably anticipate more grant funding can be obtained.
6. The City requests a contingency plan be in place to address compliance with applicable City code requirements and for City- PSE agreed upon mitigations measures to be in place concurrent with Project operation. For purposes of this Agreement, "concurrent" is defined as upon expiration of two (2) years after the commencement of PSE operations at the site.
8. PSE has committed \$5.5 million towards Project mitigation/Project Costs consisting of capital contribution towards refurbishing Fire Station 15 and rebuilding Taylor Way to heavy haul standards from SR 509 to 11th Street, and the City has committed projected new tax revenues derived from the Project to reopening a functioning Fire Station 15.

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. Taylor Way Rebuild. The Parties will make every reasonable effort to secure funding for a 'complete' rebuild of Taylor Way from SR 509 to 11th Street using federal and state grant funding supplemented by appropriate contributions from new developments, railroads, and infrastructure providers. A 'complete' rebuild is defined as a rebuild to the City's existing heavy haul standards with curb, and gutters with approximately the same paving width as currently exists, and with a complete rebuild of those railroad crossings that must remain ("Taylor Way Rebuild").

2. Intelligent Transportation System. In addition to the funds the Port still has available from its 2015 Homeland Security Grant (the "Existing Grant Funds") and expected contributions from new developments, the Parties will make every reasonable effort to secure up to \$475,000 in grant funding for Intelligent Transportation System ("ITS") improvements. These additional funds, if secured, will be added to the Existing Grant Funds and used for improvements for interim and long-term ITS improvements to support an operational ITS on the Hylebos Peninsula. The final figure necessary for ITS improvements will be proposed by a consultant retained and paid by the City.

3. Potential Taylor Way Realignment. The Parties may take up to twelve months from the execution of this Agreement to work with stakeholders on establishing an optimal Taylor Way alignment or widening ("Taylor Way Realignment"). If the Parties and stakeholders cannot agree on an alternative alignment for Taylor Way within this twelve month period, the current alignment will be used for project design. The Parties recognize that any realignment or widening of Taylor Way may result in additional costs not covered by this Agreement.

4. Local Improvement District (LID) Formation. The Parties agree that after two (2) years of the commencement of PSE operations, the City may form a LID to fund the balance of the cost for the Taylor Way Rebuild and the ITS improvements described above and that the Port will not oppose formation of such an LID, although the Port reserves any right it may have to disagree under RCW 35.44. The maximum amount to be financed through LID funding is \$5.5 million for the Taylor Way Rebuild plus a maximum of \$475,000 in ITS funding, less any amounts contributed by the Port from Existing Grant Funds (to include the Port's local match contribution), or any federal and state funding or grants, or local funding obtained by the Parties for these purposes, and any contributions received from new developments.

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

6. Port Credits. Any additional Port money contributed to the Taylor or ITS projects in advance of any LID formation shall be credited toward the Port's assessment under any later formed LID.

7. Fire Station 15. The City agrees that, by a date not later than commencement of commercial operations of the Project, it will reopen Fire Station 15 located on the Hylebos Peninsula and operate it in accordance with Tacoma Fire Department procedures and protocols. The Parties

understand and acknowledge that the City's continued operation of Fire Station 15 is subject to the budgetary and operational decision making of the City as a Washington State municipal corporation. If the City exercises its budgetary and operational decision making to close Fire station 15, neither the Port nor PSE shall be responsible for operational costs associated with the Fire Station.

8. Assignment. Neither Party to this Agreement shall have the right to convey, assign, apportion or otherwise transfer any and all of its rights, obligations, conditions and interests under this Agreement, without the prior written approval of the other.

9. Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right or cause of action based upon any provisions of this Agreement.

10. Equal Drafting. This Agreement has been reviewed and revised by legal counsel for both parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this Agreement.

11. Severability. If any provisions of this Agreement are determined to be unenforceable or invalid pursuant to a final decree or judgment by a court of law with jurisdiction, then the remainder of this Agreement not decreed or adjudged unenforceable or invalid shall remain unaffected and in full force and effect to the extent that the primary purpose of this Agreement can be preserved.

12. Modification. This Agreement may not be modified except by mutual agreement reduced to writing in a formal amendment hereto and approved by each Parties' governing body.

13. Termination. This Agreement shall terminate upon completion by both Parties of their respective obligations hereunder, or on December 31, 2022 unless terminated earlier.

14. Governing Law. This Agreement shall be governed exclusively by the laws of the State of Washington both as to interpretation and performance without recourse to any principles of Conflicts of Laws. Any action at law, suit in equity or judicial proceeding for the endorsement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Pierce County, Washington

15. Notices. All notices given pursuant to this Agreement shall be deemed delivered to the respective party on the date that it is personally delivered to the address(es) set forth below, or on the date that it is successfully sent by email transmission to the facsimile number(s) set forth below:

City:

747 Market Street
Tacoma, Washington 98402
Attention: Ian S. Munce
Facsimile: (253) 573-2478
Email: imunce@cityoftacoma.org

Port:

PO Box 1837
Tacoma, Washington 98406
Attention: Evette Mason
Facsimile: (253) 597-7573
Email: emason@portoftacoma.com

16. Entire Agreement. This Agreement constitutes the entire agreement of the parties, supersedes all previous oral or written understandings, and incorporates all prior discussions and agreements pertaining to this subject matter. The City and the Port participated equally in any negotiations and the process leading to execution of this Agreement. If a dispute should arise with regard to the meaning or interpretation of any provision hereof, there shall be no presumption of draftsmanship as to such provision.

17. Legal Relations.

A. Independent Municipal Governments. The Parties hereto are independent governmental entities and nothing herein shall be construed to limit the independent government powers, authority or discretion of the governing bodies of each Party. It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of any Party shall be deemed, or represent themselves to be, employees of any of the other Party.

B. Legal obligations. This Agreement does not relieve either Party of any obligation or responsibility imposed upon it by law.

C. Timely Performance. The requirements of this Agreement shall be carried out in a timely manner according to a schedule negotiated by and satisfactory to the Parties.

D. 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.

18. Records and Audit. During the term of this Agreement, and for a period not less than six (6) years from the date of termination, records and accounts pertaining to the work of this Agreement and accounting therefore shall be kept by each Party and shall be available for inspection and audit by representatives of either Party and any other entity with legal entitlement to review said records. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claims, or audit finding has been resolved, even though such litigation, claim, or audit continues past the six-year (6) retention period. This provision is in addition to and is not intended to supplant, alter or amend records retention requirements established by applicable state and federal laws.

19. Limits of Financial Obligations/Property Ownership. Except as provided above, each Party shall finance its own conduct of responsibilities under this Agreement. No ownership of

property will transfer as a result of this Agreement.

20. Indemnification and Hold Harmless.

A. The City releases the Port from, and shall defend, indemnify, and hold the Port and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of the City and/or its agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the City's performance of its obligations under this Agreement, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the Port or its agents, employees, and/or officers.

B. The City shall defend, indemnify, and hold the Port and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of any third parties and/or their agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the City's performance of its obligations under this Agreement, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the Port or its agents, employees, and/or officers.

C. The Port releases the City from, and shall defend, indemnify, and hold the City and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of the Port and/or its agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the Port's performance of its obligations under this Agreement, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the City or its agents, employees, and/or officers.

D. The Port shall defend, indemnify, and hold the City and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of any third parties and/or their agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the Port's performance of its obligations under this Agreement, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the City or its agents, employees, and/or officers.

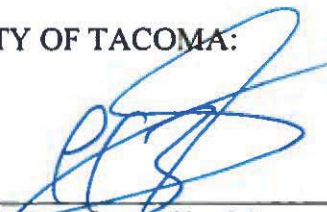
E. Each Party specifically assumes liability for actions brought by its own employees against the other Party and for that purpose each Party specifically waives, as respects the other parties only, any immunity under the Worker's Compensation Act, RCW Title 51.

F. The Parties recognizes that this waiver was the subject of mutual negotiation. In the event any Party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this Agreement against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party.

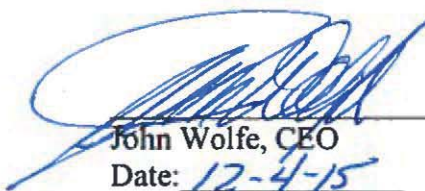
G. No liability shall attach to any of the Parties by reason of entering into this Agreement except as expressly provided herein.

H. The provisions of this Article shall survive any termination or expiration of this Agreement.

CITY OF TACOMA:

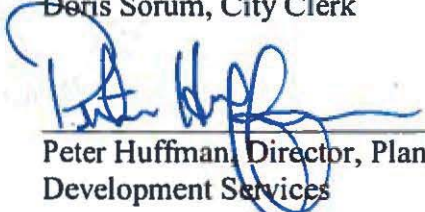

T.C. Broadnax, City Manager
Date: 1/26/16

PORT OF TACOMA:


John Wolfe, CEO
Date: 12-4-15

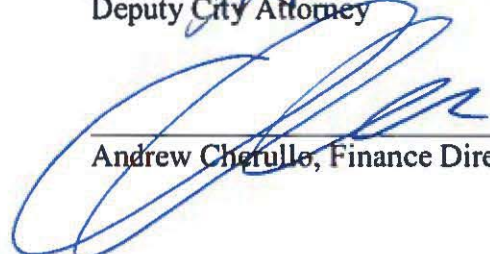
Attest:


Doris Sorum, City Clerk


Peter Huffman, Director, Planning &
Development Services

Approved as to form:


Deputy City Attorney


Andrew Cherullo, Finance Director
GD


Port Legal Counsel