

AGREEMENT BETWEEN THE CITY OF PUYALLUP  
AND THE PORT OF TACOMA  
REGARDING FREIGHT RAIL SAFETY ANALYSIS

This Agreement ("AGREEMENT") is entered into this 20 day of October, 2020 by and between the City of Puyallup, a municipal jurisdiction of the State of Washington (hereinafter the "City"), and the **PORT OF TACOMA**, a Washington public port district (the "Port"), (collectively "Parties") in consideration of the mutual covenants contained herein. The Parties hereby recite and agree as follows:

**RECITALS**

1. The Port is charged by state statute with a mission of furthering economic development. To that end, the Port has adopted a Local Economic Development Policy by which the Port administers its monetary support of economic projects sponsored by local public agencies in Pierce County.
2. The City of Puyallup requests funding to add a safety analysis of the freight rail track running through downtown Puyallup ("Project") to their Downtown Streetscape, Rehab and Restoration Project for Meridian Avenue.
3. The City of Puyallup requested funding and the Port agrees to provide an investment of \$25,000 toward the Project costs, conditioned upon proof of Project expenditures, and as expressly specified herein.
5. The Port finds the requested contribution meets the Port's Local Economic Development Policy criteria as follows:
  - a. Criteria A: Road and freight rail infrastructure projects that create long-term jobs
  - Criteria D: Planning activities or events promoting tourism intended to attract tourists to Pierce County from outside locations.

**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. SCOPE OF WORK.**

The City of Puyallup's funding request consists of the following:

- All as described in the City of Puyallup's Application, as attached hereto as **Attachment A**. Specifically, the monies would be used for an analysis of safety and visibility improvements associated with the freight rail corridor running through downtown Puyallup and crossing Meridian Avenue, a primary vehicle arterial through Puyallup's downtown commercial area.

**2. PORT'S CONDITIONAL AGREEMENT TO CONTRIBUTE FUNDS.**

Subject to the terms herein, the Port agrees to contribute to the City of Puyallup's rail safety analysis Project an amount not to exceed \$25,000 are as follows:

If the Project costs are higher than projected, the City of Puyallup will assume any excess Project costs.

The Port's annual Project contribution shall be allocated and is identified in the Port's 2020 budget.

The Port's distribution of funds is further contingent on the City of Puyallup obtaining full committed funding by June 2021 for the complete Project scope and the contents of this AGREEMENT remain unchanged.

Port payments up to the not-to-exceed amount will be made pursuant to this signed AGREEMENT, and within 45 days of the City of Puyallup's submittal of written proof to the Port that the City of Puyallup has paid its minimum contribution of \$25,000 in expenditures.

### **3. TIMEFRAME/PROJECT SCHEDULE.**

Analysis and Study – Q4 2020 through Q1 2022

### **4. CITY OF PUYALLUP'S PROJECT FINANCIAL SUMMARY.**

Total Downtown Streetscape, Rehab and Restoration Project of Meridian Avenue is approximately \$6 million over the next ten years. The rail safety analysis is part of the study/plan phase.

Source of Study Funds (other than the Port):

City of Puyallup - \$300,000

Sound Transit - \$156,000 (design/construction funds for system access)

**5. ABANDONMENT.** If the Project is abandoned, then this AGREEMENT shall be of no further force or effect.

**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 Party's governing body.

13. **TERMINATION.** This AGREEMENT shall terminate upon completion by both Parties of their respective obligations hereunder, or on May 1, 2022 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 email addresses set forth below:

City of Puyallup: 333 S Meridian St  
Puyallup, Washington 98371  
Attention: Meredith Neal  
Email: mneal@puyallupwa.gov

Port of Tacoma: PO Box 1837  
Tacoma, Washington 98401  
Attention: Evette Mason  
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 Parties 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 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 in accordance with RCW 39.34, 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 of Puyallup 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 of Puyallup and/or its agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the City of Puyallup'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 of Puyallup 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 of Puyallup'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 of Puyallup from, and shall defend, indemnify, and hold the City of Puyallup 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 of Puyallup or its agents, employees, and/or officers.

D. The Port shall defend, indemnify, and hold the City of Puyallup 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 of Puyallup 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.

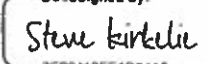
F. The Parties recognizes that this waiver was the subject of mutual negotiation. In the event any Party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this AGREEMENT against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing 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 20 shall survive any termination or expiration of this AGREEMENT.

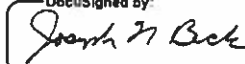
CITY OF PUYALLUP:


PORT OF TACOMA:

DocuSigned by:  
  
Steve Kirkellie, City Manager  
Date: 10/16/2020

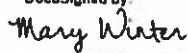
  
Eric Johnson, Executive Director  
Date: 10/20/2020

Approved as to form:

DocuSigned by:  
  
Joe Beck, City Attorney

  
Port Legal Counsel  
Carolyn Lake

Attest:

DocuSigned by:  
  
Mary Winter, City Clerk

