

PORT OF TACOMA - TACOMA WATER  
ALEXANDER AVENUE INTERLOCAL AGREEMENT

The Port of Tacoma, a port district organized under the laws of the State of Washington (hereafter, "Port") and the City of Tacoma, Department of Public Utilities, Water Division (dba Tacoma Water), a municipal corporation (hereafter, "City" or "Tacoma Water") enter into this Agreement this 30<sup>th</sup> day of September, 2004. This agreement is made pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW.

RECITALS

The Port of Tacoma is a port district organized under the authority of Title 53 RCW.

The City of Tacoma is a Charter city organized pursuant to the State constitution and state law, including Art. XI § 10, and Title 35 RCW.

The Port has filed with the City of Tacoma a petition requesting vacation of a portion of Alexander Avenue located in Tacoma in connection with Port development of a marine terminal on the Blair Waterway in the Tacoma tideflats area.

Tacoma Water currently maintains a 36-inch diameter welded steel distribution pipeline, fire hydrants, and vaults which exist within the limits of the portion of Alexander Avenue right-of-way proposed to be vacated.

The City of Tacoma Land Use Hearing Examiner in his Report and Recommendation dated March 22, 2004 included a condition that requires the Port to obtain and present written agreements with utility providers, including Tacoma Water, for maintaining or relocating existing facilities located with the Alexander Avenue right-of-way prior to final reading of the ordinance vacating Alexander Avenue.

The ordinance by which a portion of Alexander Avenue is vacated shall contain provisions for retaining permanent easements for Tacoma Water facilities, consisting of a 20-foot easement, offset 7' on one side and 13' on the other side, on the existing 36-inch water main (the Main Easement), and a 20-foot construction easement, 10 feet on each side of the water main easement, for pipeline maintenance/replacement needs (the Construction Easement).

This Agreement is hereby entered into by the parties to fulfill the Examiner's Special Condition and based on both parties' recognition of the opportunities for increased economic development presented by the Port's Street vacation action, and on the mutual responsibilities and benefits described in this Agreement.

ORIGINAL

NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, the parties agree as follows:

### TERMS OF AGREEMENT

1. This agreement describes two phases of the vacated portion of Alexander Avenue.

Phase 1 consists of an approximately 400-foot segment of Alexander Avenue north of Marshall Avenue. The terms and conditions of this Agreement shall be met for the Phase 1 Area prior to construction of any improvements in the Easement areas.

The Phase 2 Area is that section of the vacated Alexander Avenue between Marshall and SR509.

2. The parties agree that construction activity, allowed improvements and Port operations within the Easement areas shall comply with the following standards

- a. Within the Main and Construction Easements, no improvements will be allowed other than paving or concrete slab or fire hydrant/mainline protection.
- b. In preparation for the vacation action, the Port undertook a loading analysis to gauge the effect of the Port's operations on Tacoma Water's buried pipeline. Load mitigation measures based on that study will be incorporated into the PCT design as part of the vacation approval process.
- c. The Port shall complete a loading analysis, using a licensed engineer and considering the factors identified in Tacoma Water's January 16, 2004 memo filed with the Tacoma Hearings Examiner, a copy of which is attached hereto as Exhibit A, identifying any excessive loading to the pipeline under all proposed container terminal operations. The analysis shall be submitted to Tacoma Water for review and acceptance.
- d. Should the loading analysis indicate loading in excess of allowable levels with respect to the water main, the Port shall be responsible for the cost of any upgrades and protective measures necessary to address the loading issue, subject to approval of Tacoma Water.

3. The Parties agree that the conditions 1-5 contained in the Tacoma Water's January 16, 2004 memo filed with the Tacoma Hearings Examiner, a copy of which is attached hereto as Exhibit A, are incorporated herein as conditions of this Agreement, and as more particularly addressed below.

- a. Within Phase 2 area, no modification to Alexander Avenue are proposed at the present time, and the Port does not expect any development within the Phase 2 zone until potentially 2008. In consideration of this, Tacoma Water

ORIGINAL

agrees that the conditions of Tacoma Water's January 16, 2004 memo to the Tacoma Land Use Hearing Examiner (attached hereto) are not applicable until such time that Phase 2 is undertaken. Until the Port implements Phase 2, the Tacoma Power hydrants along that portion of Alexander which is adjacent to the PorTac site may remain in place as they exist today. At the time Phase 2 is implemented, the Port agrees to undertake the actions described in Tacoma Water's January 16, 2004 memo within Phase 2 that Tacoma Water determines are necessary to address the concerns of Tacoma Water

4. The following additional provisions apply to the Main and Construction Easements:

- a. Within the Phase 1 area, the Port and Tacoma Water agree that the Port shall be responsible for ensuring the Main Easement area is kept clear of shipping containers at all times, and that the Construction Easement shall be cleared of containers within 24 hours notice by Tacoma Water. . All costs of keeping the Main Easement clear and/or clearing the Construction Easement shall be the responsibility of the Port.
- b. The Parties agree to work cooperatively to determine the mechanism for identifying and restricting access to the "no container storage" areas. Options may include paint striping or some other measure(s).
- c. The Port shall be responsible for any and all future costs of removal and replacement of all Port modifications or improvements placed within the Easement areas, including pavements and protective measures if they adversely impact, or are impacted by Tacoma Water maintenance or construction activities.

5. The Port shall reimburse Tacoma Water for all costs associated with removing/abandoning all existing fire hydrants and laterals from the vacated right-of-way and the relocation or adjustment of any other water facilities, as determined by Tacoma Water, as a result of the street vacation or associated Port improvements. The Port is responsible for obtaining any necessary approvals from the City of Tacoma or the Tacoma Fire Department for the removal of the fire hydrants in the vacated right-of-way. Tacoma Water will cooperate in obtaining any such approvals.

- a. In the event that not all of the fire hydrants within the vacated portion of Alexander Avenue are removed, the Port shall grant to Tacoma Water 20-foot easements centered upon each lateral pipe that leads to a remaining fire hydrant, extending 5 feet beyond each remaining fire hydrant. For any fire hydrants not removed in the vacated portion of Alexander Avenue, the Port shall install adequate physical barriers and/or islands of landscaping around the fire hydrants as may be necessary to protect them.

ORIGINAL

6. This Agreement shall be effective upon execution by all parties hereto and shall be of indefinite duration; provided, however, that this Agreement shall terminate and neither party shall have any obligation to the other hereunder if the Port's petition to vacate a portion of Alexander Avenue, modified as stated herein, is not granted.
7. Except as provided above, the parties shall finance its own conduct of responsibilities under this Agreement.
8. This Agreement shall not be terminated prior to the accomplishment of the responsibilities spelled out above. No ownership of property will transfer as a result of this Agreement.
9. Each of the parties shall designate from its respective staff or consultants a contact person with responsibility for administration of the terms of this Agreement.
10. This Agreement does not relieve either party of any obligation or responsibility imposed upon it by law.
11. The requirements of this Agreement shall be carried out in a timely manner according to a schedule negotiated by and satisfactory to the parties.
12. Except as provided in the vacation ordinance, this Agreement constitutes the complete and final agreement of the parties, replaces and supersedes all oral and/or written proposals and agreements heretofore made by the parties on the subject matter, and may be modified only by a writing signed by the parties hereto.
13. A copy of this Agreement shall be recorded in the Office of the Pierce County Auditor as provided by law.

ORIGINAL

**PASSED BY** the Commissioners of the Port of Tacoma, State of Washington and signed in authentication thereof this 30<sup>th</sup> day of ~~June~~, 2004.  
*September*

PORT OF TACOMA:

*Clare Petrich*  
By *Clare Petrich*, Chair, President  
Port of Tacoma Commissioners

CITY OF TACOMA

*Mark Crisson*  
for *Mark Crisson*, Director of Utilities  
City of Tacoma

Approved:

*Brenda McCrea*  
Tacoma Water Superintendent

APPROVED AS TO FORM:

*Robert Goodstein*  
Robert Goodstein,  
General Counsel

APPROVED AS TO FORM:

*Aimee I. Smith*  
Chief Assistant City Attorney

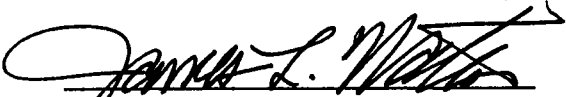
ATTEST:

*Timothy Farrell*  
~~Andrea Rinker~~ *Timothy Farrell*  
Port of Tacoma Executive Director  
*Acting*

ORIGINAL

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

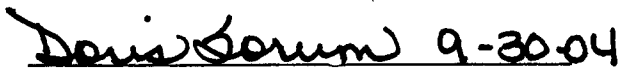
**CITY OF TACOMA**

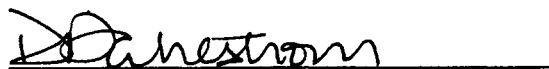
  
\_\_\_\_\_  
City Manager

Countersigned:

  
\_\_\_\_\_  
Director of Finance

Attest:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Risk Manager

ORIGINAL