

PSA # 071879

INTERLOCAL/INTERDISTRICT AGREEMENT

TSD-23-030

POR T OF TACOMA

**[SOUTH PUGET SOUND MARITIME SKILLS
CENTER AND PORT MARITIME CENTER -
PLANNING AND DEVELOPMENT – PHASE 1]**

3/23/2023 – 1/31/2024

between

TACOMA SCHOOL DISTRICT NO. 10

(hereinafter referred to as "the District")

601 South 8th Street

P. O. Box 1357

Tacoma, WA 98401-1357

Contact: Morris Aldridge

Email: maldrid@tacoma.k12.wa.us

Ph: 253.571.3350

and

PORT OF TACOMA

(hereinafter referred to as "Port")

1 Sicum Way

P.O. Box 1837

Tacoma, WA 98401-1837

Contact: Alisa Praskovich

Email: apraskovich@portoftacoma.com

Ph: 253.888.4773

THIS AGREEMENT is between Tacoma School District No. 10 (District), a political subdivision of the State of Washington, and Port of Tacoma (Port), a public port district organized under the laws of the State of Washington, referred to individually as a "Party" and collectively as the "Parties".

WHEREAS, the Interlocal Cooperation Act, as amended, and codified in Chapter 39.34 of the Revised Code of Washington, provides for interlocal cooperation between governmental agencies; and

WHEREAS, Port of Tacoma's 2021-2026 Strategic Plan calls upon the Port to partner with regional organizations to facilitate career development and business growth in Pierce County; and

WHEREAS, in 2022, the Port of Tacoma Commission adopted a Workforce Development Strategic Plan, which has an overarching objective of ensuring that the maritime industry has access to workers who have the necessary skills to provide safe and efficient maritime services; and

WHEREAS, the Parties seek to work together to improve maritime career access and opportunities throughout the region; and

WHEREAS, the Port and the District desire to explore the opportunity to locate the Maritime Skills Center as part of a larger campus together with a new Port Maritime Center; and

WHEREAS, in addition to supporting workforce development, the Port plans to develop a new Maritime Center to meet the business needs of the Port while also accommodating public access elements, community engagement and other mixed-used opportunities; and

WHEREAS, the Port intends to partner with the District to develop a South Puget Sound Maritime Skills Center to provide efficient management of the Parties' resources for the benefit of Tacoma and Pierce County citizens by entering into a cooperative capital venture; and

WHEREAS, the Parties' partnership will provide advantages and educational opportunities for students in Tacoma, Pierce County, and throughout the South Puget Sound; and

WHEREAS, the District has vast planning and construction experience in delivering significant capital projects both on time and on budget using alternative project delivery methods in a manner that results in local investment in community businesses and workforce; and

WHEREAS, the District and the Port are both qualified public bodies in RCW 39.10.210(18) which may be certified to use alternative project delivery methods pursuant to RCW 39.10.270; and

WHEREAS, the Port owns real estate where the South Puget Sound Maritime Skills Center and Port Maritime Center could be jointly developed in a campus setting; and

WHEREAS, the District has identified at least \$12 million in capital dollars and is requesting \$12 million in state funds.

NOW, THEREFORE, the Parties agree as follows:

1. Incorporation of Recitals. The Parties acknowledge and agree that the above stated recitals are true and correct to the best of their knowledge and are incorporated by this reference as though fully set forth herein.
2. Interlocal Cooperation Act Compliance. This is an Agreement entered into pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW. Its purpose is stated in Section 3 below. Its duration and method of termination is stated in Section 4 below. Except as otherwise specifically provided herein, each Party shall bear its own costs and control its own manner of financing and of establishing and maintaining a budget for the activities contemplated herein. No separate entity is created hereby and, except as otherwise provided in this Agreement, no real or personal property shall be acquired pursuant to this Agreement which will need to be disposed of upon partial or complete termination of this Agreement.
3. Purpose. This agreement provides a framework for the Parties to engage in a master planning process to support the development of a campus on Port-owned property that will include, at a minimum, a South Puget Sound Maritime Skills Center (operated by the District) and the Port's Maritime Center (operated by the Port), together with other Port functions and public amenities as may be identified and agreed upon during the planning process.
4. Term and Termination. This Agreement shall be effective upon mutual execution by the Parties (the "**Effective Date**") and shall remain in effect until completion of the selection of and contract negotiation with the Design Build Team for the Project unless amended for future phases per Section 9. Either Party may terminate this Agreement upon written notice to the other Party. If such notice is given, each Party shall bear its own costs incurred pursuant to this Agreement. The Parties anticipate entering into one or more future Agreements corresponding with future phases of the Project, as described in Section 9.
5. Parties' Obligations and Project Coordination.

A. District's Obligations.

1. Project Approval. The District will coordinate and lead the submission of the Capital Projects Advisory Review Board (CPARB) Project Review Committee (PRC) application and presentation seeking the approval that is necessary to develop the Project using alternative project delivery (APD) methods. This would include follow up or resubmission efforts if additional info is requested by the PRC panel or if the initial submission is rejected.

2. Design Build Team Procurement. The District will facilitate and coordinate activities related to the procurement of the progressive Design Build Team and related negotiations.

3. Consultant Expenses. The District will enlist the services of and fund the costs associated with an external consultant selected by the District who will provide APD advisory and project management services related to the tasks the District approves related to Design Build Team procurement for this Project. This responsibility will continue through selection of the most qualified Design Build Team and through the contract negotiation process. The firm currently contracted by the District to assist with this process is Parametrix, Inc.

4. Design Build Team Expenses. Once the Design Build Team is selected the District may choose to begin initial work on this Project with the selected team prior to authorization from the Port Commission and District Board in order to fund the Design Build Team through the next phase of the Project. The Port will not be responsible for any costs associated with this initial work.

B. Port's Obligations

1. Project Approval. The Port will provide the District with relevant Port information related to its operations, intent and budget for this Project and collaboration with the District as necessary for the CPARB PRC application and presentation process. The Port will co-present at the Project Review Committee (PRC) meeting related to approval for an alternative project delivery method for the Project.

2. Site Conditions Assessment. The Port will complete an assessment of cultural resources, environmental conditions, and existing encumbrances on potentially suitable Port properties in preparation for the site alternatives selection and planning process for the Project. The Port will assume all costs associated with this work. Findings and reports completed by the Port will be shared with the District and the selected Design Build Team upon completion.

3. Site Selection. Following completion of the site conditions assessment as outlined above, the Port commits to the selection and use of Port-owned property to support the Project.

4. Public and Stakeholder Input. The Port will commit to a public and stakeholder engagement process in the design and development of the campus to ensure public access elements are incorporated.

C. Internal Staff Costs. Each Party will fund their own internal staff costs.

D. Timetable. The Parties anticipate the following Project schedule for this initial Agreement:

Task	Timeline
CPARB PRC Submission	April 22, 2023
CPARB PRC Presentation/Review	May 25, 2023
RFQ Advertisement	June 2023
Selection of Design Build Team Finalist	August 2023
Project Site Selection & Contract Negotiation with selected DB Team	Fall 2023

6. Selection of Design Build Team.

- A. RFQ/RFP Development. The Port and District will develop the Request for Qualifications (RFQ) / Request for Proposals (RFP) packages cooperatively. Each Party will have the opportunity to contribute to, review, and approve the RFQ/RFP package before it is issued or advertised.
 - B. Selection Process. The Parties agree to select the Design Build Team following a qualifications-based selection process in compliance with chapter 39.10 RCW, all applicable state and City of Tacoma laws, regulations and policies as well as the procurement policies and practices of the Port and the District. The Design Build Team selection process that will be followed is generally outlined in Exhibit A.
 - C. Selection Committee. The Port and the District will each select up to three representatives to represent their interests and participate on the selection committee that will review and score the proposer's qualifications and select the most qualified Design Build Team for the Project.
 - D. Contract Documents. The District will obtain the services of, and fund all costs associated with, external legal counsel who are experienced in alternative project delivery contracting to assist and advise the District and the Port in preparing the proposed contract documents for the Project for inclusion with the RFQ. The District and the Port will develop the proposed contract documents cooperatively utilizing the services of the external legal counsel and the APD Advisory Consultant. Each Party will have the opportunity to review, provide input, and approve the proposed contract documents to be included with the RFQ/RFP package.
7. Commitment to Public Engagement. The District and the Port agree to provide the opportunity for public engagement as part of the overall master planning process for the Project. The Design Build team shall demonstrate to the Parties their approach and methodology to engage the public in the design of the Project.

8. Communications. The District and the Port agree to coordinate communications regarding the Project through a mutually created communications plan, regular meetings between Port and District communications staff, and the use of mutually agreeable language describing Project updates and information.
9. Agreements for Future Project Phases. The Parties anticipate working cooperatively towards and entering into one or more future Interlocal Agreements corresponding with future phases of pre-design, programming, design and construction of the Project. Future Agreements are expected to include, but not be limited to, the following subjects:
 - Negotiation of Contract terms and conditions and the Design Build Team's scope and fees related to the Phase 1 pre-design, programming and design services for the Project;
 - Costs related to the Services of the external APD advisory and project management consultant beyond selection of the Design Build Team for the Project;
 - Project/Contract Management (following selection of the Design Build Team);
 - Site selection and planning;
 - Project timetable;
 - Project design process (including review and approval procedures);
 - Funding and payment (including final Project authorization by the Port and invoicing procedures between the Parties);
 - Site development/offsite improvement cost allocations;
 - Cost allocations for costs resulting from unforeseen site conditions including but not limited to existing buried tanks/structures, contaminated soils, unsuitable soils and buried debris;
 - Real property agreement(s) for South Sound Maritime Skills Center location.

10. Indemnification.

- A. The District agrees to indemnify and hold harmless the Port, its officials, officers, agents, employees, volunteers, and representatives, from, and shall defend at its sole expense, against any and all claims, demands, damages, suits at law or at equity, liabilities, losses, judgments, liens, expenses, and costs arising out of or occasioned by the District's negligence or wrongful conduct in fulfillment of its obligations pursuant to this Agreement. In the event of recovery due to the aforementioned circumstances, the District shall pay any judgment or lien arising therefrom, including any and all costs as part thereof.

- B. The Port agrees to indemnify and hold harmless the District, its officials, officers, agents, employees, volunteers, and representatives, from, and shall defend at its sole expense, against any and all claims, demands, damages, suits at law or at equity, liabilities, losses, judgments, liens, expenses, and costs arising out of or occasioned by Port negligence or wrongful conduct in fulfillment of its obligations pursuant to this Agreement. In the event of recovery due to the aforementioned circumstances, The Port shall pay any judgment or lien arising therefrom, including any and all costs as part thereof.
- C. In the event of liability based upon the alleged concurrent or joint negligence of the Parties, the Parties shall individually bear their respective liability, including costs, as determined according to RCW 4.22.015.
- D. The indemnification provisions of this Agreement shall not be limited by any worker's compensation, benefit, or disability laws, and each indemnifying Party hereby waives, solely for the benefit of the indemnified Party, any immunity that such indemnifying Party may have under the Industrial Insurance Act, Title 51 RCW.
- E. The foregoing obligations shall survive termination of this Agreement with respect to acts or omissions occurring during its term and relating to or involving the subject matter of this Agreement.

11. Miscellaneous:

- A. EXAMINATION AND RETENTION OF RECORDS: The District agrees that any duly authorized representative of the Port, including the Port's Auditor, shall, until the expiration of three (3) years after the last of the Project is completed, have access to and the right to examine any books, documents, papers, and records of involving any matter directly related to this Agreement. All Project records shall be retained in accordance with each Party's document retention schedule.
- B. ASSIGNMENT & SUBCONTRACT: Except as otherwise expressly provided in this Agreement, each Party covenants and agrees that it will not assign, transfer, or subcontract its rights and obligations hereunder without first obtaining the written consent of the other Party. Any approved assignment or subcontract may require new or extended insurance and indemnification being provided by the assignee or transferee.
- C. NO THIRD-PARTY BENEFICIARY: The Parties understand and expressly agree. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. Nothing contained in this Agreement shall give or allow any such claim or right of action by any third person. It is the express intention of the Parties that any person other than the District or the Port receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary Only.

- D. NO AUTHORITY TO BIND THE PORT TO CONTRACTS: The District has no authority to bind the Port on any contractual matters. Final approval of all contractual matters which obligate the Port or District must be by the Port and/or District, as applicable.
- E. NO AUTHORITY TO BIND THE DISTRICT TO CONTRACTS: The Port has no authority to bind the District on any contractual matters. Final approval of all contractual matters which obligate the Port or District must be by the Port and/or District, as applicable.
- F. INTEGRATION & AMENDMENTS: This Agreement, including the exhibits and attachments hereto (each of which is specifically incorporated herein), is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other modification hereto shall have any force or effect, unless embodied in this Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force of effect unless embodied in a written amendment to this Agreement executed by the Parties in the same manner as this Agreement. The Parties anticipate that this Agreement shall be amended from time to time to allow for future phases of the Project as described in Section 9 above.
- G. SEVERABILITY: The Parties agree that if any provision of this Agreement or any portion thereof is held by a court of competent jurisdiction to be invalid, illegal, unenforceable, or in conflict with any law, the validity of the remaining portions or provisions shall not be affected if the intent of the Parties can be fulfilled.
- H. CONFLICT OF INTEREST: No employee of the Port or the District shall have any personal or beneficial interest in the services or property described in the Agreement; and neither the District nor any contractor hired by the District under this Agreement shall hire, or contract for services with, any employee or officer of the Port in violation of the District's Code of Ethics.
- I. NOTICES: All notices required under this Agreement, notices concerning the termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and other notices of similar importance, including changes to the persons to be notified or their addresses, shall be in writing and delivered to:

To: Port: Alisa Praskovich
Chief, Strategic Projects & Commission Relations
Port of Tacoma
Address: 1 Sircum Plaza, Tacoma, WA 98421
Tel: (253)888-4773
Mobile: (253) 459-9069
E-mail: apraskovich@portoftacoma.com

To: The District: Morris Aldridge
Executive Director of Planning & Construction
Tacoma Public Schools
3223 South Union Avenue
Tacoma, Washington 98409
Tel: (253) 571-3350
E-mail: maldrid@Tacoma.K12.Wa.US

All notices shall be in writing and provided by personal delivery, certified mail, return receipt requested, or overnight courier. All notices are effective upon personal delivery or upon placing in the United States mail or with the courier service.

- J. COUNTERPARTS: This Agreement may be executed in two or more identical counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
12. **No Waiver.** No failure by either Party to insist upon the performance of any of the terms of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of any of the terms of this Agreement. None of the terms of this Agreement to be kept, observed, or performed by either Party, and no breach thereof, shall be waived, altered, or modified except by a written instrument executed by the injured party. No waiver of any breach shall affect or alter this Agreement, but each of the terms of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. No waiver of any default of the defaulting party hereunder shall be implied from any omission by the injured party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by the injured party shall not be construed as a waiver of a subsequent breach of the same covenant, term, or conditions.
13. **Dispute Resolution.** In the event of a dispute between the Port and the District arising out of or relating to this Agreement, the Port's Executive Director and the District's Superintendent or their designated representatives shall review such dispute and options for resolution. If the dispute cannot be resolved by the Port's Executive Director and the District's Superintendent, the dispute may be submitted to mediation before a mediator agreed to by the Parties, and if still not resolved, shall be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04 RCW, and the judgment or award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
14. **Enforcement, Interpretation, Venue.** The laws of the State of Washington shall govern the validity, performance, interpretation, and enforcement of this Agreement. Should either party institute arbitration for enforcement or interpretation of any provision contained herein, the venue of such arbitration shall be in Pierce County, Washington. The prevailing party in any arbitration or litigation arising out of this Agreement shall be entitled to its reasonable attorney's fees, costs and expert witness fees.

15. Equal Participation in Drafting. The Parties agree that each of them were adequately represented by independent counsel, and that both Parties shared equally in the drafting of this Agreement. Therefore, this Agreement shall not be construed either for or against the District or the Port as drafter, but this Agreement shall be interpreted in accordance with the general tenor of the language in an effort to reach an equitable result.
16. Integration and Amendment. There are no oral Agreements between the parties affecting the meaning, content, purpose, or effect of this Agreement. The provisions of this Agreement may be amended with the mutual consent of the parties. No additions to, or alterations of the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of both Parties.
17. Invalid Provisions. If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected thereby, if such remainder would then continue to serve the purposes and objectives of the Parties.
18. Filing. By its signature below, each party confirms it approves of and is authorized to enter into this Agreement pursuant to RCW 39.34.080. A copy of this Interlocal Agreement shall be filed with the Pierce County Auditor pursuant to chapter 39.34 RCW. Alternatively, a copy of this Interlocal Agreement may be listed by subject on the District and Port's website or other electronically retrievable public source.

CONDITIONS OF COMMENCEMENT OF PERFORMANCE

The parties to this Agreement shall not commence performance or be entitled to compensation or reimbursement for any services rendered or materials provided, prior to the occurrence of each of the following conditions: (1) this Agreement must be executed by an authorized representative of both Parties, and (2) this Agreement must be approved by the Port of Tacoma Commission and the District's Board of Directors.

We the undersigned agree to the terms of the foregoing Agreement.

POR T OF TACOMA

By: Eric Johnson

(signature)

Its: Executive Director

Eric Johnson

(print name)

TACOMA SCHOOL DISTRICT NO. 10

By: J. Garcia

(signature)

Its: Superintendent

Joshua J. Garcia

(print name)

Who certifies that they are the party identified
herein, OR a person duly qualified and
authorized to sign for the party.

Date: March 21, 2023

Date: 3/23/2023

Approved as to form:

Heather L. Burgess

By: Heather L. Burgess
General Counsel, Port of Tacoma

Exhibit A: Design Build Team Selection Process

The key stages of the Design Build Team selection process will include:

Phase I: RFQ

- Issuing and advertising a Request for Qualifications (RFQ) through a minimum of two publicly accessible platforms and/or publications;
- Pre-bid submittal meeting and walk-through with qualified applicants and interested candidates;
- Submittal of a statement of qualifications by proposers;
- Evaluation and scoring of the statements of qualifications that are received; and
- Short list of finalists receive a copy of the Request for Proposals (RFP).

Phase II: RFP

- Proprietary meeting with finalists to answer finalist's questions (usually three);
- Submittal of proposals and price factors by finalists;
- Interviews, evaluation and scoring of finalists;
- Opening and scoring of finalists price factors;
- Identification of the most qualified finalist;
- Notification to all proposers of the most qualified finalist (Design Build Team), the intent to negotiate terms and conditions with that finalist and a summary of the scoring of the procurement process;
- Selection of the most qualified finalist; and
- Presentation to School Board and the Port of Tacoma Commission for approval to negotiate the Design Build Team contract.

INTERLOCAL AGREEMENT

AMENDMENT #1

TSD-23-030-1

PORT OF TACOMA

[SOUTH PUGET SOUND MARITIME SKILLS
CENTER AND PORT MARITIME CENTER -
PLANNING AND DEVELOPMENT]

DATE SIGNED: 10/17/2023



INTERLOCAL/INTERDISTRICT AGREEMENT No. TSD-23-030-1

For District Use Only

between

TACOMA SCHOOL DISTRICT NO. 10

(hereinafter referred to as "the District")

601 South 8th Street

P.O. Box 1357

Tacoma, WA 98401-1357

Contact: Morris Aldridge

Email: maldrid@tacoma.k12.wa.us

Ph: 253.571.3350

and

PORT OF TACOMA

(hereinafter referred to as "Port")

1 Sitcum Way

P.O. Box 1837

Tacoma, WA 98401-1837

Contact: Alisa Praskovich

Email: apraskovich@portoftacoma.com

Ph: 253.888.4773

This first Amendment to Interlocal Agreement TSD-23-030-01 (ILA) for the planning and development of the Puget Sound Maritime Skills Center and Port Maritime Center is entered into by and between Tacoma School District No. 10 (District), a political subdivision of the State of Washington, and Port of Tacoma (Port), a public port district organized under the laws of the State of Washington, referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, the Port and the District entered into ILA TSD-23-030-01 effective as of August 31, 2023, to govern planning and development of the District's Maritime Skills Center as part of a larger campus co-located with a new Port Maritime Center (collectively, the Project) on Port-owned property; and

WHEREAS, the original ILA provides a framework for the Parties to support development of the Project through initial design development, schematic design, and cost estimating; and

WHEREAS, concurrent with execution of the Initial Design Build Team Contract for the Project (as described in the original ILA TSD-23-030-01), the Parties wish to amend the ILA to address: (1) the payment reimbursement process for the Initial Design Build Contract, and (2) to establish a not-to-exceed cost for Port reimbursement of Parametrix services; and

WHEREAS. paragraph 13 of the original ILA allows for amendment of the Agreement with the mutual consent of the Parties.

NOW, THEREFORE. the Parties agree to amend the original ILA TSD-23-030-01 as follows:

1. Section 5.C.1(b), Invoicing Procedure for Phase 1 Design Build Team Costs, is stricken in full and replaced with the following:

b. Invoicing Procedure for Phase 1 Design Build Team Costs

(1) BNBuilders will issue the District and Port a monthly invoice for design build services on the basis of the percentage of services completed up to the not to exceed maximum(s) established in the Initial Design Build Contract, as follows:

The invoice will indicate costs which are allocated to the Port and to the District pursuant to the terms of Maritime Center design fee cost split allocations as set forth in Exhibit A (Scope of Services) to the Initial Design Build Contract, which is incorporated herein by reference.

BNBuilders will direct invoices to Dan Cody, at dcody@parametrix.com, or identified representative on behalf of the District and Stan Ryter, at sryter@portoftacoma.com on behalf of the Port. The District and the Port will each review the invoice for correct scope percentage completion and appropriate allocation of costs. The Port will inform the District of its approval of or requested revisions to the invoice within seven (7) business days of receipt.

(2) Following receipt of Port approval or requested revisions, the District will complete a final review of the invoice within fourteen (14) calendar days. The District will issue payment to BNBuilders for all approved costs within thirty (30) calendar days of the date of receipt using the method specified in the Initial Design Build Contract.

(4) Once payment is transferred to BNBuilders, The District will issue an invoice to the Port by email to cpinvoices@portoftacoma.com, no more frequently than once per month for reimbursement of the Port's allocated costs of the approved BNBuilders' invoice. The invoice will be numbered and will include a copy of the underlying BNBuilders' invoice and proof of District payment from accountspayable@tacoma.k12.wa.us.

(5) The reimbursement payment from the Port will be due thirty (30) days after receipt of the District's invoice.

2. Section 5.C.4(a), Use of District's Project Management Consultant, is amended as follows:

a. Use of District's Project Management Consultant. The District and the Port agree that the District will lead Project Management for the Project through completion of Phase 1 using the District's contracted project management consultant, Parametrix. Upon execution of the Initial Design Build Team Contract, the District's Parametrix project management consultant fees and costs for the Project will be split between the District and the Port as follows:

For the District: not-to-exceed \$79,352.50

For the Port: not-to-exceed \$84,153.50

Fees and costs specific to Port-only (Port Maritime Center) or District-only (Maritime Skills Center) items will be allocated to each party individually within the above not-to-exceed amounts.

3. Savings Clause. Except to the extent expressly modified by the provisions of this first Amendment, the provisions of the original ILA TSD-23-030-01 shall remain unchanged and in full force and effect.

4. Counterparts. This first Amendment may be executed in two or more identical counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

CONDITIONS OF COMMENCEMENT OF PERFORMANCE

The Parties to this first Amendment shall not commence performance or be entitled to compensation or reimbursement for any services rendered or materials provided, prior to the occurrence of each of the following conditions: (1) this first Amendment must be executed by an authorized representative of both Parties, and (2) this first Amendment must be approved by the Port of Tacoma Commission and the District's Board of Directors.

We the undersigned agree to the terms of the foregoing first Amendment.

PORT OF TACOMA

TACOMA SCHOOL DISTRICT NO. 10

By:



(signature)

Its: Executive Director

Eric Johnson

(print name)

By:



Joshua J Garcia (Oct 24, 2023 15:08 PDT)

(signature)

Its: Superintendent

Joshua J. Garcia

(print name)

Who certify that they are the party identified
herein, *OR* a person duly qualified and
authorized to sign for the party.

Date: 10/24/2023

Approved as to form:



By: Heather L. Burgess
General Counsel, Port of Tacoma
Chris Pierce-Wright

Exhibit A: Split of Maritime Center Design Costs Between Port & TPS

Preconstruction and Schematic (30%) Design Fees

Revised 10/2/23

Page 1 of 2

Task#	Task Description	Port %	TPS %	Total
Design Team Services				
<u>Predesign - Phase 1A</u>				
Design Team Services				
1	Project Administration	50%	50%	
2	Port Programming & Design Criteria	100%	0%	
3	TPS Programming & Ed Specs	0%	100%	
4	Site Investigation & Reg Analysis	62%	38%	
5	Master Planning	100%	0%	
6	Public Outreach	100%	0%	
7	Sustainability	25%	75%	
8	Conceptual Design	50%	50%	
9	Cost and Budget Management	50%	50%	
10	Basis of Design Report	50%	50%	
	Subconsultant Markup	0%	0%	
	Subtotal	<u>\$842,878.50</u>	<u>\$316,687.50</u>	<u>\$1,159,566</u>
Schematic (30%) Design - Phase 1A				
	Design Team Basic Services	50%	50%	
1	Project Administration (Extra Services)	50%	50%	
2	Schematic Building & Site Design (Extra Services)	50%	50%	
3	Sustainability (Extra Services)	25%	75%	
4	Regulatory Management (Extra Services)	50%	50%	
5	Schematic (30%) Design Report (Extra Services)	50%	50%	
	Subconsultant Markup	0%	0%	
	Subtotal	<u>\$492,725.00</u>	<u>\$533,834.00</u>	<u>\$1,052,696</u>
TCF Predesign & SD Reimbursable Budget				
	Subtotal	<u>\$13,068.50</u>	<u>\$13,068.50</u>	<u>\$26,137</u>
BNB Predesign and Schematic (30%) Design Services				
	PreCon Design Management	50%	50%	
	Estimating	50%	50%	
	Outreach and Community Events			
	Subcontractor Outreach Events	50%	50%	
	Community Relations	75%	25%	
	Scheduling	50%	50%	
	Virtual Design	50%	50%	
	Procurement	50%	50%	
	Support Materials & Equipment	50%	50%	
	Subtotal	<u>\$227,204.50</u>	<u>\$213,869.50</u>	<u>\$441,074</u>

BNB Preconstruction, Design, Early Procurement Services

Potholing/Site Investigation	100%	0%
Utility Video	100%	0%
TCP and Flagging	100%	0%
Laser Scanning/Drone/Bathymetry	100%	0%
Design Support	50%	50%
Mechanical D/B Subcontractor	50%	50%
Electrical D/B Subcontractor	50%	50%
Fire Sprinkler Design	50%	50%
Geo-tech Consultant	50%	50%
HazMat/Environmental	100%	0%
3D Utilities & Infrastructure	100%	0%
Subtotal	\$433,992	\$70,100.00
		\$504,092
Subtotal Predesign & Schem (30%) Design	\$2,009,868.50	\$1,147,559.50
		\$3,157,428
Contingencies & Insurance		
Precon & Design Contingency	5.00%	64%
Payment & Performance Bonds	1.00%	64%
Sub Bonds	1.00%	64%
General Liability Insurance	1.30%	64%
Professional Liability Insurance	0.90%	64%
Builders Risk Insurance	1.00%	64%
Business & Occupation Tax	0.62%	64%
Design Builder's Fee	2.95%	64%
Subtotal	\$292,365.99	\$166,930.01
		\$459,296
Sales Tax	10.30%	64%
Subtotal	\$237,130.15	\$135,392.42
		\$372,522.57
TOTAL INCLUDING SALES TAX	\$2,539,364.64	\$1,449,881.93
		\$3,989,246.57

INTERLOCAL/INTERDISTRICT AGREEMENT

TSD-23-030-1

PORt OF TACOMA

**[SOUTH PUGET SOUND MARITIME SKILLS
CENTER AND PORT MARITIME CENTER -
PLANNING AND DEVELOPMENT –
INTERLOCAL AGREEMENT No. 2]**

DATE SIGNED – 8/31/2023



INTERLOCAL/INTERDISTRICT AGREEMENT No. TSD-23-030-1
For District Use Only

between

TACOMA SCHOOL DISTRICT NO. 10

(hereinafter referred to as "the District")

601 South 8th Street

P. O. Box 1357

Tacoma, WA 98401-1357

Contact: Morris Aldridge

Email: maldrid@tacoma.k12.wa.us

Ph: 253.571.3350

and

PORT OF TACOMA

(hereinafter referred to as "Port")

1 Sitcum Way

P.O. Box 1837

Tacoma, WA 98401-1837

Contact: Alisa Praskovich

Email: apraskovich@portoftacoma.com

Ph: 253.888.4773

THIS AGREEMENT is between Tacoma School District No. 10 (District), a political subdivision of the State of Washington, and Port of Tacoma (Port), a public port district organized under the laws of the State of Washington, referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, the Interlocal Cooperation Act, as amended, and codified in Chapter 39.34 of the Revised Code of Washington, provides for interlocal cooperation between governmental agencies; and

WHEREAS, the Port and the District entered into Interlocal/Interdistrict Agreement (the First Agreement) TSD-23-030 in March 2023 to explore the opportunity to locate the District's Maritime Skills Center as part of a larger campus co-located with a new Port Maritime Center (collectively, the Project) on Port-owned property; and

WHEREAS, the First Agreement was intended to provide a framework for the Parties to initiate planning and development of the Project, including site evaluation, submission and approval of an application to the Capital Projects Advisory Review Board (CPARB) Project Review Committee (PRC) for the use of alternative project delivery methods and issuance of an RFQ for the progressive Design Build Team; and

WHEREAS, the District and Port have been approved by CPARB through the PRC to pursue this project through a progressive design build alternative delivery method process pursuant to RCW 39.10.270; and

WHEREAS, the District and the Port anticipate selecting a progressive Design Build Team by August 21, 2023; and

WHEREAS, the First Agreement contemplated that the Parties would enter into one or more later Interlocal Agreements or Amendments addressing site selection, Project design, development, contracting, and cost allocations; and

WHEREAS, the Parties desire to enter into this Second Agreement to govern planning and development of the Project from execution of the progressive Initial Design Build Team Contract through completion of initial design development, schematic design, and cost estimating.

NOW, THEREFORE, the Parties agree as follows:

1. **Incorporation of Recitals**. The Parties acknowledge and agree that the above stated recitals are true and correct to the best of their knowledge and, together with the recitals in the First Agreement, are incorporated by this reference as though fully set forth herein.
2. **Interlocal Cooperation Act Compliance**. This Second Agreement is entered into pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW. Its purpose is stated in Section 3 below. Its duration and method of termination are stated in Section 4 below. Except as otherwise specifically provided herein, each Party shall bear its own costs and control its own manner of financing and of establishing and maintaining a budget for the activities contemplated herein. No separate entity is created hereby and, except as otherwise provided in this Second Agreement, no real or personal property shall be acquired pursuant to this Second Agreement which will need to be disposed of upon partial or complete termination of this Second Agreement.
3. **Purpose**. This agreement provides a framework for the Parties to engage in a planning and design process to support the development through initial design development, schematic design, and cost estimating for the Project, which consists of a campus on Port-owned property that will include, at a minimum, a South Puget Sound Maritime Skills Center (operated by the District) and the Port's Maritime Center (operated by the Port), together with other Port functions and public amenities as may be identified and agreed upon during the planning process.

4. **Term and Termination.** This Second Agreement shall be effective upon mutual execution by the Parties (the “**Effective Date**”) and shall remain in effect until execution by the Parties of a future Interlocal Agreement governing the final design and construction phases of the Project. Upon execution of the Initial Design Build Team Contract, this Agreement is expected to be amended to address (1) the form of contract(s) for later design phases, (2) the payment reimbursement process for the Initial Design Build Contract, and (3) a not to exceed cost for Port reimbursement of Parametrix services. Either Party may terminate this Second Agreement upon written notice to the other Party. If such notice is given, each Party shall bear its own costs incurred pursuant to this Agreement. The Parties anticipate entering into one or more future Agreements corresponding with future phases of the Project.

5. **Parties’ Obligations and Project Coordination**

A. **District’s Obligations**

1. **Community Engagement.** The District will facilitate and coordinate community engagement activities related to the Maritime Skills Center portion(s) of the Project. These activities are primarily expected to be conducted through the District’s Design Advisory Committee (DAC). The DAC is expected to consist of TPS Career and Technical Education staff members and potentially students and skill center partners, as well as community members to provide input and feedback on the new skills center.

2. **Preconstruction & Design Process.** The District will facilitate and coordinate the preconstruction and design development process and management of the Design Build Team in conjunction with the District’s project management consultant.

3. **Consultant Expenses.** The District has contracted and paid for an external project management consultant selected by the District (Parametrix, Inc.) to provide Advanced Planning Document advisory and project management services related to the tasks the District approves for Design Build Team management for this Project. The District will continue to fully fund the Parametrix contract for the Project until the Initial Design Build Team Contract is executed. Once the Initial Design Build Team Contract is executed, Parametrix project management consultant fees for the Project will be allocated and paid as provided for in Section 5.C(4) below.

B. **Port’s Obligations**

1. **Design & Development Participation.** The Port will participate in the design build process through schematic design and design development and will provide the Design Build Team adequate design direction for the team to create a Guaranteed Maximum Price estimate for construction costs related to the Port portion(s) of the Project. Port staff will attend design meetings as needed and provide responses in a timely manner as requested.

2. Site Conditions Assessment. The Port has completed an initial assessment of cultural resources, environmental conditions, and existing encumbrances on potentially suitable Port properties in preparation for the site alternatives selection and planning process for the Project. The Port has paid all costs associated with this work. Preliminary findings completed by the Port have been shared with the District and final findings and reports will be shared with the District and the Design Build Team upon selection. The Port reserves the right to continue site conditions assessment at its sole expense during the design development phase. The Port will share the results of any additional site conditions assessments performed under this provision with the District and the Design Build Team prior to the cost estimating phase and development of the GMP Amendment(s).

3. Real Property. The Port agrees to provide the District with a development site for the Maritime Skills Center on Port-owned property located at 1203 East D. Street, Tacoma, Pierce County, Washington, commonly known as Port Parcel 94. A specific development site for the Maritime Skills Center will be identified during the site selection process. The Port and the District will negotiate the terms of any required real property agreements for the Maritime Skills Center site following completion of the design development and cost estimating phase of the Project schematic (30% design).

4. Existing Conditions. The Port will bear all costs associated with evaluation and planning for existing conditions on the Port-owned property necessary for the Project through the design development phase, including environmental assessment and remediation, cultural resource assessment, and identification and removal of encumbrances.

5. Site Master Planning. Concurrently with site selection and planning for the Project, the Port intends to engage in site master planning for Port-owned property in the immediate area, commonly known as Port Parcels 92 and 94. The Port will be solely responsible for coordinating and managing the Port's site master planning process and will bear all costs associated with the work.

6. Community Engagement. The Port will facilitate and coordinate community engagement activities related to the Port Maritime Center portion(s) and Site Master Planning of the Project and bear all costs associated with the community engagement process for the Port project. The Port expects to create an external Port Design Advisory Committee (DAC) comprised of Port staff and community partners to provide input and feedback on the new Port Maritime Center. Port and District DAC groups may meet jointly to discuss joint design options and stakeholder engagement activities. Additional community engagement is expected to take the form of open house(s), presentations at community meetings and educational booths at community events. The input requested from the community will focus on areas of the Port Maritime Center that the public will have direct access to, such as commission hearing room(s), other publicly accessible spaces, and water access.

C. Project Contracting, Coordination and Management

1. **Project Contracting**. The Parties intend to use a Progressive Design Build (PDB) contracting method with a three-phase Agreement process. Phase 1, covered by the Initial Design Build Team Contract, includes Project pre-design, programming, design development, and some or all of schematic design. Phase 2 includes remaining design through execution of Guaranteed Maximum Price Amendment(s). Phase 3 involves construction of the Project. The District and Port intend that the Design Build Team, the District, and the Port shall each be parties to the Initial Design Build Team Contract governing Phase 1 of the Project. The District shall have the primary responsibility for administering the Initial Design Build Team Contract. The contracting method for Phases 2 and 3 shall be established pursuant to future Interlocal Agreements. The contracting method for Phases 2-3 may involve (i) the District and Port executing separate contracts with the Design Build Team for each entity's respective component of the Project, or (ii) the District and Port employing a different mutually-acceptable contracting method. The Parties will work cooperatively to develop contracts, amendments, and agreements necessary to develop the Project.

a. Responsibility for Design Build Team Costs

(1) The Design Build Team's compensation will be split equally between the District and the Port, on the basis of services rendered up to the not-to-exceed maximum established in the Initial Design Build Team Contract, except that the Port shall be solely responsible for fees and costs related to the following work and services:

- (a) Existing Conditions. The Port will bear all costs associated with evaluation and planning for existing conditions on the Port-owned property, including environmental assessment and remediation, cultural resource assessment, and identification and removal of encumbrances.
- (b) Site Master Planning. The Port will bear all costs associated with the Port's site master planning process for Parcels 92 and 94.
- (c) Community Engagement. The Port will bear all costs related to the community engagement process related to the Port Maritime Center portion(s) of the Project.

b. Invoicing Procedure for Phase 1 Design Build Team Costs

The District and the Port anticipate establishing invoicing procedures for the Initial Design Build Team Contract pursuant to a future amendment to this Agreement.

2. Project Coordination

a. Phase 1 - Pre-design, Programming & Design Development

- (1) The Design Build Team will work with the District and Port's team to develop a program and design services for the Project which shall define the District and Port's goals and programmatic requirements for the Project.
 - (a) For the Maritime Skills Center, the District will be solely responsible for the evaluation and approval of the Design Build Team's proposal to meet the District's programmatic, design and cost requirements.
 - (b) For the Port's Maritime Center, the Port will be solely responsible for the evaluation and approval of the Design Build Team's proposal to meet the Port's programmatic, design and cost requirements.
 - (c) The District and the Port will participate in program development and design meetings to provide the Design Build Team with information and provide responses in a prompt, responsible manner.

- b. Phase 1 - Dispute Resolution. At the conclusion of the initial design development and schematic design phase, the Design Build Team, the District and the Port shall review the Phase 1 deliverables and Project cost estimates to determine if they are adequate to proceed with Phase 2 of the Project. If, following review, the District or the Port decides in its sole discretion not to proceed with the final design, permitting and construction phase of the Project, either Party may, at its sole discretion, terminate the Initial Design Build Contract in full, and not proceed to execute the remaining Project scope. If the Parties are unable to reach an agreement to proceed beyond Phase 1 of the Project, and the Initial Design Build Team Contract is terminated, the District and Port will maintain joint ownership of any program or design documents developed during Phase 1 services, subject to the terms of the Initial Design Build Agreement.

- 3. Project External Communications. The District and the Port agree to coordinate communications regarding the Project to the public through a mutually created communications plan, regular meetings between Port and District communications staff, and the use of mutually agreeable language describing Project updates and information.

4. Project Management

a. Use of District's Project Management Consultant. The District and the Port agree that the District will lead Project Management for the Project through completion of Phase 1 using the District's contracted project management consultant, Parametrix. Upon execution of the Initial Design Build Team Contract, the District's Parametrix project management consultant fees and costs for the Project will be split between the District and the Port. Fees and costs specific to Port-only (Port Maritime Center) or District-only (Maritime Skills Center) items will be allocated to each party individually.

b. Invoicing Procedure for Project Management; Maximum Amount

- (1) The District will review and pay Parametrix invoices for project management services, and then invoice the Port for reimbursement as provided for below.
- (2) The District will issue an invoice to the Port no more frequently than once per month for reimbursement of the Port's share of Parametrix's compensation. The invoice will be numbered, showing the project number, title, and a detailed description of the work being invoiced. Copies of underlying Parametrix invoices and proof of District payment will also be provided. The Port reserves the right to request additional supporting documentation from the District.
- (3) The reimbursement payment from the Port will be due thirty (30) days after receipt of the District's invoice.
- (4) District invoices and supporting documentation shall be transmitted to the Port at the following address: cpinvoices@portoftacoma.

5. Internal Staff Costs. Each Party will continue to fund their own internal staff costs.

D. Timetable. The Parties anticipate the following Project schedule for this second ILA Agreement:

Task	Timeline
Selection of Design Build (DB) Team finalist	August 2023
Project Site Selection & Initial Contract Negotiation with selected DB Team	September 2023
Initial Design Build Team Contract Approval and	October 2023

Execution/POT Project Authorization, Approval of ILA #2 Amendment for NTE amount & invoicing procedure.	
Preconstruction & Schematic Design (30% design)	February 2024
Negotiate/Approve Phase 2 Contract(s)	March 2024
Design Development (60% design)	July 2024
Ground Lease for Skills Center & Execute ILA 3	August 2024
Negotiate/Approve Phase 3 Contract(s)	September 2024

6. Agreements for Future Project Phases. The Parties anticipate working cooperatively towards and entering into one or more future Amendments or Interlocal Agreements corresponding with future phases of design, construction and delivery of the Project. Future Amendments or Agreements are expected to include, but may not be limited to, the following subjects:

- A. Establishing the not to exceed amount and procedures for invoicing between the Parties for Initial Design Build Contract costs.
- B. Real property agreement(s) between the District and the Port for the South Sound Maritime Skills Center location.
- C. Contracting arrangement for Phases 2-3 (Final Design, Permitting, and Construction).
- D. Construction permitting, timing, phasing and scope details for Phases 2-3 (Final Design, Permitting, and Construction).
- E. Programming, maintenance and repair agreements for any joint or shared facilities.

7. Indemnification

- A. The District agrees to indemnify and hold harmless the Port, its officials, officers, agents, employees, volunteers, and representatives, from, and shall defend at its sole expense, against any and all claims, demands, damages, suits at law or at equity, liabilities, losses, judgments, liens, expenses, and costs arising out of or occasioned by the District's negligence or wrongful conduct in fulfillment of its obligations pursuant to this Agreement. In the event of recovery due to the aforementioned circumstances, the District shall pay any judgment or lien arising therefrom, including any and all costs as part thereof.
- B. The Port agrees to indemnify and hold harmless the District, its officials, officers, agents, employees, volunteers, and representatives, from, and shall defend at its sole expense, against any and all claims, demands, damages, suits at law or at equity, liabilities, losses, judgments, liens, expenses, and costs arising out of or occasioned by Port negligence or wrongful conduct in

fulfillment of its obligations pursuant to this Agreement. In the event of recovery due to the aforementioned circumstances, The Port shall pay any judgment or lien arising therefrom, including any and all costs as part thereof.

- C. In the event of liability based upon the alleged concurrent or joint negligence of the Parties, the Parties shall individually bear their respective liability, including costs, as determined according to RCW 4.22.015.
- D. The indemnification provisions of this Agreement shall not be limited by any worker's compensation, benefit, or disability laws, and each indemnifying Party hereby waives, solely for the benefit of the indemnified Party, any immunity that such indemnifying Party may have under the Industrial Insurance Act, Title 51 RCW.
- E. The foregoing obligations shall survive termination of this Agreement with respect to acts or omissions occurring during its term and relating to or involving the subject matter of this Agreement.

8. Miscellaneous.

- A. Examination and Retention of Records. The District and Port agree that any duly authorized representative of the other Party, including but not limited to each Party's auditors, shall, until the expiration of three (3) years after the Project is completed, have access to and the right to examine any books, documents, papers, and records of the other Party involving any matter directly related to this Agreement. All Project records shall be retained in accordance with each Party's document retention schedule. If the Parties elect not to proceed with Phases 2 or 3 of the Project, the audit rights established herein shall extend until the expiration of three (3) years after the Initial Design Build Team Contract is terminated.
- B. Assignment and Subcontract. Except as otherwise expressly provided in this Agreement, each Party covenants and agrees that it will not assign, transfer, or subcontract its rights and obligations hereunder without first obtaining the written consent of the other Party. Any approved assignment or subcontract may require new or extended insurance and indemnification being provided by the assignee or transferee.
- C. No Third-Party Beneficiaries. The Parties understand and expressly agree. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. Nothing contained in this Agreement shall give or allow any such claim or right of action by any third person. It is the express intention of the Parties that any person other than the District or the Port receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

- D. No Authority to Bind Parties to Contract. The Parties have no authority to bind the other Party on any contractual matters. Final approval of all contractual matters which obligate the Port or District must be by the Port and/or District, as applicable.
- E. Integration and Amendments. This Agreement, including the exhibits and attachments hereto (each of which is specifically incorporated herein), is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other modification hereto shall have any force or effect unless embodied in this Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force of effect unless embodied in a written amendment to this Agreement executed by the Parties in the same manner as this Agreement. The Parties anticipate that this Agreement shall be amended, or that new agreements will be entered into from time to time to allow for future phases of the Project.
- F. Severability. The Parties agree that if any provision of this Agreement or any portion thereof is held by a court of competent jurisdiction to be invalid, illegal, unenforceable, or in conflict with any law, the validity of the remaining portions or provisions shall not be affected if the intent of the Parties can be fulfilled.
- G. Conflict of Interest. No employee of the Port or the District shall have any personal or beneficial interest in the services or property described in the Agreement; and neither the District nor any contractor hired by the District under this Agreement shall hire or contract for services with any employee or officer of the Port in violation of the District's Code of Ethics.
- H. Notices. All notices required under this Agreement, notices concerning the termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and other notices of similar importance, including changes to the persons to be notified or their addresses, shall be in writing and delivered to:

To: Port: Alisa Praskovich
Chief, Strategic Projects & Commission Relations
Port of Tacoma
Address: One Sicutum Plaza, Tacoma, WA 98421
Tel: (253)888-4773
Mobile: (253) 459-9069
E-mail: apraskovich@portoftacoma.com

To: The District: Morris Aldridge
Executive Director of Planning & Construction

Tacoma Public Schools
3223 South Union Avenue
Tacoma, Washington 98409
Tel: (253) 571-3350
E-mail: maldrid@Tacoma.K12.Wa.US

All notices shall be in writing and provided by personal delivery, certified mail, return receipt requested, or overnight courier with courtesy copy via electronic mail. All notices are effective upon personal delivery or upon placing in the United States mail or with the courier service.

- I. **Counterparts.** This Agreement may be executed in two or more identical counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
9. **No Waiver.** No failure by either Party to insist upon the performance of any of the terms of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of any of the terms of this Agreement. None of the terms of this Agreement to be kept, observed, or performed by either Party, and no breach thereof, shall be waived, altered, or modified except by a written instrument executed by the injured party. No waiver of any breach shall affect or alter this Agreement, but each of the terms of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. No waiver of any default of the defaulting party hereunder shall be implied from any omission by the injured party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by the injured party shall not be construed as a waiver of a subsequent breach of the same covenant, term, or conditions.
10. **Dispute Resolution.** Except as provided otherwise expressly herein, in the event of a dispute between the Port and the District arising out of or relating to this Agreement, the Port's Executive Director and the District's Superintendent or their designated representatives shall review such dispute and options for resolution. If the dispute cannot be resolved by the Port's Executive Director and the District's Superintendent, the dispute may be submitted to mediation before a mediator agreed to by the Parties, and if still not resolved, shall be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04 RCW, and the judgment or award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
11. **Enforcement. Interpretation. Venue.** The laws of the State of Washington shall govern the validity, performance, interpretation, and enforcement of this Agreement. Should either party institute arbitration for enforcement or interpretation of any provision contained herein, the venue of such arbitration shall be in Pierce County, Washington. The prevailing party in any arbitration or litigation arising out of this Agreement shall be entitled to its reasonable attorney's fees, costs and expert witness fees.

12. Equal Participation in Drafting. The Parties agree that each of them was adequately represented by independent counsel, and that both Parties shared equally in the drafting of this Agreement. Therefore, this Agreement shall not be construed either for or against the District or the Port as drafter, but this Agreement shall be interpreted in accordance with the general tenor of the language in an effort to reach an equitable result.
13. Integration and Amendment. There are no oral Agreements between the parties affecting the meaning, content, purpose, or effect of this Agreement. The provisions of this Agreement may be amended with the mutual consent of the parties. No additions to, or alterations of the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of both Parties.
14. Invalid Provisions. If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected thereby, if such remainder would then continue to serve the purposes and objectives of the Parties.
15. Filing. By its signature below, each party confirms it approves of and is authorized to enter into this Agreement pursuant to RCW 39.34.080. A copy of this Interlocal Agreement shall be filed with the Pierce County Auditor pursuant to chapter 39.34 RCW. Alternatively, a copy of this Interlocal Agreement may be listed by subject on the District and Port's website or other electronically retrievable public source.

CONDITIONS OF COMMENCEMENT OF PERFORMANCE

The parties to this Agreement shall not commence performance or be entitled to compensation or reimbursement for any services rendered or materials provided, prior to the occurrence of each of the following conditions: (1) this Agreement must be executed by an authorized representative of both Parties, and (2) this Agreement must be approved by the Port of Tacoma Commission and the District's Board of Directors.

We the undersigned agree to the terms of the foregoing Agreement.

PORT OF TACOMA

TACOMA SCHOOL DISTRICT NO. 10

By:

By:

Eric D. Johnson

(signature)

J. M.

(signature)

Its: Executive Director

Its: Superintendent

Eric D. Johnson

Joshua J. Garcia

(print name)

(print name)

Who certify that they are the party identified herein, *OR* a person duly qualified and authorized to sign for the party.

Date: 8-31-23

Approved as to form:

Heather L. Burgess

Heather L. Burgess (Aug 14, 2023 14:08 PDT)

By: Heather L. Burgess
General Counsel, Port of Tacoma