

AGREEMENT BETWEEN THE CITY OF DUPONT, WA
AND THE PORT OF TACOMA
REGARDING A PAVEMENT CONDITION STUDY

This Agreement (AGREEMENT) is entered into this 19 day of June, 2018 by and between the City of DuPont, a noncharter code city 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 is charged by state statute with a mission of furthering economic development. To that end, the Port has adopted a Port Community 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 requested a financial partnership for a city-wide street study of the pavement conditions. Over \$3 billion of freight traffic passes through DuPont and certain corridors are in need of repair. The project will inspect materials and the serviceability status of DuPont's roads. The resulting study and pavement condition report will be used in competitive grant applications for state and regional funding.
3. The Port agrees to provide an investment from the Port Community Economic Development Investment Fund of \$5,000 in matching funds for the pavement condition study when the City provides proof of a \$5,000 expenditure or invoice for the study, expressly as specified herein.
4. The Port finds the requested contribution meets the Port's Community Economic Development Policy criteria as follows:

This project assesses the condition of DuPont's road infrastructure and will strengthen their future grant applications for road preservation and repair. These roads provide access to warehouses and manufacturing facilities that create long-term jobs in Pierce County.

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 will generate a Pavement Condition Index (PCI) which is used to indicate the general condition of streets. This report will be used in future regional and state grant applications for preservation and repair projects. Improvements to the City's roads will benefit the movement of freight within the City.

- All as described in the City's Application, as attached hereto as **Attachment A**.

2. PORT'S CONDITIONAL AGREEMENT TO CONTRIBUTE FUNDS.

Subject to the terms herein, the Port agrees to contribute to the City an investment from the Community Economic Development Investment Fund for the Project in the amount of \$5,000 in matching funds for the pavement condition study when the City provides proof of a \$5,000 expenditure or invoice for the study. Further conditions of the Port's funding are as follows: In the event Project costs are higher than projected, the City will assume any excess Project costs.

The Port's annual Project contribution shall be allocated and specifically identified in the Port's 2017 budget. The Port's distribution of funds are contingent on the City obtaining full committed funding by May 31, 2017 for the complete Project scope and the contents of this AGREEMENT remain unchanged.

Port payments will be made within thirty days of the City's submittal of written proof to the Port of actual Project expenses.

3. TIMEFRAME/PROJECT SCHEDULE.

Start: November 1, 2017

Complete: December 31, 2017

4. CITY'S PROJECT FINANCIAL SUMMARY.

Total Project Cost: Up to \$10,000

Source of Funds: \$5,000 (Port) + \$5,000 (City of DuPont)

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.

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

17. LEGAL RELATIONS.

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.

PO Box 1837
Tacoma, Washington 98406
Attention: Evette Mason
Email: emason@portofacomma.com

Port:

City of DuPont
Attention: Gus Lim
1700 Civic Drive
DuPont, WA 98327
Email: glim@dupontwa.gov

ENTITY:

below:

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

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

13. **TERMINATION.** This AGREEMENT shall terminate upon completion by both Parties of their respective obligations hereunder, or on December 30, 2018 unless terminated earlier.

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.

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.

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, 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, 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.

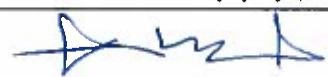
F. The Parties recognizes that this waiver was the subject of mutual negotiation. In the event any Party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this AGREEMENT against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing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

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

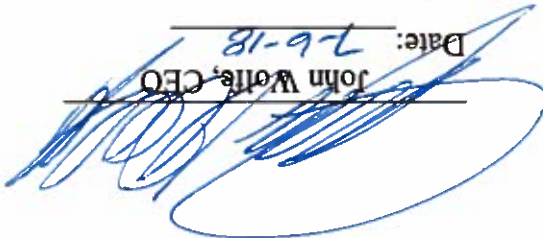
H. The provisions of this Article shall survive any termination or expiration of this AGREEMENT.

City of DuPont:

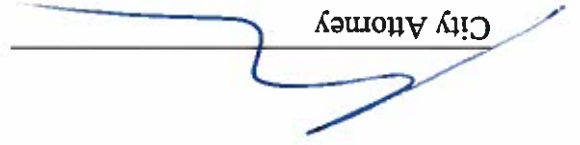
PORT OF TACOMA:




City Administrator
Date: 6/5/18



John Worle, CEO
Date: 7-6-18

Approved as to form:


City Attorney



Port Legal Counsel