

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF SUMNER, WA
AND THE PORT OF TACOMA
REGARDING AN INFRASTRUCTURE PROJECT AT SR 410 AND TRAFFIC AVENUE**

This Agreement (AGREEMENT) is entered into this 27 day of July, 2018 by and between the City of Sumner, a Washington Municipal Corporation (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 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 final design and environmental permitting for an upgrade to the WSDOT overpass and two intersections in the SR 410 interchange with Sumner's Traffic Avenue. This interchange and overpass serves as a truck route from Sumner's Manufacturing Industrial Center to Port of Tacoma facilities.
3. The Port agrees to provide to the City \$45,000.00 in matching funds from the Port Community Economic Development Investment Fund for design and permitting expenditures. The City shall be reimbursed by the Port in the amount of \$45,000.00 upon the City providing to the Port proof of a minimum of \$45,000 in expenditures for the project, expressly as specified herein.
4. The Port finds the requested contribution meets the Port's Community Economic Development Policy criteria as follows:

This project upgrades a major, outdated interchange that is a part of a freight corridor between a Sumner industrial park and the Port of Tacoma. 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.

This award was used as matching funds for a City of Sumner application to Puget Sound Regional Council for design and permitting funding related to the WSDOT overpass and two intersections in the SR 410 interchange with Sumner's Traffic Avenue.

- Specifically as described in the City's Application, 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 Port's Community Economic Development Investment Fund for the Project in an amount not to exceed \$45,000 in matching funds for final design documents and permitting expenditures when the City provides proof of a minimum of \$45,000 in said expenditures. 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 2018 budget.

Port not to exceed payment will be made only after the signing of this AGREEMENT by the Parties' respective authorized representatives, and within thirty days of receipt of City's proof of a minimum of \$45,000 in expenditures.

3. TIMEFRAME/PROJECT SCHEDULE.

Design work is underway and nearly complete.

4. CITY' S PROJECT FINANCIAL SUMMARY.

Total Design Cost: \$1.65 million

Source of Funds (other than the Port): City of Sumner, Washington State, Sound Transit, Private Development

5. ABANDONMENT. If the Project is abandoned prior to completion of final design and project permitting, then this AGREEMENT shall be of no further force or effect. If final design and permitting is complete, and the City has received the funds from the Port as contemplated herein, this AGREEMENT shall terminate pursuant to Paragraph 13, below, and there shall be no right to reimbursement of those funds to the Port should the Project be delayed or abandoned thereafter.

8. ASSIGNMENT. Neither Party to this AGREEMENT shall have the right to convey, assign, apportion or otherwise transfer any or 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 December 1, 2019 unless terminated earlier.

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

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

ENTITY: Attention: Michael Kosa
 Email: michaelk@sumnerwa.gov

City of Sumner
1104 Maple, St.
Sumner WA 98390

Port: PO Box 1837
 Tacoma, Washington 98406
 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 Municipal Governments. The Parties hereto are independent governmental entities and nothing herein shall be construed to limit the independent government powers, authority or discretion of the governing bodies of each Party. It is understood and agreed that this AGREEMENT is solely for the benefit of the Parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this AGREEMENT. No employees or agents of any Party shall be deemed, or represent themselves to be, employees of any of the other Party.

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

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

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

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

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.

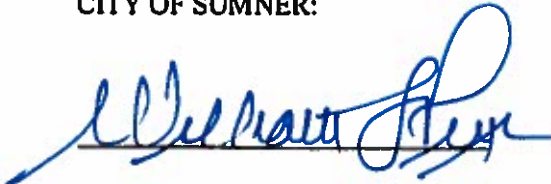
E. Each Party specifically assumes liability for actions brought by its own employees against the other Party and for that purpose each Party specifically waives, as respects the other parties only, any immunity under the Worker's Compensation Act, RCW Title 51.

F. The Parties recognize 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 reasonable 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.

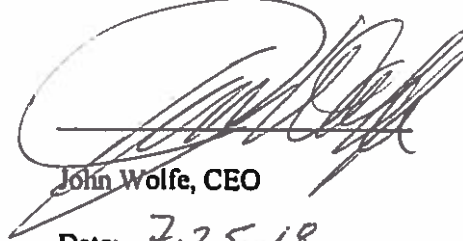
CITY OF SUMNER:



Mayor Bill Pugh

Date: 7/18/18

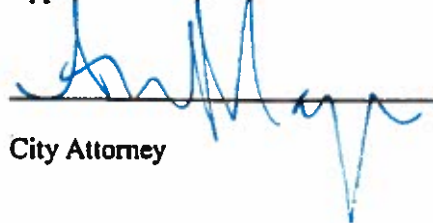
PORT OF TACOMA:



John Wolfe, CEO

Date: 7.25.18

Approved as to form:



City Attorney



Port Legal Counsel



Local Economic Development Funding Request Application

The Port of Tacoma dedicates a portion of its revenues to partnership projects that create economic development benefits, enhancing the community vitality of Pierce County. As a special purpose district governed by state law, investments by the Port of Tacoma must adhere to the legal requirements set forth in Title 53 of the Revised Code of Washington (particularly Chapter 53).

Investments shall be limited to county, city, and town government agencies or non-profits in Pierce County and typically will involve the Port as a minority investor. The Port's allocation to a project will be committed for up to two calendar years, (however contracts must be signed in the calendar year awarded), and payable on a reimbursement basis. Investment focus and priorities include:

- a. Road and freight rail infrastructure projects that create long-term jobs
- b. Marine tourism infrastructure projects

intended to attract tourists to Pierce County from outside locations.

- c. Planning activities or events promoting international trade, business retention or business recruitment;
- d. Planning activities or events promoting tourism intended to attract tourists to Pierce County from outside locations.

Activities or events may not be religious in nature. You may apply and receive funds for up to three consecutive years.

If your project is found to be within the Port's statutory authority and policy guidelines, your application will be considered during the Port's annual review process. Municipal entities must agree to enter into an Interlocal Agreement in accordance with § RCW 39.34. For more information about the Port of Tacoma, visit www.portoftacoma.com or call 253.428.8662.

APPLICATIONS ARE DUE February 2, 2018

Instructions

- 1. Please fill in this form and print it out. Use the tab key or click to move between fields. Click to mark boxes.
- 2. Answer each question in the space provided.
- 3. Attach the required documents.

- 4. Sign and date the application.
- 5. Send completed application to Leslie Barstow, Manager, Community Relations, Port of Tacoma
PO Box 1837
Tacoma, WA 98401-1837,
or e-mail to community@portoftacoma.com

Applicant Information

Organization

Name City of Sumner			
Address 1104 Maple St			
City Sumner	County Pierce	State/Province WA	Zip/Postal Code 98390
Website www.sumnerwa.gov		Organization Legal Status, ie 501(c)3 or 107(c) Municipality	

Organization/Representative/Contact

Name Michael Kosa, P.E.		Phone 253-299-5709
Title Associate City Engineer/Project Manager	E-mail Address michaelk@sumnerwa.gov	

Project Information

Title and Brief Description of Project SR 410/Traffic Avenue Interchange Improvements <p>This project will eliminate the final bottleneck on a major corridor for vehicular traffic, freight, transit commuters, and bicycle routes. Transportation dollars widened roads and built trails on either side, but now, Traffic Avenue's outdated two-lane bridge over SR 410 and associated ramp terminal intersections causes delays, backing up traffic over 1/2 mile in Sumner, Puyallup, from Edgewood and even from Bonney Lake onto the SR 410 ramps. Caught in the delays are 14,000 commuters headed to the Sumner-Pacific Manufacturing Industrial Center, freight traffic on a designated truck route to/from the Port of Tacoma, local traffic accessing the historic town center, East Pierce Fire's response to accidents on SR 410, SR 167, and SR 512, and commuters for Sound Transit trains & buses, approximately 2,775 boardings per day.</p> <p>The improved interchange will move vehicles, freight, pedestrians, and bicycles safely and efficiently while encouraging ridership on Sound Transit and support for South Sound businesses. The project will efficiently reuse the existing, structurally sound bridge yet eliminate the "bottleneck" by adding a new forward-compatible bridge structure to carry two additional travel lanes and a protected 14'-wide bicycle/pedestrian shared use path, overall resulting in a 4-lane roadway section. Intersection improvements to the two on- and off-ramp intersections will provide for the increased capacity of the intersection as well as better serve non-motorized travelers. The new lanes will increase capacity on a currently congested roadway that currently carries more than six million tons of freight annually, including aerospace and agricultural products. The improvements will pave the way for an increase of the estimated 4,400-5,800 boardings at the Sumner Sounder Station by 2035. The Sumner Station serves regional growth in areas like Tehaleh and Lakeland Hills and well-established communities such as Sumner, Puyallup, Edgewood, Pacific, Bonney Lake and Orting. In addition, the Sumner-Pacific Manufacturing Industrial Center continues to grow, with space for more regional family-wage jobs.</p>		
Geographic Area Covered by Project WSDOT Right-Of-Way within the City of Sumner	Number of People Served by Project 30,000 People/Day	Dates of Project From: To: Current 12/2020
Amount Requested from Port of Tacoma \$100,000	Total Project Cost \$17,000,000	Is this a one-time event or an ongoing effort? One-time project that takes years for overall construction

Port of Tacoma Local Economic Development Funding Request Application

Funding Sources for this Project

Firm Financial Commitments to Date	
Source	Amount
Port of Tacoma (2016)	\$10,500
Sound Transit	\$5,000,000
Washington State Freight Mobility Strategic Investment Board (FMSIB)	\$2,500,000
Private Development	\$75,000
State Legislature	\$300,000
Other Sources Where Applications Were Submitted	
Source	Amount Status
Transportation Improvement Board	\$5,000,000 Unsuccessful in 2017, Will Apply in 2018
FHWA - Surface Transportation Program	\$5,000,000 Unsuccessful in 2016, Will Apply in 2018
National Highway Freight Program	\$12,800,000 Unsuccessful in 2017, pending for 2018 award

Purpose: What will this project accomplish?

Traffic demands in the area continue to increase, particularly with the new Sounder commuter garage and regional growth in Tehaleh, Orting, and Bonney Lake. This project will improve freight mobility and employee access to the largest manufacturing job center in Pierce County. It will improve quality of life for commuters, residents and businesses. And, reducing traffic congestion will reduce vehicle idling in an area that is in the to 10% of "highly impacted communities" from air-quality and environmental justice as identified by the Puget Sound Clean Air Agency.

Our funds: Specifically, how would you use our contribution? When would you want the contribution?

Your 2016 contribution showed the Port's support for this project and helped us leverage a \$2.5 million FMSIB grant. Since then, the City has coordinated with WSDOT to use funding to design the fix, assessing details like being able to reuse the existing overpass. Now, we're applying this spring to more grants to complete construction and final design. This ask is to support final design needs. Funds committed to design can be spent sooner rather than having to wait for construction to begin when the project is fully funded. Perhaps more importantly, all the spring grants ask for commitments and amounts. An additional grant from the Port would indicate again how important this project is to regional commerce and transportation and better position this project to receive State and regional funding to be completed.

In-kind: If the Port does not contribute any money, are there in-kind services that the Port could provide?

Financial support provides a higher level of support and commitment than a simple letter of support. However, a letter in support of the project would be helpful when applying for other grant funding to show that the Port continues to support the project and that partners also identify the project as a critical need locally and regionally. Ideally, the Port will choose to provide a financial commitment that exceeds the \$11,500 award from the 2016 award cycle to show its continuing and increasing commitment to the project. Like you, those individuals assessing many competitive applications for regional transportation grants will see the difference between a letter of support and a commitment of funds.

Port of Tacoma Local Economic Development Funding Request Application

Referral: *Who suggested that you contact the Port for funding on this project?*

Evette Mason

Need: *Why is this project important to our community? Why should this project be important to the Port?*

Since the overpass was completed, Sumner's population has doubled. The Sumner-Pacific Manufacturing and Industrial Center (MIC) is the largest manufacturing employment center in Pierce County, and the project is one of three major access points to the MIC. The route is on the Washington State FMSIB Strategic Freight Corridors System Map and carries over six million tons of freight annually. The Sound Transit station provides much needed commuter train service to reduce the burden on the State highway system, but the station generates so much traffic from East Pierce County commuters flocking to Sumner that local residents and employees in the MIC experience gridlock during commutes, limiting the employment opportunities that support Port of Tacoma operations and the highway system freight capacity arriving from the Port of Tacoma.

Approach: *How do you plan to implement this project?*

Much has already occurred since our previous application. Using funds supplied by the State and Sound Transit, we are currently at a 60% design for the project and are going to be shovel-ready during the second quarter of 2018. However, at that point, the project is on hold until we raise another \$10 million to fund construction. We are currently seeking funding from numerous sources. To have the best chance to continue moving forward as quickly as possible, we plan to use secured funds to complete the design and demonstrate the regional support that this project enjoys. We are submitting for other funding sources in the next few months and hope to close the funding gap and proceed to construction as quickly as possible. Most businesses, commuters and residents want it done yesterday.

Support: *What kind of local support is there for the project?*

Aside from previous support from the Port of Tacoma, the project benefits from Sound Transit as a significant project partner. WSDOT has been heavily involved in the design process and is encouraging the project to move forward as well. Private development (Knutson property) in the area has provided financial support, acknowledging that they will both impact and rely on this intersection for future truck travel. The City also received funding for design from the State of Washington and has a current ask in for construction dollars. In addition to funding, letters of support for this project have come from the Washington State Fair, Coleman America, the Puyallup/Sumner Chamber of Commerce, Tehaleh, Knutson Farms, The Old Cannery Furniture Warehouse, East Pierce Fire & Rescue, and Belmont Cabinets.

Port of Tacoma Local Economic Development Funding Request Application

Coordination: *Who else in your community is working on this issue? How do you coordinate with them?*

A wide range of partners are involved in this project. Sound Transit has funded approximately 25% of the project due to their desire to see this bottleneck widened to provide access to a regional commuter rail station. With many more potential transit riders moving to the area just south of Sumner, Sound Transit identifies the Sumner Station parking garage and associated roadway improvements as a key to a successful station in Sumner.

The project's other key partner is WSDOT, who owns and will maintain the new bridge structure. The City has been working hand-in-hand with WSDOT development services from the initiation of the project. We have held monthly coordination meetings since early 2016 with additional meetings occurring as required. In mid-February, a City of Sumner - WSDOT Technical review of the 60% design drawings will be taking place with technical experts at WSDOT over a five-hour technical review meeting. The team will continue to meet for the next few months as the plans reach a 90% design level, when final WSDOT final review will take place. At that point, the project will be considered "shovel-ready" from WSDOT's perspective. WSDOT understands the complications presented by the bottleneck and has actively supported Sumner's efforts to fundraise for their interchange.

In addition, community partners such as the Knutson development and adjacent cities such as Puyallup have benefited the project with written and financial support.

Construction of this project is Transportation Project Priority #1 from the City of Sumner's perspective. Whether it is relieving congestion for Sumner residents, providing a connection between historic downtown Sumner and the regional Trail network, or improving access to transit, this project embodies Sumner's Vision statement to "...set the standard of excellence for a progressive small city." As such, Sumner has taken the Lead Agency role for this project that is primarily within WSDOT right-of-way. Sumner has provided financial commitments, has spent hundreds of hours of staff time toward completing this project so far, and will spend hundreds more to manage the project throughout design and construction. As lead agent, Sumner will also bear risk responsibility for overages.

Port of Tacoma Local Economic Development Funding Request Application

Future Support: *How will this project be financed in the future?*

The project is pursuing multiple funds sources to make up the shortfall needed for construction, including Federal funds from the FHWA Surface Transportation Program and the National Highway Freight Program, State funds from the Transportation Improvement Board and the Freight Mobility Strategic Investment Board, and local funds from the City of Puyallup and nearby private developments. Also, the City of Sumner is committed to injecting funds when the project need arises. Everyone wants to see this project completed as soon as possible.

Deliverables: *What will the Port receive for their financial +/- in-kind partnership? What happens to our funds if the event does not occur?*

Already, the City has celebrated the Port's investment in this project, including your name on signage, handouts, webpages and social media discussions about support for this project. That will increase with further funding. Completing the project is inevitable due to the traffic levels, committed support, and need. Without further Port funding, the project will be complete. However, the real question is when. The next round of grants come in the spring, and competition will be very tight. With increased support/funding from the Port, we believe we have a better chance of telling the regional impact of this project and a better chance at receiving the grant funding that will let us begin construction sooner rather than later.

Evaluation: *How will the success of the project be measured?*

Success will be measured by a completed project open to all motorized and non-motorized users. If you award funds this year, we will leverage your investment in other applications to show local and regional support for the project. Local and regional support is very important when applying for funds. The perfect example is 2016 Port of Tacoma award, which was immediately used as local and regional project partner in the Project's FMSIB application, leading to a \$2.5 Million funding award. We believe your previous support was key in securing the multi-million dollar award and would like to repeat that recipe for success again this year.

Additional Information

Does this organization have a formal policy of compliance with equal employment opportunity and affirmative action laws and regulations?

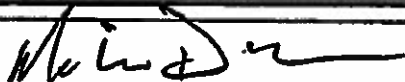
Yes ☒ X
No

Please attach each of the following to the completed application: See Attached

- *Project budget (if relevant)
- *List of current board members/officers

Signature

Signature:



Date

Print Name Here: Mike Dahlem

2-1-18

**APPLICATIONS ARE DUE NO LATER THAN
February 2, 2018**