

**MEMORANDUM OF UNDERSTANDING BETWEEN
WASHINGTON DEPARTMENT OF TRANSPORTATION
AND THE CITY OF LAKEWOOD**

THIS AGREEMENT is made and entered into between the Washington Department of Transportation, hereinafter referred to as "WSDOT" and the City of Lakewood, hereinafter referred to as "City".

A. RECITALS

This Agreement is predicated on the following circumstances:

1. WSDOT owns real property within the City commonly known as 11211 41st Avenue SW, tax lot numbers 0219121004 and 0219122075, hereinafter the "WSDOT Property", and
2. The WSDOT Property is located within the Pacific Highway corridor adjacent to I-5 in an area of the City that the City desires to revitalize by improving the availability of commercial property, and
3. WSDOT operates a maintenance facility on the WSDOT Property that is essential to WSDOT's fulfillment of its obligation to maintain the state highway right-of-way within the region. The maintenance facility currently meets WSDOT's operational needs and the maintenance facility is not scheduled or budgeted for replacement or relocation in the foreseeable future, and
4. The WSDOT Property abuts several other parcels of real property owned by third parties, hereinafter "Abutting Parcels" that, when combined with the WSDOT Property, could enhance economic revitalization in the Pacific Highway corridor, and
5. The City desires to maximize the potential for economic revitalization in the Pacific Highway corridor by facilitating the sale of the WSDOT Property and the Abutting Parcels to a single purchaser, thereby maximizing the extent of commercial redevelopment, and
6. In order for WSDOT to dispose of the WSDOT Property and associated maintenance facilities, WSDOT will require replacement real property improved with appropriate maintenance facilities in the vicinity of the WSDOT Property, hereinafter "WSDOT Replacement Facility", and
7. Subject to the express terms, conditions, and limitations set forth in this Agreement, WSDOT supports the City's economic revitalization efforts, and
8. This agreement is intended to initiate a working relationship between WSDOT and the City to advance the economic revitalization goals of the City, recognizing that future agreements between the parties will be required to achieve the City's ultimate objective.

NOW, THEREFORE, in exchange for the mutual promises enumerated herein, the parties agree as follows:

1. **SUMMARY OF CITY OBJECTIVES AND SCOPE OF TASKS:** The City desires to revitalize a section of the Pacific Highway corridor in the vicinity of the WSDOT Property, by facilitating the sale of the WSDOT Property and the Abutting Parcels to a single purchaser for commercial redevelopment in accordance with RCW 47.12.063(3). The City believes that packaging the WSDOT Property with the Abutting Parcels for redevelopment is essential to maximize the economic revitalization potential for the area. In order to accomplish its objectives, the City will require, among other things: (1) permission from WSDOT and the owners of the Abutting Parcels relative to the sale of their respective real property as a single unit; (2) funding in order to acquire and develop the WSDOT Replacement Facility; and (3) a willing purchaser.

2. **CONDITIONS AND LIMITATIONS OF WSDOT PARTICIPATION:** WSDOT supports the City's economic revitalization efforts. WSDOT's participation under this Agreement and its support of the City's objectives is expressly conditioned and limited as provided below; however, nothing herein prohibits funding from the State's Capital Budget, existing or future economic development funding, or other legislative allocation of funds.

- a. That all funding sought by the City for the WSDOT Replacement Facility originate from sources other than the Motor Vehicle Fund,
- b. That authorization or appropriation for the WSDOT Replacement Facility not reduce WSDOT's existing budgetary or capital facility prioritization, and
- c. That disposition of the WSDOT Property comply in all respects with the requirements of State law.
- d. That WSDOT receive adequate funding or appropriations to accomplish the tasks described in Section 4, below.

3. **PURPOSE OF AGREEMENT:** The purpose of this Agreement is to facilitate the City's preliminary assessment of the feasibility of the sale of the WSDOT Property and the Abutting Parcels and the funding and acquisition of the WSDOT Replacement Facility. Both parties acknowledge the limited scope of this Agreement and conditions and limitations under which WSDOT enters into this Agreement. The parties further acknowledge that future agreements between the parties will be required to implement the sale of the WSDOT Property and acquisition and development of the WSDOT Replacement Facility, if any.

4. **STATEMENT OF WORK:**

- a. **WSDOT & CITY TASKS:** Within sixty (60) days of the execution of this Agreement, the parties shall develop a Scope of Work related to the following:
 - i. A planning level estimate of the costs and expenses associated with the relocation of WSDOT equipment and personnel from the WSDOT Property to the WSDOT Replacement Facility,
 - ii. Site Selection criteria for the WSDOT Replacement Facility,

- iii. Conceptual design and/or requirements of the capital facility improvements for the WSDOT Replacement Facility,
 - iv. An estimate of the cost associated with construction of the capital facility improvements for the WSDOT Replacement Facility, and
 - v. Phase 1 Environmental Assessment for the WSDOT Property.
- b. Following agreement on the above Scope of Work, the parties shall determine who will perform, manage, and fund the identified work necessary to support the objectives of this Agreement.
- c. CITY TASKS: During the term of this Agreement, the City shall:
- i. Identify potential alternative sites for the WSDOT Replacement Facility, subject to WSDOT's site selection criteria and capital facility requirements, and submit potential sites to WSDOT for consideration,
 - ii. Identify potential sources of funding for site acquisition and construction of the WSDOT Replacement Facility subject to (1) the source of funding limitations set forth in this Agreement, and (2) WSDOT's site and capital facility criteria and requirements. The City shall notify WSDOT in writing of any potential funding sources prior to any actions by the City to procure funding from any source. The City shall not take any action to pursue said funding without the written consent of WSDOT.
 - iii. Perform, manage, and/or fund the Scope of Work tasks identified in 4(a) above based on agreement with WSDOT.
 - iv. Explore legislation or administrative means by which WSDOT can retain any proceeds from the sale of the WSDOT Property for use in site acquisition and construction of the WSDOT Replacement Facility. The City shall notify WSDOT in writing of its legislative and administrative strategy and proposed actions and shall not take any actions under this paragraph without the written consent of WSDOT.
 - v. Obtain an appraisal of the WSDOT Property.
 - vi. Engage the owners of the Abutting Parcels relative to the sale of the Abutting Parcels with the WSDOT Property.

5. OUTSIDE COMMUNICATIONS: During the term of this Agreement, on behalf of WSDOT, the City is authorized to communicate and represent only that WSDOT supports the City's objectives and that WSDOT is willing to sell the WSDOT Property subject to the conditions and limitations set forth above.

6. FUTURE AGREEMENTS: In the event the parties mutually determine that it is feasible and in the public interest to sell the WSDOT Property and to acquire and construct the WSDOT Replacement Facility in accordance with the terms of this Agreement, the parties acknowledge that future agreements will be required to, among other things: (1) dispose of the WSDOT Real Property in a manner consistent with state law; and (2) acquire, design, and construct the WSDOT Replacement Facility. The parties agree to provide the necessary resources and to work in good faith to diligently and timely develop the final form and contents of such agreements.

7. **COOPERATION AND GOOD FAITH EFFORTS:** The parties understand and agree that the process described in this Agreement depends upon timely and open communication and cooperation between the parties. In this regard, communication of issues, changes, or problems that arise with any aspect of the performance of terms of this Agreement should occur as early as possible in the process, and not wait for explicit due dates or deadlines. Each party agrees to work cooperatively and in good faith toward resolution of any such issues in a manner that ensures adequate time for each party to work through issues.

8. **INDEPENDENT CONTRACTOR:** The City shall be deemed an independent contractor for all purposes, and the employees of the City or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees or agents of the State.

9. **INDEMNIFICATION:** To the extent permitted by law, the City shall protect, defend, indemnify, and save harmless WSDOT, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from the City's actions under this Agreement. The City will not be required to indemnify, defend, or save harmless WSDOT if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of WSDOT. Where such claims, suits, or actions result from concurrent negligence of both parties, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each party's own negligence.

The City agrees that its obligation under this section extends to any claim, demand and/or course of action brought by, or on behalf of any City employee or agent while performing pursuant to the provisions of this Agreement. For this purpose, the City, by mutual negotiation, hereby waives with respect to WSDOT only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Chapter 51.12 RCW.

This indemnification and waiver shall survive the termination of this Agreement.

10. **SEVERABILITY:** If any section, term, or provision of this Agreement, or any section, term, or provision of any document incorporated by reference, shall be held invalid, such invalidity shall not affect the other sections, terms, or provisions of this Agreement that can be given effect without the invalid section, term, or provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement are declared to be severable.

11. **AMENDMENT:** Either party may request modifications to the provisions of this Agreement. Such modifications shall be mutually agreed upon by written amendments to this Agreement. No variation or alteration of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the parties hereto.

12. **ALL WRITINGS CONTAINED HEREIN:** This Agreement contains all the terms and conditions agreed upon by the parties to this Agreement. No other understanding, oral

or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

13. **GOVERNANCE:** This Agreement is entered into pursuant to, and under the authority granted by, the laws of the State of Washington and applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

14. **EFFECTIVENESS AND DURATION:** This Agreement shall begin as of the party's date last signed below and continue to be in full force and effect until such time either party provides written notice of termination to the other party pursuant to Section 16.

15. **CONTACTS AND AGENCY REPRESENTATIVES:** The following individuals are authorized to represent the interest of each party to this memorandum:

STATE:

Pasco Bakotich III
Director Maintenance Operations
Washington State Department of
Transportation
310 Maple Park Avenue SE
Olympia, WA 98501
(360) 705-7851

CITY:

John Caulfield
City Manager
City of Lakewood
6000 Main Street SW
Lakewood, WA 98499-5027
(253) 983-7703

16. **TERMINATION OF AGREEMENT:** This Agreement may be terminated, without cause, by either party upon thirty (30) days written notice.

STATE:

DATED: 8/31/18

By: Pasco Bakotich III

Pasco Bakotich III

CITY:

DATED: 10-17-2018

By: John Caulfield

John Caulfield

APPROVED AS TO FORM:

DATED: August 30, 2018

By: Mark Schumock

Mark Schumock
Assistant Attorney General
Transportation and Public
Construction Division

Attest:

Briana Schumacher
Briana Schumacher, City Clerk

Approved as to Form:

Heidi Ann Wachter
Heidi Ann Wachter, City Attorney