

AGREEMENT BETWEEN THE CITY OF LAKEWOOD, WA
AND THE PORT OF TACOMA
REGARDING the 146th STREET RECONSTRUCTION PROJECT

This Agreement ("AGREEMENT") is entered into this 11th day of January, 2021 by and between the City of Lakewood, a municipal jurisdiction of the State of Washington (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 Local 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 of Lakewood's 146th Street reconstruction project ("Project")
3. The City of Lakewood requested and the Port agrees to provide an investment of \$50,000 toward the Project costs, conditioned upon proof of Project expenditures, and as expressly specified herein.
5. The Port finds the requested contribution meets the Port's Local Economic Development Policy criteria as follows:
 - a. This project meets priority number one: Road and freight rail infrastructure projects that create long-term jobs.
 - b. This road project is in the Woodbrook Business Park and between Murray Road SW and Woodbrook Drive SW. The design of the rebuild is to better accommodate industrial truck traffic for current and future manufacturing and distribution facilities in the business park. Businesses may choose to locate in the Woodbrook Business Park because of the proximity to the Port of Tacoma and the improved road infrastructure.

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 of Lakewood's 146th Street reconstruction project consists of the following:

- 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's 146 Street reconstruction project an amount not to exceed \$50,000. Conditions of the Port's funding are as follows:

If the Project costs are higher than projected, the City will assume any excess Project costs.

The Port's annual Project contribution shall be allocated and is identified in the Port's 2020 budget.

The Port's distribution of funds is further contingent on the City obtaining full committed funding by June 1, 2021 for the complete design phase and the contents of this AGREEMENT remain unchanged.

Port payments up to the not-to-exceed amount will be made pursuant to this signed AGREEMENT, and within 45 days of the City's submittal of written proof to the Port that the City of Lakewood has paid its minimum contribution of \$50,000 in expenditures.

3. TIMEFRAME/PROJECT SCHEDULE.

Design and Survey Complete	Q4 of 2021
Construction Complete	Q4 of 2022

4. CITY OF LAKEWOOD'S PROJECT FINANCIAL SUMMARY.

Total Design Cost: \$241,000

Source of Funds (other than the Port): City of Lakewood SWM fund

With the survey and design work complete, other grant funding opportunities may be available.

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.

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 June 1, 2022 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:

City of Lakewood: 6000 Main Street
Lakewood, Washington 98499
Attention: Becky Newton
Email: bnewton@cityoflakewood.us

Port of Tacoma: PO Box 1837
Tacoma, Washington 98401
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 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 City's 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, 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.

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.

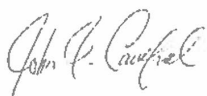
E. Each Party specifically assumes liability for actions brought by its own employees against the other Party and for that purpose each Party specifically waives, as respects the other parties only, any immunity under the Worker's Compensation Act, RCW Title 51.

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 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 LAKEWOOD:



John Caulfield, City Manager
Date: 1/11/2021

PORT OF TACOMA:



Eric Johnson, Executive Director
Date: Jan 21, 2021

Approved as to form:



Heidi Ann Wachter, City Attorney



Heather Burgess, Port Legal Counsel

Attest:



Briana Schumacher, City Clerk



CONTRACT ROUTING FORM

1. ORIGINATING DEPT./DIV: CED DATE: 12/1/2020

2. ORIGINATING STAFF PERSON: Becky Newton EXT: 7738 3. DATE REQUESTED BY: 12/5/20

4. TYPE OF DOCUMENT (CHECK ONE):

<input type="checkbox"/> PUBLIC WORKS CONSTRUCTION CONTRACT	<input type="checkbox"/> CDBG/HOME	<input type="checkbox"/> GRANT AGREEMENT
<input type="checkbox"/> SMALL OR LIMITED PUBLIC WORKS CONTRACT	<input type="checkbox"/> HUMAN SERVICES	<input type="checkbox"/> INTERLOCAL
<input type="checkbox"/> GOODS AND SERVICE AGREEMENT	<input type="checkbox"/> LEASE	<input type="checkbox"/> MAINTENANCE AGREEMENT
<input type="checkbox"/> PROFESSIONAL SERVICES AGREEMENT	<input type="checkbox"/> REAL ESTATE DOCUMENT	<input type="checkbox"/> OFF DUTY POLICE SERVICES
<input type="checkbox"/> CONTRACT AMENDMENT No. ____ (ORIGINAL CONTRACT#): _____		
<input checked="" type="checkbox"/> OTHER Agreement between the City of Lakewood and Port of Tacoma regarding 146th Street Reconstruction Project; Investment fund grant.		

5. PROJECT NAME: 146th Street Reconstruction Project Grant

6. NAME OF CONTRACTOR: City of Lakewood is the Contractor; Port of Tacoma is the grantor to support this project

ADDRESS: _____ TELEPHONE _____

E-MAIL: _____ FAX: _____

AUTHORIZED SIGNATURE NAME: _____ TITLE _____

7. EXHIBITS AND ATTACHMENTS: ☒ SCOPE, WORK OR SERVICES ☒ COMPENSATION ☐ INSURANCE REQUIREMENTS/CERTIFICATE

ALL OTHER REFERENCED EXHIBITS ☐ PRIOR CONTRACT/AMENDMENTS ☐ PROOF OF AUTHORITY ☐ E-VERIFY ☐ W-9 ☐ Copy of Safety Plan/Program

8. TERM: COMMENCEMENT DATE: _____ COMPLETION DATE: by the end of Q4 2022

9. TOTAL COMPENSATION \$ 50,000 paid by Port of Tacoma to City of Lakewood

☐ CHARGE TO EDEN BARS EXPENDITURE ACCOUNT : _____

10. DOCUMENT/CONTRACT REVIEW

	INITIAL / DATE REVIEWED	INITIAL / DATE APPROVED
<input checked="" type="checkbox"/> PROJECT MANAGER	<u>BN 12/1/20</u>	<u>BN 12/1/20</u>
<input type="checkbox"/> DIRECTOR	_____	_____
<input type="checkbox"/> LEGAL	_____	_____

11. COUNCIL APPROVAL DATE (IF APPLICABLE) _____

12. CONTRACT SIGNATURE ROUTING

☐ SENT TO VENDOR/CONTRACTOR DATE SENT: _____ DATE REC'D SIGNED BY CONTRACTOR: _____

☐ ATTACH: INSURANCE CERTIFICATE, LICENSES, EXHIBITS

	INITIAL / DATE SIGNED
<input type="checkbox"/> CITY CLERK (ROUTE)	<u>12/2/2020</u>
<input type="checkbox"/> CITY ATTORNEY	_____
<input type="checkbox"/> CITY MANAGER	_____
<input type="checkbox"/> CITY CLERK/ CONTRACT# <u>2020-295</u>	_____
<input type="checkbox"/> SIGNED COPY TO ORIGINATING DEPT & A/P	_____

COMMENTS:

Please provide this to Evette Mason, emason@portoftacoma.com for completion of the contract. Let Becky know this has been done.