

RESOLUTION NO. 1668

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON, AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE PORT OF TACOMA REGARDING HYDRAULIC ANALYSIS REVIEW AND APPROVAL

WHEREAS, the Port of Tacoma plans to construct rail corridor improvements required to increase the capacity and efficiency of the Port of Tacoma's (Port) rail system. To address future Port intermodal and commercial rail capacity, two (2) new lead tracks are planned within a corridor beginning at Milwaukee Way and extending to Alexander Avenue. The Project includes the design of new track and the reconfiguration of existing tracks to create five long tracks ("Rail Project"); and

WHEREAS, the City of Fife owns and maintains the Erdahl ditch at the Port of Tacoma, a man-made stormwater drainage system; and

WHEREAS, the Rail Project requires a portion of the Erdahl ditch to have a culvert installed and the ditch to be filled to provide space for the tracks to be built on top; and

WHEREAS, the Port of Tacoma (through the consulting firm KPFF) has prepared a hydraulic analysis to show that the capacity of the Erdahl ditch will not be decreased as a result of these improvements; and

WHEREAS, the attached interlocal agreement provides that the Port will compensate the City of Fife in an amount not to exceed \$18,394 for the City's consultant to review the Rail Project's hydraulic analysis; now therefore

BE IT RESOLVED that the Fife City Council hereby authorizes the City Manager to execute the Interlocal Agreement between the Port of Tacoma and the City of Fife for Hydraulic Analysis Review and Approval substantially in the form attached hereto as Exhibit A. The City Manager is authorized to make non-material changes to the agreement prior to signing.

ADOPTED by the City Council at an open public meeting held on the 23rd day of June, 2015.



Tim Curtis, Mayor

Attest:



Carol Egen, City Clerk

EXHIBIT A
To Resolution No. 1668

INTERLOCAL AGREEMENT BETWEEN PORT OF TACOMA AND CITY OF FIFE FOR HYDRAULIC ANALYSIS REVIEW AND APPROVAL

This Interlocal Agreement ("Agreement") is made and entered into by the City of Fife, a municipal corporation of the State of Washington, hereinafter called the "City" and the Port of Tacoma, a port district organized under the laws of the State of Washington hereinafter called the "Port" pursuant to RCW § 39.34. As used in this Agreement, "Project" means Work within the Erdahl ditch in support of North Lead Rail Improvement Project as further described in Section 1. The Port and the City are also referred to in this Agreement collectively as "the Parties", and individually as a "Party".

RECITALS

WHEREAS, RCW § 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other agencies on a basis of mutual advantage.

WHEREAS, the assurance of continuing freight movement throughout Puget Sound is an issue of critical strategic importance to the City and to the Port.

WHEREAS, The Port plans to construct rail corridor improvements required to increase the capacity and efficiency of the Port of Tacoma's (Port) rail system. To address future Port intermodal and commercial rail capacity, two (2) new lead tracks are planned within a corridor beginning at Milwaukee Way and extending to Alexander Avenue. The Project includes the design of new track and the reconfiguration of existing tracks to create five long tracks ("North Lead Rail Project" or "Rail Project").

WHEREAS, the City owns Erdahl ditch, a man-made stormwater drainage system, designated by the City of Tacoma as a Non-Jurisdictional Wetland and is non-fish bearing.

WHEREAS, the City owns an easement from the Port for the Erdahl Ditch within the Port Parcel 33B, Tacoma Rail yard (see Exhibit B).

WHEREAS, the Rail Project provides for the Erdahl ditch to be modified to culvert a approximately 50 foot long open channel section and associated uplands between the Tacoma Rail classification rail yard and the Port Banana rail yard, east of Port of Tacoma Road.

WHEREAS, the Port has agreed to compensate the City of Fife in an amount not to exceed Eighteen thousand, three hundred and ninety four Dollars (\$18,394) without prior authorization for the review of the Project's hydraulic analysis for the City of Fife's Drainage and Hydraulic Approval.

WHEREAS, the Port shall be assigned all duties of Project Management and perform all phases of Project work, including design, permitting and construction, as the Project falls under the Port's jurisdiction and ownership.

NOW, THEREFORE, the Parties agree as follows:

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1. SCOPE OF WORK

- 1.1. Project Title: Erdahl Ditch work in support of the North Lead Rail Improvement Project ("Erdahl Ditch Project").
- 1.2. Description: The proposed Project scope: The Port's North Lead Rail Project will construct rail corridor improvements required to increase the capacity and efficiency of the Port of Tacoma's (Port) rail system. To address future Port intermodal and commercial rail capacity, two (2) new lead tracks are planned within a corridor beginning at Milwaukee Way and extending to Alexander Avenue. The Project includes the design of new track and the reconfiguration of existing tracks to create five long tracks.

The new trackwork associated with the Rail Project extends from just east of Milwaukee Way to Alexander Avenue. The Rail Project is bounded by State Route (SR) 509 to the south and the Port owned Banana Tracks and the Pierce County Terminal to the north (exhibit A). While the final long tracks will extend through the entire area described above, new trackwork is confined to the west end of the project site near Milwaukee Way, the central area below and adjacent to Port of Tacoma Road, and the east end of the Rail Project near Alexander Avenue where the existing tracks curve to the north. Existing tracks will be utilized to connect these three locations in the creation of the five long tracks.

In order to construct the additional long tracks, the existing three (3) arrive and departure tracks need to be realigned to be parallel along with the two (2) new tracks under the Port of Tacoma Road overpass. This requires the portion of the Erdahl ditch to have a culvert installed and the ditch to be filled to provide space for the tracks to be built.

The scope of the Rail Project is anticipated to include, selective site demolition and erosion control, railway track work and associated systems, access roads within the rail yard, relocation of power/lighting, utility, drainage, and surface features, and installation of a culvert and backfill of the open channel portion of the Erdahl Ditch.

- 1.3. Schedule: It is anticipated the Project's Hydraulic Analysis review will commence by August 10, 2015. The City of Fife's initial review of the Hydraulic Analysis is to be complete by September 15, 2015 and final approval by November 2, 2015 to support the design and construction schedule of the Project.
- 1.4. Form of Approval: The City of Fife will signify its approval of the Project's Hydraulic Analysis by providing an original copy of the Analysis with an approval stamp signed by the City Engineer.

2. TERMS AND CONDITIONS

- 2.1. Lead Agency: Port of Tacoma
- 2.2. Contact Persons: Carol Rhodes, Senior Project Manager, Port of Tacoma.

3. COST REIMBURSEMENT AND FUNDING

The review of the Erdahl Ditch Project, Hydraulic Analysis will be accomplished on a time and material basis and will not exceed \$18,894 without prior written approval from the Port. All

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invoices shall be mailed "Attention: Contracts Department". Invoices may be emailed to cpinvoices@portoftacoma.com. The email must include the required supporting documentation.

4. AMENDMENT

Either Party may request changes to the provisions contained in this Agreement. Any change to this Agreement must be mutually agreed to by both Parties, in writing. Changes to the schedule or cost reimbursement within ten (10%) of the original amount may be made as minor administrative changes to the original agreement, with any other change executed with the same formalities as the original Agreement.

5. NOTIFICATION

Any notice required or permitted to be given pursuant to this Agreement shall be in writing, and shall be sent postage prepaid by U.S. Mail, return receipt requested, to the following addresses unless otherwise indicated by the Parties to this Agreement:

To the City of Fife: Ken Gill
City Engineer
Public Works Department
3725 Pacific Highway East
Fife, WA 98424
kgill@cityoffife.org
(253) 922-9315

To the PORT: Carol Rhodes
Senior Project Manager, Engineering
Port of Tacoma
1 Sitcum Plaza
Tacoma, WA 98401
crhodes@portoftacoma.com
(253) 592-6703

6. RECORDS RETENTION AND AUDIT

During the progress of the work on the Erdahl Ditch Project and for a period not less than three (3) years from the date of Final Completion of the Erdahl Ditch Project, the engineering and construction records pertaining the culvert and any associated work in the Erdahl ditch are to be kept available for inspection and audit by the Port and the Port shall provide the City with copies of all design and construction documents pertaining to the Erdahl Ditch Project upon the City's request. 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 typical three year retention period. This provision is not intended to alter or amend records retention requirements established by applicable state and federal laws.

7. DISPUTES

The designated representatives herein under section 4.0, NOTIFICATION, shall use their best efforts to resolve disputes between the Parties. If the designated representatives are unable to resolve a dispute, then the responsible Project directors for each Party shall review the matter and attempt to resolve it. If the Project directors are unable to resolve the dispute, the matter

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shall be reviewed by the department director or chief executive officer of each Party or his or her designee. The Parties agree to exhaust each of these procedural steps before seeking to resolve disputes in a court of law or any other forum.

8. EFFECTIVENESS AND DURATION

The duration of this Agreement is until the revised easement is executed and the Erdahl Ditch Project is complete.

9. TERMINATION

Either Party may terminate this Agreement at any time upon thirty (30) days written notice to the other Party, provided however, if the Port decides to terminate this Agreement, the Port shall reimburse the City for all costs payable under this Agreement and all non-cancelable obligations that the City incurred prior to receiving the Port's notice of its intent to terminate this Agreement. For the purposes of this Agreement, "non-cancelable obligations" are defined as those costs that the Port is obligated to pay as of the day that the Port provides notice that it is terminating this Agreement.

10. INDEMNIFICATION AND HOLD HARMLESS

10.1 To the maximum extent permitted by law, the City shall protect, defend, indemnify, and hold harmless the Port, its officers, officials, employees, and agents from any and all costs, claims, demands, suits, actions, judgment, and/or awards of damages, including but not limited to reasonable attorney's fees, to the extent arising out of, or in any way resulting from this Agreement.

10.2 The City agrees that its obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the City hereby waives, with respect to the Port only, any immunity that would otherwise be available against such claims under the Industrial Insurance provision of Title 51 RCW to the extent necessary to provide indemnification as required under this Agreement.

10.3 The indemnification, hold harmless, and/or waiver obligation described in this Agreement in paragraphs 10.1 and 10.2 shall survive the termination of this Agreement.

11. VENUE

This Agreement shall be deemed to be made in the County of Pierce, State of Washington, and the legal rights and obligations of the City and Port shall be determined in accordance with the laws of the State of Washington. All legal actions in connection with this Agreement shall be brought in the County of Pierce, State of Washington.

12. PROJECT FINANCING.

Except as provided above, the Parties shall finance its own conduct of responsibilities under this Agreement.

13. PROPERTY OWNERSHIP.

No ownership of property will transfer as a result of this Agreement.

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14. NO THIRD PARTY BENEFICIARIES

This Agreement is entered into solely for the mutual benefit of the parties. This Agreement is not entered into with the intent that it shall benefit any other person or entity and no other such person or entity shall be treated as a third-party beneficiary of this Agreement.

15. SEVERABILITY

The provisions of this Agreement are hereby declared to be separate and severable, and the invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Agreement or the invalidity of its application to any person or circumstance shall not affect the validity of its application to other persons and circumstances.

16. LEGAL OBLIGATIONS. This Agreement does not relieve either party of any obligation or responsibility imposed upon it by law.

17. TIME IS OF THE ESSENCE. The requirements of this Agreement shall be carried out in a timely manner according to a schedule negotiated by and satisfactory to the parties.

18. COPIES FILED WITH COUNTY AUDITOR OR POSTED ON PARTIES' WEB SITE: Copies of this Agreement shall either be filed with the Pierce County Auditor's Office after execution or posted on each parties' website listed by subject or other electronically retrievable public source, as allowed by RCW 39.34.040, and shall be filed with the respective party authorities.

19. ENTIRE AGREEMENT. This Agreement, including Exhibits constitutes the entire understanding of the Parties with respect to its subject matter and supersedes any prior oral or written statements.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement which shall be effective upon the date of recording.

PORT OF TACOMA

City of Fife

John Wolfe, Chief Executive Officer
Date: _____

Subir Mukerjee, City Manager
Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Port Legal Counsel
Date: _____

City of Fife Attorney
Date: _____

**INTERLOCAL AGREEMENT BETWEEN PORT OF TACOMA AND CITY OF
FIFE HYDRAULIC ANALYSIS REVIEW AND APPROVAL**

ATTEST:

Carol Etcen

Date: _____