

**AGREEMENT BETWEEN
CITY OF ORTING
and
PORT OF TACOMA
REGARDING
CONSTRUCTION OF A PEDESTRIAN BRIDGE OVER HWY 162**

THIS AGREEMENT (“AGREEMENT”) is entered into this ___ day of _____, 2022, by and between the [City of Orting, a city of the State of Washington] (hereinafter the “City”), and the **PORT OF TACOMA**, a Washington public port district (the “Port”), (each a “Party,” collectively the “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 proposes the construction of a pedestrian bridge over highway 162 adjacent to Orting Primary and Middle Schools. (the “Project”).
3. The City has requested and the Port agrees to provide an investment of \$25,000 toward the Project costs, conditioned upon proof of Project expenditures, and as expressly specified herein.
4. The Port finds the requested contribution meets the Port’s Local Economic Development Policy criteria as follows:
 - A. This project will remove a hazardous, at-grade, pedestrian crossing on a key freight route consistent with priority ‘A’.

CONSIDERATION

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**
 - A. The City or Orting HWY 162 Pedestrian Bridge consists of the following:
 - i. Property acquisition and construction of the HWY 162 Pedestrian Bridge.
 - B. All as described in the City’s Application, as attached hereto as **Attachment A**.

2. PORT'S CONDITIONAL AGREEMENT TO CONTRIBUTE FUNDS

A. Subject to the terms herein, the Port agrees to provide reimbursements of an amount not to exceed \$25,000 reimbursable up to 24 months from the Port signing for expenses incurred by City for the Project. City shall be responsible for timely payment of all invoices submitted by third parties providing goods or services for the Project. City shall submit to the Port, or its designee, paid project invoices within ninety (90) days after the referenced goods or services have been provided. The Port or its designee shall review any such invoices and as appropriate make payment to City within thirty (30) days of receipt of the invoice. The Port shall not be obligated to reimburse City for invoiced goods or services where invoices are not submitted in a timely fashion. City shall be solely responsible for compensation of City's employees, including those employees' salaries, fringe benefits, or any other compensation, including for time spent by those employees related to the Project. The Port shall not be responsible to provide reimbursement for any compensation to City's employees.

B. Conditions of the Port's funding are as follows:

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

ii. The Port's annual Project contribution shall be allocated and is identified in the Port's 2022 budget.

C. The Port's distribution of funds is further contingent on the City obtaining full committed funding 24 months from the Port signing for the complete Project scope and the contents of this AGREEMENT remain unchanged.

D. 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 City has paid its minimum contribution of \$25,000 in expenditures.

3. TIMEFRAME/PROJECT SCHEDULE

TWENTY-FOUR MONTHS FROM THE DATE OF THE PORT'S SINGATORY

4. CITY'S PROJECT FINANCIAL SUMMARY

A. Total Project Cost: \$9,500,000

B. Source of Funds (other than the Port):
- State of Washington (Design): \$1,500,000
- State of Washington (Final Design and Construction): \$6,000,000

5. ABANDONMENT. If the Project is abandoned, then this AGREEMENT shall be of no further force or effect.

6. **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.

7. **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.

8. **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.

9. **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.

10. **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. **TERMINATION.** This AGREEMENT shall terminate after all reimbursements are paid or two years following completion of the Project, whichever occurs first, unless terminated earlier by written agreement. However, absent express authorization by the Port, in no case will the Port's allocations as provided under this AGREEMENT be committed for more than two years after approval of this AGREEMENT by the Port.

12. **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. **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: Attention: Scott Larson, City Administrator
Email: slarson@cityoforting.org

Port: P.O. Box 1837
Tacoma, Washington 98406
Attention: Matthew Mauer

Email: mmauer@portoftacoma.com

14. 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.

15. 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 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 chapter 39.34 RCW or shall be posted to each Parties' web site.

16. 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 City 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.

17. 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.

18. 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.

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 to the other party 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 either Party by reason of entering into this AGREEMENT except as expressly provided herein.

H. The provisions of this Article 18 shall survive any termination or

expiration of this AGREEMENT.

CITY OF ORTING :

By: 

Its: *Mayor*

Date: 7/28/2022

PORT OF TACOMA:

By: *Eric D. Johnson*
Eric D. Johnson (Jun 13, 2022 15:53 PDT)

Eric Johnson
Its: Executive Director

Date: Jun 13, 2022

Approved as to form:

By: 

Its: *City Attorney*

By: 

Heather L. Burgess
Its: Legal Counsel