

CONFIDENTIALITY AND COMMON INTEREST AGREEMENT

This Confidentiality and Common Interest Agreement (“Agreement”), dated June 13, 2016 by and between the City of Tacoma (“City”) and the Port of Tacoma (“the Port”) (individually a “Party,” and collectively, the “Parties”) memorializes understandings previously reached between the Parties with respect to sharing information relating to the lawsuit involving the Parties concerning two initiatives filed in the City of Tacoma in March of 2016 (“the Lawsuit”).

Citizens Charter Amendment Initiative No. 5 (“Charter Initiative”) and Citizens Initiative No. 6 (“Code Initiative”) (collectively “the Initiatives”) would amend the Tacoma City Charter and the Tacoma Municipal Code to insert new requirements for the provision of municipal water service that conflict with and purport to preempt state, federal and international law. Specifically, the Initiatives would require the City to hold a public vote on an application for water service that exceeds 1 million gallons per day, and require the water service applicant to pay for the costs of such an election. The Initiatives also attempt to restrict the powers of the state courts and remove the constitutional and statutory rights of corporations in violation of federal law. On June 6, 2016, the Port filed a lawsuit against the City, the political committee sponsor and individual promoters of the Initiatives and the Pierce County Auditor Julie Anderson. On June 8, 2016, the City answered the Port’s complaint and filed cross-claims against the Initiatives’ sponsors and promoters and Defendant Anderson.

The Parties agree that they have common interests with respect to the Lawsuit and have concluded that, from time to time, their mutual interests will be best served by sharing information, appraisals, legal research or analysis, mental impressions, memoranda and other information, including the confidences of their clients, which would otherwise be exempt from disclosure under the Washington Public Records Act, chapter 42.56 RCW (“PRA”). This listing is not intended to be all-inclusive; it is merely representative of materials or information that are exempt from public disclosure because they are subject to an exemption from the PRA including the attorney-client privilege; the attorney work-product doctrine; the accountant-client privilege; the deliberative process privilege; controversy exemption; and/or other applicable exemptions, privileges, or doctrines exempting records from disclosure. Such information shall hereinafter be collectively referred to as the “Shared Information.” It is understood that any and all Shared Information disclosed by and among the Parties and their counsel shall remain exempt from public disclosure by the joint prosecution or common interest privilege, the attorney-client privilege, attorney work product doctrine, and any and all other applicable exemptions, privileges, or rules of confidentiality, whether or not so identified or marked, and that no waiver of any such exemptions, privileges or protections shall occur because such Shared Information is shared as between the City and the Port.

The Parties have discussed both the advantages and disadvantages of this Agreement with their respective counsel. Counsel have informed their clients that the provisions of this Agreement do not override each attorney’s obligation to represent his or her client zealously and, within this capacity, to preserve and to protect client confidences and secrets, absent consent of the client to disclose them. The Parties have been advised by their counsel that disclosures made under this Agreement are permissive and discretionary, not mandatory.

Currently, no Party is aware of any existing conflicts of interest amongst the Parties that would preclude their participation under the terms of this Agreement. However, the Parties acknowledge the possibility that one or more of them may take positions in the course of the Lawsuit that may be in conflict with, or inconsistent with, the position of one or more of the other Parties. Under such circumstances, when such conflict is discovered or arises, it will be fully disclosed to all Parties and resolved as set forth in Paragraph 5 below.

Accordingly, the Parties agree as follows:

1. Exchange of Shared Information. During the pendency of the Lawsuit and any related court proceedings, Shared Information may be exchanged or disclosed between or among the Parties and their counsel in order to further their common interests. It is the mutual understanding of the Parties that such exchanges or disclosures, no matter how disclosed, are not intended to, and shall not, diminish or waive in any way the exempt or privileged nature or confidentiality of such materials or information. It is the additional understanding that any exchanges or disclosures shall be conducted and protected pursuant to the common interest or joint prosecution privilege, and any other applicable exemptions, privileges, or doctrines, to the fullest extent allowed under the law.

2. No Disclosure. Neither the Parties nor their counsel will disclose Shared Information obtained from each other, or the contents thereof, to anyone except their counsel (including lawyers within their firms), appropriate employees or agents, or non-testifying experts, without first obtaining the written consent of all Parties who may be entitled to claim any exemption or privilege with respect to such materials or information. The Parties and their counsel shall, to the extent practicable, mark all Shared Information with the designation "Confidential, Privileged, and Exempt from Disclosure, Pursuant to Common Interest Agreement," or some comparable designation; provided, however, that the failure to so designate any Shared Information shall not imply or be construed as a waiver of any of the protections to be afforded such material hereunder.

3. Use of Shared Information. Shared Information obtained from another Party is to be used solely by the Parties and their counsel in the preparation of prosecution and/or evaluation of issues related to the Lawsuit and/or any related court proceedings that may be brought by or against the Parties. Shared Information may not be used by a Party against the interests of the other Party and shall not be admissible in any proceeding relating to a dispute between the Parties. Nothing in this Agreement shall obligate any Party to share any information with any other Party to this Agreement.

4. Requests for Shared Information. If another person or entity requests or demands, under 42.56. RCW, by subpoena, or otherwise, any Shared Information that the Party subject to the request obtained from another Party, or the Parties jointly developed in the course of the Lawsuit, the Party to whom the request is directed shall: (a) promptly notify the Party who produced the Shared Information, who is named in the Shared Information, or to whom the Shared Information pertains, in accordance with RCW 42.56.540 or other applicable law to afford such Party not less than ten (10) days prior notice for the opportunity to seek an

injunction preventing the release of the Shared Information and/or to quash a subpoena; and (b) after such notification, to the extent authorized by chapter 42.56 RCW or other applicable law, make reasonable and lawful efforts to determine whether the Shared Information is exempt from disclosure and to assure that the Party seeking protection of the Shared Information is provided a reasonable period in which to seek injunctive relief in the event the Party to whom the request is directed believes there may be a basis to disclose the Shared Information. Nothing herein shall preclude a Party from producing Shared Information as required by a court order. The right of any Party to the protections afforded by this Agreement and applicable exemptions and privileges shall not be waived by any other Party's unauthorized, negligent, or unintentional disclosure of Shared Information. Each Party shall bear its own attorney fees and costs incurred in responding to any requests for Shared Information or in seeking injunctive or other relief to prevent the disclosure of Shared Information.

5. Withdrawal or Dismissal. Any Party and its attorneys may withdraw from this Agreement by giving written notice to all Parties. Such withdrawal shall be effective upon receipt of such written notice by the signatories hereto, but this Agreement shall remain in force after withdrawal as to any and all Shared Information provided prior to the date withdrawal is effective as provided herein. In the event that any Party withdraws from this Agreement or ceases to be a part of the joint or common prosecution for any reason, each such Party and its attorneys shall remain obligated to continue to protect the confidentiality of all Shared Information, both oral and written, as though such Party or its attorneys were still active in the common prosecution.

Each Party agrees that if at any time it no longer has interests in common with the other Party to this Agreement or that if at any time its interests on any issue become adverse to those of the other Party to this Agreement, that Party shall notify the other Party of such conflict and the Parties may take steps to isolate such issue from common consideration or to protect each Party's interests on such issue, including requiring the Party whose interests have become conflicting, to withdraw from the Agreement. In the event of notification of such conflict by any Party, or the withdrawal by any Party from this Agreement, such Party shall not be precluded from fully pursuing all of its interests in the Lawsuit, including those interests that have been identified as in conflict with those of the other Party, provided that in the event of withdrawal, the withdrawing Party and its counsel agree to continue to fulfill the obligations to hold the Shared Information confidential.

6. No Agency or Attorney-Client Relationship. By entering into this Agreement, the Parties do not intend that any agency or any attorney-client relationship be created with any other Party's attorneys and each Party acknowledges and agrees it is relying upon the advice of its own counsel with respect to the subject matter of this Agreement. Neither this Agreement nor any actions taken pursuant to the Agreement shall create any agency or any attorney-client relationship between a Party and any attorney for any other Party, nor shall anyone acting on behalf of a Party hold themselves out as an agent for the other Party.

7. No Conflict of Interest. Neither this Agreement nor any action pursuant to this Agreement shall create a conflict of interest for any Party's attorneys or constitute a basis for disqualification of any Party's attorneys from the representation of that Party. No Party's

attorney shall be prevented, because of participation in the Agreement, from examining or cross-examining the other Party at deposition or trial.

8. No Violation of Law. Each Party and each Party's attorneys hereby represent and agree that this Agreement and the actions taken pursuant to it do not, and in no way are intended to, constitute or encourage or facilitate any violation of law, or any violation of any Rule of Professional Conduct, or any interference with any official proceeding or investigation.

9. Specific Performance. No adequate remedy is available at law for a breach of this Agreement. Accordingly, in addition to any other remedies available, performance of this Agreement may be specifically ordered or a breach hereof may be enjoined, or both.

10. Choice of Law. Washington law governs this agreement. The parties agree that any dispute arising under this Agreement will be heard in Pierce or Thurston County, and the Parties consent to personal jurisdiction in those courts.

11. Entire Agreement. This Agreement supersedes any prior written or oral agreement or understanding that may have been in effect between and among any of the Parties and their respective counsel regarding the subject matter hereof and represents the full understanding of all the parties to this Agreement. This Agreement also confirms that, to the extent that any of the parties to the Agreement already have been in communication concerning any Shared Information, such communication and any corresponding exchanges or disclosures have been made pursuant to the joint prosecution or common interest privilege and are now subject to this written Agreement.

12. Notices. Any notices required by or sent pursuant to this Agreement shall be directed to the following individuals. Notice sent via e-mail shall constitute valid written notice.

For the Port:

Carolyn Lake
GOODSTEIN LAW GROUP PLLC
501 South G Street
Tacoma, WA 98405
clake@goodsteinlaw.com
Cell: 253-2296727
Office: 253-779-4000


For the City:

Elizabeth Pauli
Tacoma City Attorney
Tacoma Municipal Building
747 Market Street
Room 1120
Tacoma, WA 98402

Copy to:
Kymberly K. Evanson
Pacifica Law Group LLP
1191 Second Ave., Suite 2000
Seattle, WA 98101-3404
Email: kymberly.evanson@pacificalawgroup.com
Office: 206-245-1700

13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties may execute this Agreement by a faxed signature or .pdf copy in place of an original signature.

CITY OF TACOMA

By:  _____
Elizabeth Pauli, City Attorney

PORT OF TACOMA

By: _____