

**RESOLUTION NO. 672**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE CITY OF TACOMA FOR THE PURPOSE OF COOPERATIVE PERMITTING OF THE POINT RUSTON PROJECT.**

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WHEREAS, in accordance with Chapter 39.34 RCW, the “Interlocal Cooperation Act”, the City is authorized to contract with other governmental agencies to provide services that the City is authorized to perform; and

WHEREAS, the City of Ruston and the City of Tacoma have agreed to create a streamlined permit approval process for the Point Ruston Project with Tacoma acting as lead agency for all permits which are submitted after the adoption of the Agreement; and

WHEREAS, the City of Ruston will continue to review all permits for the Ruston portion of the project and to provide input to Tacoma thereon; and

WHEREAS, Tacoma will manage the process and issue the permits in accordance with the Interlocal Agreement; and

WHEREAS, Tacoma and Ruston have established a process to discuss and resolve any conflicts or disagreements on the permits and other development issues; and

WHEREAS, Tacoma will reimburse Ruston for its review time, with the Interlocal Agreement providing reimbursement of up to thirty percent (30%) of the permit fee under the Agreement, however, these amounts may change or be updated by a later adopted “Rate Agreement”; and

WHEREAS, the City Council finds it in the public interest to authorize the Mayor to execute the proposed Interlocal Agreement regarding Coordinated Permitting of the Point Ruston Development which is attached to this Resolution as Exhibit “1”; **NOW, THEREFORE,**

**THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. Authorization of Agreement. The Mayor is hereby authorized to execute the 2 Interlocal Agreement regarding Coordinated Permitting of the Point Ruston Development between the City of Ruston and the City of Tacoma in substantially the form attached hereto as Exhibit “1”.

Section 2. Posting on Website Required. The Clerk is directed to post a copy of this Agreement, once fully executed, on the City’s website.

RESOLVED this 6th day of February, 2018.

APPROVED:

\_\_\_\_\_  
Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Judy Grams, City Clerk

FILED WITH THE CITY CLERK: 2-6-2018  
PASSED BY THE CITY COUNCIL: 2-6-2018  
RESOLUTION NO.: 672

**Attachment “1”**  
**Interlocal Agreement**  
**Regarding Coordinated Permitting of the Point Ruston Development**  
**Between**  
**City of Tacoma**  
**and**  
**City of Ruston**

When Recorded Return To:

City of Tacoma  
Planning and Development Services Department  
747 Market Street  
Tacoma, WA 98402

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<b>Document Title:</b>	<b>INTERLOCAL AGREEMENT REGARDING COORDINATED PERMITTING OF THE POINT RUSTON DEVELOPMENT</b>
<b>Parties:</b>	<b>CITY OF RUSTON &amp; CITY OF TACOMA</b>
<b>Legal Description:</b>	<b>NA</b>
<b>Referenced Document(s):</b>	<b>AF#200809260096</b>
<b>Assessor's Tax Parcel Number:</b>	<b>NA</b>

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## **Interlocal Agreement Regarding Coordinated Permitting of the Point Ruston Development**

THIS INTERLOCAL AGREEMENT REGARDING COORDINATED PERMITTING OF THE POINT RUSTON DEVELOPMENT (this "Agreement") is made and entered into this 6th day of February, 2018 (the "Effective Date") by and between the City of Tacoma, a Washington municipal corporation ("Tacoma") and the City of Ruston, also a Washington municipal corporation (separately "Ruston" and, together with Tacoma, the "Municipalities"). The parties hereby agree as follows:

### Section 1 Recitals

1.1 Tacoma and Ruston previously entered into that certain "Interlocal Agreement between the City of Ruston and the City of Tacoma for Paving, Street lighting and Utilities Project" dated September 17, 2008 and recorded under Pierce County Auditor's File No. 200809260096 (the "LID ILA"). The LID ILA related to the negotiation and creation of local improvement districts established to finance the construction of certain public infrastructure improvements (the "Project") to be built at or near the Point Ruston Development (the "Development"), with such Project spanning the jurisdictional boundaries of both Municipalities. The LID ILA established a cooperative framework for administering the Project, with Tacoma deemed the primary agency and designated as the "Project Administrator". The Project under the LID ILA was substantially completed in April 2012, but the Municipalities, through this Agreement, desire to continue such cooperative efforts in regard to the regulation of other aspects of the Development.

1.2 The Development is located on approximately 97-acres and includes approximately one-mile of waterfront property straddling the municipal boundary of the Municipalities. The Development is proposed to comprise multiple uses, buildings, and structures, some of which have been completed, and others are currently being constructed, or will be proposed and constructed in the future. The Development is being undertaken by separate legal entities, each of which is affiliated with the master developer of the Development, Point Ruston LLC (and each such affiliated legal entity together with

Point Ruston LLC shall be collectively referred to hereinafter as the “Developer”). Environmental review of the proposed Development was conducted under the Final Supplemental Environmental Impact Statement SEP2007-40000090529 (“FSEIS”), with Tacoma acting as the Lead Agency of such review, as such FSEIS may be amended. With the Development currently undergoing substantial construction and development, the Municipalities are engaged in frequent regulatory oversight, permit review, inspection and approval.

1.3 As the Development represents significant and important growth and development opportunities for both Municipalities, the Municipalities are seeking to maximize their resources and coordinate their review and approval processes, as well as ensure the timely resolution of all matters related to the Development, including final permit issuance and approval of projects related to the Development.

1.4 The Municipalities agree that cooperating in their regulatory and ministerial duties in regard to the Development will enhance the efficiency and effectiveness of such administrative processes and facilitate the successful outcome of the Development. As such, the Municipalities have agreed to enter into this Agreement, which provides Tacoma the authority to be the lead agency and to manage the administrative land use and building permitting processes arising after the Effective Date hereof, and as defined herein. “Tasks” encompass the municipal functions related to all project permits required by law to effectuate the improvement, development, or modification, of the Development in Ruston, including but not be limited to, all land use and building permitting, approval, and inspection processes (with the exception of the current building permits, as described under section 2.2(i), below), with Tacoma acting as the lead agency in undertaking and administering the municipal regulations, oversight, review, permitting, inspection, and approval processes related to the projects, proposals, and permits associated with the Point Ruston Development in Ruston as described in this Agreement.

## Section 2 Joint Process Management & Cooperation

2.1 In furtherance of the collaborative principles established in Section 1 above (the “Recitals”), the Municipalities agree to the following:

a) In administering the Tasks, the Municipalities shall share any and all documentation related thereto with each other, with copies of all such documentation, reports or other data and information arising from Tacoma undertaking the Tasks to be promptly copied and shared with Ruston.

b) Neither Municipality shall take any regulatory or other action related to the Development, including undertaking enforcement action, without first notifying the other in advance of such action and agreeing to discuss the issues(s) and possible resolution(s) related thereto, provided that this provision shall not be interpreted as limiting, conditioning, or placing any additional limitations on Tacoma’s role in performing the Tasks as otherwise set forth herein.

c) To meet regularly amongst themselves and/or with the Developer to discuss activities related to the Development, share progress, and resolve issues.

d) To draw upon each other’s expertise and staff resources in the regulation of building and land use matters, including planning, permitting, inspection, and compliance, with Tacoma providing its municipal resources to foster efficient and effective regulatory decision-making for the Development and to avoid unnecessary delays of the Development.

e) To provide each other copies of all Development-related correspondence sent to any local agency, state agency, federal agency, or the Developer; and

f) To collaboratively use best efforts to take action on complete permit applications within 30 days of applications being deemed complete.

2.2 As part of accomplishing the shared regulatory goals and actions set forth in subsection 2.1 above, the Municipalities further agree as follows:

a) Ruston grants Tacoma the authority to undertake and perform the administrative Tasks associated with the Development arising after the Effective Date.

b) Where Ruston as a utility provider has established utility connection fees and standards, those fees and standards will be applied in reviewing and permitting the utility aspects of the Development with the connection fees being paid directly to Ruston at the time of the building permit application.

c) Tacoma will collect all fees related to the Tasks hereunder, including but not limited to all local permit application fees, with the amount of all such fees calculated according to Tacoma's regular permit fee schedule adopted in the Tacoma municipal code ("Permit Fees"). If the applicable permit does not have a fee schedule in the Tacoma municipal code, then the applicable fee shall be established in the Rate Agreement, and prior to adoption of the Rate Agreement shall be determined by reference to the most similar rate category in Tacoma's fee schedule. A "Surcharge" may be applied to such Permit Fees, subject to the Municipalities and Developer entering into a Rate Agreement which specifies the applicable Surcharge. Until such Rate Agreement is entered between the Municipalities and Developer, Developer shall reimburse Tacoma monthly for Ruston's review fees. The aggregate total of such reimbursements shall not exceed thirty percent (30%) of the total applicable Permit Fees, shall not exceed the legal reasonable fee test, and shall be consistent with Ruston's role as a reviewing agency. The reimbursement shall be transmitted to Ruston within 30 days of receipt by Tacoma. Ruston may elect to provide its contract staff with additional compensation beyond the Surcharge which shall be solely at Ruston's cost and expense.

d) Ruston contract staff under the Rate Agreement may provide Tacoma with input and comments on the Tasks undertaken by Tacoma on the Development in Ruston. However, Ruston shall fund all costs related to any such comments or input that Ruston provides to Tacoma for projects in Tacoma.

e) No final permits shall be issued by Tacoma for Development components located in Ruston until Tacoma has provided the draft permit to Ruston at least five (5) business days prior to the projected date of issuance to allow Ruston adequate time for input and, if necessary, to utilize the dispute resolution process in Section 2.3 below.

f) Both Municipalities will establish single points of contact for all aspects of permitting of the Point Ruston development in order to facilitate efficient and reliable communications.

g) The Municipalities will jointly request that Point Ruston establish a single point of contact for all aspects of the Point Ruston permit process in order to facilitate efficient and reliable communications. These points of contact shall be set forth in the Rate Agreement and may be modified administratively from time to time upon written notice to all of the parties to the Rate Agreement.

h) In addition to the permit processing, for all applications for permits which are submitted after the Effective Date, the inspections and approvals shall be performed by Tacoma with copies of all reports being contemporaneously copied to Ruston.

i) For all current building permits applied for prior to the Effective Date, which includes, but is not limited to, the Parking Garage (RST 14-1312), the Hotel (RST 17-1526), Intaglio Salon Tenant Improvements (RST 17-1577), Tickled Pink Boutique Tenant Improvements (RST 18-1590), Purpose Boutique Tenant Improvements (RST 17-1519), and Pink Polish Salon Tenant Improvements (RST 17-1576), Ruston shall have responsibility for inspections under an agreement with the Pierce County government, which shall authorize Pierce County to conduct the Building Inspection Services related to the current building permits (“Pierce County Agreement”). The Pierce County Agreement shall be entered into contemporaneous with this Agreement. In the event the Pierce County Agreement shall terminate for any reason, then the inspections of the current building permits under the Pierce County Agreement shall thereafter be automatically assigned to and performed by Tacoma, with the Tasks being defined thereafter to include inspections of the current building permits. Fees related to the current building permits that were applied for prior to the Effective Date shall be collected by Ruston pursuant to Tacoma’s regular fee schedule adopted in the Tacoma Municipal Code.

2.3 In the event a dispute arises between the City of Ruston and the City of Tacoma from either a decision made by Tacoma in its performance of the Tasks, or a decision made by Pierce County in its conduct or performance of the inspection services, then a dispute resolution process shall be engaged by the Municipalities. A written notice of disagreement shall be lodged in writing within two (2) business days of an inspection as to an Inspection Dispute, and prior to issuance of a permit as to a project permit dispute. This dispute resolution process shall not apply after the issuance of any project permit. The dispute resolution process shall be as follows: (i) First, the Planning Directors for the Municipalities (collectively the “Directors”) shall meet within, either (a) one (1) business day of such disagreement having been lodged in writing with the parties entitled to receive notice under Section 3, if such disagreement relates to matters arising from or related to a building inspection (an “Inspection Dispute”), or (b) within three (3) working days of any such other disagreement having been lodged in writing with the parties entitled to receive notice under Section 3 (a “General Disagreement”). The Directors shall each provide written findings supporting their position related to such Inspection Dispute or General Disagreement, as the case may be, with a copy of such findings provided to the parties entitled to receive notice under Section 3. The Directors shall use their best efforts to resolve the dispute at this meeting. In the event the dispute is not resolved by the Directors at the meeting, then, (ii) within five (5) days of the Directors meeting to resolve an Inspection Dispute, or fourteen (14) days of their meeting to resolve a General Disagreement, the Mayor of Ruston and City Manager of Tacoma shall meet and attempt to resolve the dispute. Both Directors shall provide the City Manager and Mayor with the written findings, updated as applicable, to assist in the discussion and decision-making. In the event such written findings are updated, they shall be provided to the parties entitled to receive notice under Section 3. If the dispute remains unresolved, the Mayor and City Manager may jointly agree to initiate formal mediation in order to resolve the dispute with the assistance of a neutral third party.

However, in the event the dispute is not resolved at the meeting between the Mayor and City Manager, Tacoma shall nevertheless issue its decision relating to issuance or non-issuance of a land use approval or building permit or conditions thereof, and Tacoma, Ruston and the Developer shall each have the right to appeal such decision in accordance with the applicable procedures under the applicable code or law. The Ruston municipal code and procedures shall apply to permits and decisions rendered on components of the Development in Ruston. During the pendency of any dispute resolution process the Municipalities shall continue to perform their obligations under this Agreement as to any other Tasks not in dispute.

### Section 3 Notices

Any notices required by this Agreement shall be sent in writing to the following:

To Tacoma:  
ATTN: City Manager  
747 Market Street, RM. 1200  
Tacoma, WA 98402

To Ruston:  
ATTN: Mayor  
5117 N. Winnifred Street  
Ruston, WA 98407

To the Developer:  
ATTN: Loren M. Cohen  
5219 N. Shirley St. Suite 100  
Ruston, WA 98407

Notices required or permitted to be given hereunder shall be delivered in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery. Duplicate copies of the notices shall also be sent via email.

### Section 4 Duration of Agreement and Termination

The Municipalities intend for this Agreement to continue in full force and effect with regard to the components of the Development identified in the FSEIS for a period of five (5) years. At that time, the Agreement will automatically renew for one additional term of five (5) years, unless either party gives the other party 365 days' written notice of its intent to terminate, in which case, the Agreement will terminate on the sixth year anniversary of the effective date. If the Developer, or any of its subsidiary entities within the Development ceases to operate or ends up in receivership or bankruptcy, then either party may terminate the parties' responsibilities under this Agreement upon ninety (90) days' written notice, as to the entity in receivership or bankruptcy.

### Section 5 Miscellaneous Provisions

Each Municipality agrees to indemnify, defend, and hold the other harmless, together with its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the negligence of the other that occurs in the performance of this Agreement. In addition to the foregoing, the Municipalities agree to defend and hold the other harmless from any claims for delay that arise from a permit decision in the other's jurisdiction.

5.1 If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the



extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible. Both parties agree to cooperate in the defense of this agreement and are executing it in good faith.

5.2 Nothing in this Agreement shall be construed as creating any separate entity or joint venture between the Municipalities, nor shall anything in this Agreement be considered to create any third party beneficiary rights in Point Ruston or any other third party and is neither expressly nor impliedly enforceable by any third party.

5.3 No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the Municipality waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, shall in any way constitute a continuing waiver unless the writing so specifies.

5.4 This Agreement and any attachments, exhibits, and schedules referred to in this Agreement constitute(s) the final, complete, and exclusive statement of the terms of the agreement between the Municipalities pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements of the Municipalities. This Agreement does not supersede or amend the LID ILA, which remains in full force and effect. This Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. Neither Municipality has been induced to enter into this Agreement by, nor is any Municipality relying on, any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this AGREEMENT:

CITY OF TACOMA:

CITY OF RUSTON:

\_\_\_\_\_  
Elizabeth Pauli, City Manager

\_\_\_\_\_  
D. Bruce Hopkins, Mayor

Attest:

Attest:

\_\_\_\_\_  
Doris Sorum, City Clerk

\_\_\_\_\_  
Judy Grams, City Clerk

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Steve Victor, Deputy City Attorney

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Jennifer Robertson, City Attorney