

**INTERLOCAL AGREEMENT BETWEEN THE PORT OF SEATTLE AND THE PORT OF TACOMA FOR
JOINT ECONOMIC IMPACT STUDY**

INTRODUCTION

This Interlocal Agreement (ILA) is between the PORT OF SEATTLE (POS), a municipal corporation of the state of Washington and the PORT OF TACOMA (POT), a municipal corporation of the state of Washington, collectively referred to as the "Parties."

RECITALS

WHEREAS, both POS and POT are port districts incorporated under the authority of Chap. 53.04 RCW; and;

WHEREAS, both POS and POT enjoy the power and the authority to contract with private entities to undertake economic studies; and

WHEREAS, under the Interlocal Cooperation Act, Chap. 39.34 RCW, both POS and POT have authority to enter into an interlocal agreement (ILA) to procure joint economic studies; and

WHEREAS, both POS and POT would like to solicit proposals from firms interested in conducting a comprehensive analysis of the economic impacts derived by the activities related to each port and share the cost of the preparation of this study; and

WHEREAS, a section of the comprehensive economic study would assess areas of economic impact generated by POS and POT in the Puget Sound region and in the State of Washington; and

NOW, THEREFORE, in consideration of mutual promises and covenants herein contained, the Parties agree to the terms and conditions as follows:

RESPONSIBILITIES OF THE PARTIES

1. The Parties shall continue to work cooperatively to jointly procure consulting services for an economic impact study.
2. Each Party shall designate a primary contact person to facilitate communications concerning the execution of this ILA. The designated contact persons and contact information for each Party are identified below:

Port of Tacoma

Port of Seattle

Michael Tong, Corporate Budget Manager

2711 Alaskan Way, Seattle, WA 98121

Telephone: (206) 787-3321

3. POT shall be responsible for administering the execution of the RFP and contract, but shall confer with POS about material matters related to the procurement of the consultant and contract. POS is a third party beneficiary to the contract executed between the consultant and POT.

4. The Parties shall jointly select the consultant and shall designate appropriate staff to serve on the selection team. POS shall designate one staff member to serve on the team and the POT shall designate two staff members to serve on the team. The team members shall strive to reach a consensus concerning the selection of the consultant, but are not required to reach a unanimous decision concerning the selection of the consultant.
5. The contract scope of work may include the following: (a) joint study objectives of POT and POS together; (b) POT specific study objectives; (c) POS specific objectives; and (d) economic impact of the State of Alaska on the Puget Sound region. If the Parties decide to include (a) or (d), they shall equally share of the costs of the joint study objectives. If either Party decides to include (b) and/or (c), each Party shall be responsible for the cost of its individual study needs and the contract shall provide for a method to add or revise the scope of the study. Joint study objectives shall take precedence over individual Port specific study objectives. POS will manage this additional work, directing the consultant as necessary within the scope of the contract with the Consultant once the contract has been amended to clearly reflect the POS specific study objectives. POS is not obligated to authorize any additional work outside of the scope of the contract as amended. The POS is authorized to spend up to \$200,000 for the joint study and POS specific study objectives. Invoices submitted by POT to POS with appropriate backup supporting the charges on the invoice shall be paid within thirty calendar days from the date of issue.

GENERAL PROVISIONS

6. Effectiveness and Termination - This Agreement shall become effective upon signature by both Parties and shall remain in effect until terminated on or before 12/31/2014, whichever event or date occurs first.
7. Termination Without Cause - This Agreement may be terminated by either Party for any reason upon provision of thirty (30) days written notice to the other Party. Each Party shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination. Before terminating this Agreement without cause, the Parties must first engage in dispute resolution as provided for in this Agreement.
8. Amendment - This Agreement may be amended, altered, or clarified only by written agreement of the Parties, and may be supplemented by addenda or amendments (e.g., new scopes of work and cost estimates) which have been agreed upon by both Parties in writing. Copies of such addenda and amendments shall be attached to this Agreement, shall be incorporated into this Agreement and made a part of it.
9. Complete Expression - This Agreement is a complete expression of its terms. Any oral or written representations or understandings that have not incorporated into this Agreement in writing are excluded.
10. Time - The Parties recognize that time is of the essence in the performance of the provisions of this Agreement.
11. Waiver - Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of the Agreement, unless stated to be such through written approval by the Parties which shall be attached to the original Agreement.

12. Severability - If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.
13. Assignment - The work to be provided under this Agreement, and any claim arising under this Agreement, is not assignable or delegable by either Party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.
14. Dispute Resolution - The Parties shall use their best efforts to prevent and resolve conflicts at the lowest level of staff. In the event that a dispute arises under this Agreement, the contact persons designated in this Agreement shall meet to discuss the dispute and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fourteen (14) days of beginning their negotiations, the Deputy Chief Executive Officer for POS and the _____ for POT shall meet to discuss and attempt to resolve the dispute in a timely manner. The Parties shall engage in dispute resolution under these provisions before pursuing any legal remedies.
15. Governance and precedence -This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.
16. Remedies – The Parties reserve the right to exercise any and all remedies that exist at law that may arise out of this Agreement. In the event of a dispute, the Parties must first engage in dispute resolution as provided for in this Agreement before pursuing any legal remedies.
17. Independent capacity - The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party.
18. Records maintenance - The Parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described in this Agreement. This may include, but is not limited to: invoices, vouchers, and receipts. These records shall be subject to inspection, review or audit by personnel of parties, other personnel duly authorized by either party, and other officers so authorized by law.
19. Indemnity and Hold Harmless - To the maximum extent permitted by law, the Parties shall protect, defend, indemnify and hold harmless each other and all of their elected and appointed officials, employees, principals and agents, while acting within the scope of its employment as such, from all costs, claims, demands, suits, actions, judgment, and/or awards of damages, arising out of, or in any way resulting from, each Party's negligent acts or omissions. Where such claims, suits, or actions result from concurrent negligence of the Parties, the indemnity provision provided herein shall be valid and enforceable only to the extent of each Party's own negligence. Each Party agrees that its obligations under this subparagraph 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, each Party, by mutual negotiation, hereby waives, with respect to each other, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. In the event that the either Party incurs any judgment, award, and/or cost arising therefrom, including attorney's fees, to enforce the provision of this section, all such fees, expenses and costs shall be recoverable by the prevailing Party. This indemnification shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the ____ day of _____, 2013.

Approved as to Form

PORT OF TACOMA:

Port of Tacoma Attorney

Port of Tacoma

Approved as to Form

PORT OF SEATTLE:

Senior Port Counsel

Tay Yoshitani

Chief Executive Officer