

**INTERLOCAL AGREEMENT FOR  
FEDERAL AGENCY PERMIT STAFFING SUPPORT  
BY AND BETWEEN  
THE PORT OF TACOMA AND THE PORT OF SEATTLE**

**THIS INTERLOCAL AGREEMENT** ("Agreement") is entered into by and between the Port of Tacoma, and the Port of Seattle, both port districts organized under the laws of the state of Washington (the "ports").

WHEREAS, the ports are committed to providing the necessary support to the federal resource and regulatory agencies, particularly National Oceanic and Atmospheric Administration (NOAA)'s National Marine Fisheries Service (NMFS), who are charged with the implementation and enforcement of federal laws including the Clean Water Act (CWA) and the Endangered Species Act (ESA); and

WHEREAS, the ports are required to obtain approvals from the NOAA NMFS for the development, redevelopment, repair and maintenance of new and existing port facilities within the jurisdiction of the two ports; and.

WHEREAS the ports desire to improve efficiency and reduce the time required to obtain from federal agencies the permits necessary for the continuation of normal activities by the ports; and

WHEREAS, the Port of Tacoma has executed an Assignment Agreement with the NOAA, National Marine Fisheries Service to obtain the services of an assigned individual; and

WHEREAS, since November 2001 the ports have been cooperating to provide financial support to NOAA NMFS to assure such timely and efficient provision of services from that agency, and desire to continue such cooperation under new terms; and

WHEREAS, the ports are authorized, pursuant to Chapter 39.34 RCW, to enter into interlocal governmental cooperative agreements.

NOW, THEREFORE, the parties agree as follows:

**1. Scope of Agreement**

The ports hereby agree to share the services of the assigned individual from NOAA, NMFS and to share related costs. The assigned individual shall provide services that include the preparation of detailed analyses and opinions of impact, and coordination and communication with permit applicants and the other federal regulatory and resource agencies, as well as local and state agencies with similar or related charges under state law.

Nothing in this Agreement precludes either port from entering into other agreements or arrangements with these or other federal agencies related to the processing or administration of permit applications submitted by either port.

## **II. Administration of Agreement**

This Agreement shall be administered by the Port of Tacoma. The Port of Tacoma will maintain an individual employee from NOAA NMFS (the "Assigned Individual") on its payroll. The Assigned Individual shall be paid and afforded identical benefits of a Port of Tacoma employee. The Assigned Individual shall submit to the Port of Tacoma a bi-weekly timesheet, identifying which port's projects has been worked, and the amount of time, in hours, spent on performing that task. This record will be utilized to determine monies owed to the Port of Tacoma by the Port of Seattle.

Each Port is responsible for paying for their share of time, as determined by the timesheet. The Port of Seattle will reimburse the Port of Tacoma at the rate equal to the salary and benefits of the Assigned Individual. The current rate for the Assigned Individual is \$64.30/hour; this may be increased in the future pursuant to Section IV. In addition, the Port of Seattle will pay the Port of Tacoma a management/overhead fee equivalent to 25% of the total amount that the Assigned Individual worked on Port of Seattle projects.

The Port of Tacoma shall submit invoices reflecting the above charges to the Port of Seattle on a monthly basis. The Port of Tacoma will include timesheet records as part of the invoice. The Port of Seattle will review and approve the invoice, and submit payment to the Port of Tacoma within thirty days of receipt of invoice. Any disputed charges will be withheld pending resolution.

## **III. Schedule**

This Agreement shall become effective on the day it has been executed by the Port of Seattle and the Port of Tacoma. The term of this Agreement shall be from January 1, 2009 through December 31, 2010.

## **IV. Changes**

Any revision to this Agreement shall require the prior written concurrence of both parties.

## **V. Legal Relations**

- A. It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and give 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 any of the other parties.

- B. To the maximum extent permitted by law, each party shall defend, indemnify and hold harmless the other parties and their officials and employees from all claims, demands, suits, actions, and liability of any kind whatsoever, which arise out of or are related to the acts or omission of the indemnifying party and its officials, employees, agents and contractors. The indemnifying party specifically assumes liability for actions brought by its own employees against the other parties and for that purpose the indemnifying party specifically waives, as respects the other parties only, any immunity under the Worker's Compensation Act, RCW Title 51. The indemnifying party recognizes that this waiver was the subject of mutual negotiation and is expressly entered into pursuant to the provisions of RCW 4.24.115, if applicable. In the event any party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this Article against the other party, all such fees, costs and expenses shall be recoverable by the prevailing property.
- C. No liability shall attach to any of the parties by reason of entering into this Agreement except as expressly provided herein.
- D. Each party agrees that it will include in any contract which is related to the work of this Agreement a provision requiring the contractor to defend, indemnify and hold harmless all the parties to this Agreement against any claims arising out of or related to the work of the contractor.
- E. The provision of this Article shall survive any termination or expiration of this Agreement.

#### **VI. 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 available for inspection and audit by representatives of either Port.

#### **VII. Terminations**

This Agreement may be terminated after a period of one (1) year at the discretion of either party, upon sixty days notice to the other party. Upon termination of this agreement a reconciliation of all costs and obligations since the last reconciliation shall be conducted and all unpaid costs shall be resolve in accordance with Paragraph II of this Agreement.

#### **VIII. Dispute Resolution**

If the parties are unable to resolve a disagreement between them arising out of this Agreement, the parties will refer the matter to an independent third party selected by them for resolution. Such referral shall be a condition precedent before either party resorts to other remedies it may have.

**IX. Severability**

If any term or provision of this Agreement, or its application to any person or circumstance is ruled invalid or unenforceable, the remainder of this Agreement will not be affected and will continue in full force and effect.

**X. Entire Agreement/Amendment**

This Agreement, together with any documents incorporated by reference shall constitute the entire agreement between the parties with respect to the services to be provided and shall supersede all prior agreements, proposals, understandings, representations, correspondence or communications relating to the subject matter hereof. No modification or amendment of this Agreement shall be valid and effective unless evidenced by the agreement in writing.

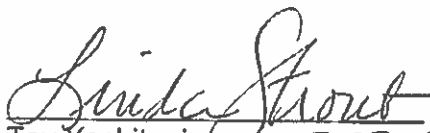
**Integration and Amendment**

This writing contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be given validity.

WHEREFORE, the parties have executed this Agreement this \_\_\_\_\_ day of April, 2009.

**Port of Seattle**

**Port of Tacoma**

*fan:*   
Tay Yoshitani 5-27-09  
Chief Executive Officer

  
Timothy J. Farrell  
Chief Executive Officer

**FIRST AMENDMENT  
OF  
MASTER INTERLOCAL AGREEMENT 069227  
FOR  
FEDERAL AGENCY PERMIT STAFFING SUPPORT  
BY AND BETWEEN  
THE PORT OF TACOMA AND THE PORT OF SEATTLE**

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This amendment reflects language changes in Section II - Administration of Agreement/Billing and extends the period of performance defined in Section III - Term.

Section II is amended to read as shown below:

**II. Administration of Agreement/Billing**

A. Billing Rate. The Contractee will pay to the Port the hourly rate of \$ 93.85, for the Services provided herein. The billing rate of \$93.85 includes the assigned individual's hourly rate, plus a Port management/overhead fee equal to thirty-five percent (35%). The hourly rate for the Assigned Individual may increase in the future, which shall be effective upon the Port's thirty (30) calendar day advance written notice to Contractee. If multiple projects are anticipated, the Contractee is encouraged to provide specific project identification numbers or titles that can be used to track time to each project.

B. Billing Procedure. The Port will submit monthly invoices to the Contractee within ten (10) days of the last day of the month the Services were provided, including timesheet records describing the services provided and the hours billed. The Contractee shall submit payment to the Port of Tacoma within thirty (30) days of receipt of invoice. Contractee shall provide the Port notice of any disputed charges within thirty (30) days receipt of the invoice, or such disputes are waived. Disputes shall be resolved according to the process defined within Paragraph VI herein.

Section III is amended to read as follows:

**III. Term**

The period of this performance is extended eighteen (18) months from December 31, 2012 through June 30, 2014.

This Agreement may be terminated at the discretion of either Party, upon thirty (30) days' written notice to the other Party. Upon termination of this Agreement a reconciliation of all costs and obligations since the last reconciliation shall be conducted and all unpaid costs shall be resolved in accordance with Paragraph II of this Agreement, or in the event of dispute, Paragraph VI herein.

Port of Seattle

Port of Tacoma

  
Tay Yoshitani  
Executive Director

10/25/12  
(Date)

  
John Wolfe  
Chief Executive Officer

11-11-12  
(Date)

**SECOND AMENDMENT  
OF  
MASTER INTERLOCAL AGREEMENT 069227  
FOR  
FEDERAL AGENCY PERMIT STAFFING SUPPORT  
BY AND BETWEEN  
THE PORT OF TACOMA AND THE PORT OF SEATTLE**

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This amendment reflects language changes and a funding increase in Section II - Administration of Agreement/Billing and extension to the Period of Performance in Section III - Term.

Section II.A is amended to read as shown below:

**II. Administration of Agreement/Billing**

A. Billing Rate. The Contractee will pay to the Port the hourly rate of \$ 103.00, for the Services provided herein. The billing rate of \$103.00 includes the assigned individual's hourly rate, plus a Port management/overhead fee equal to thirty-five percent (35%). The hourly rate for the Assigned Individual may increase in the future, which shall be effective upon the Port's thirty (30) calendar day advance written notice to Contractee. It shall be the Contractee's responsibility to ensure the hours of service rendered under this agreement will not result in charges in excess of this amount. If multiple projects are anticipated, the Contractee is encouraged to provide specific project identification numbers or titles that can be used to track time to each project.

Section III is amended to read as shown below:

**III. Term**

This Agreement shall be effective on the day it has been executed by the Contractee and the Port of Tacoma. The term of this Agreement is extended twenty-four months from June 30, 2014 through April 22, 2016.

Should the Interpersonal Government Agreement (IPA) between the Port of Tacoma and the U. S. Department of Interior, United States Fish and Wildlife Service not be signed prior to June 30, 2014, this agreement will expire on June 30, 2014. Written notification will be provided to the Port of Seattle should this occur.

This Agreement may be terminated at the discretion of either Party, upon thirty (30) days' written notice to the other Party. Upon termination of this Agreement a reconciliation of all costs and obligations since the last reconciliation shall be conducted and all unpaid costs shall be resolved in accordance with Paragraph II of this Agreement, or in the event of dispute, Paragraph VI herein.

**Port of Seattle**

**Port of Tacoma**

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Tay Yoshitani (Date)  
Executive Director

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John Wolfe (Date)  
Chief Executive Officer

**THIRD AMENDMENT  
OF  
MASTER INTERLOCAL AGREEMENT 069227  
FOR  
FEDERAL AGENCY PERMIT STAFFING SUPPORT  
BY AND BETWEEN  
THE PORT OF TACOMA AND THE PORT OF SEATTLE**

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This amendment reflects language changes in Section III – Term to bring the month count (noted in bold italics) into alignment with the expiration date and removes the paragraph related to a possible expiration of this agreement on June 30, 2014.

Section III is amended to read as shown below.

**III. Term**

This Agreement shall be effective on the day it has been executed by the Contractee and the Port of Tacoma. The term of this Agreement is extended ***twenty-two*** months from June 30, 2014 through April 22, 2016.

This Agreement may be terminated at the discretion of either Party, upon thirty (30) days' written notice to the other Party. Upon termination of this Agreement a reconciliation of all costs and obligations since the last reconciliation shall be conducted and all unpaid costs shall be resolved in accordance with Paragraph II of this Agreement, or in the event of dispute, Paragraph VI herein.

**Port of Seattle**

Nancy Huey 3-13-14  
(Authorized Agency Representative) (Date)

Nancy Huey  
Director of P&S

**Port of Tacoma**

Michael Keim 8/14/13  
Michael Keim (Date)  
Senior Contracts Administrator