

**MEMORANDUM OF UNDERSTANDING for PARTNERSHIP and COOPERATION  
between KING COUNTY and the PORT OF SEATTLE**

This Memorandum of Understanding (“MOU”) is hereby entered into by and between KING COUNTY hereinafter referred to as the “County” and the Port of Seattle, hereinafter referred to as “the Port”. The Port and the County are also referred to in this MOU collectively as “the Parties”, and individually as a “Party.”

**RECITALS**

**WHEREAS**, The Port of Seattle is a municipal corporation, with authority under Title 53 RCW of the laws of the State of Washington, and other federal, state, and local laws, to engage in economic development in Port-related industries; and

**WHEREAS**, King County, Washington, is a political subdivision of the state of Washington, with authority under the Constitution of the State of Washington, to provide County governance and services to all residents of the County; and

**WHEREAS**, in accordance with the Port of Seattle’s mission, to “create jobs by advancing trade and commerce, promoting industrial growth, and stimulating development” alongside the Port’s Century Agenda goals to 1) advance this region as a leading tourism destination and business gateway and 2) responsibly invest in the economic growth of the region and all its communities is consistent with the intended goals of the proposed International Public Market Feasibility Study; and

**WHEREAS**, in accordance with King County’s commitment to provide more direct investments to communities to improve economic opportunity and wellbeing; and

**WHEREAS**, in support of the collaboration and partnership contemplated by this MOU, the Port has identified a maximum not to exceed \$150,000 in funding and King County has appropriated a maximum of \$50,000 to evaluate the technical, logistical, and financial feasibility of establishing the proposed International Public Market Feasibility Study in South King County; and

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants of the Parties contained herein, the Parties hereto agree as follows:

**1. STATEMENT OF WORK**

The Port and the County mutually agree to the following:

1. The Parties’ investments will be used to fund an International Public Market Feasibility Study and site analysis, as defined in the forthcoming request for proposals (RFP).

2. The Port will issue the RFP and the County shall participate as a reviewer (using a consensus-based approach) on the evaluation committee to select the successful proposer(s), in accordance with the Port's RFP selection process.
3. The Port and County will both have representation and serve on the Advisory Committee for the International Public Market Feasibility Study.
4. The Port will provide written acknowledgement of the County's partnership in any resulting work product from this procurement, RFP, and the resulting contract(s).
5. The Port will, in its sole discretion, enter into contracts with the successful proposer(s) selected by the evaluation committee.

### **Project Management**

The Port and the County have designated formal points of coordination for this MOU. Each Party shall identify its respective point of contact for this MOU the "Designated Representative." The Designative Representative(s) of each Party shall communicate regularly to discuss the status of the tasks to be performed, administer a project advisory committee, identify upcoming decisions related to the RFP, provide information necessary to inform those decisions and to resolve issues or disputes related to the RFP consistent with this MOU.

The Designated Representative(s) are:

<u>County</u>	<u>Port of Seattle</u>
Ashton Allison	Annie Tran
206-477-2761	206-495-5322
401 5 <sup>th</sup> Ave, Suite 800	2711 Alaskan Way
Seattle, WA 98104	Seattle, WA 98111
aallison@kingcounty.gov	Tran.a@portseattle.org

A Party may change its Designated Representative(s) by written notice to the other Party during the term of the MOU.

### **2. PERIOD OF PERFORMANCE**

This MOU shall be effective when countersigned by King County and shall expire two (2) years after the date of the County's signature, unless terminated earlier in accordance with this MOU.

### **3. PAYMENT BILLING PROCEDURE**

The Port shall submit an invoice to the County after execution of the contract resulting from the RFP. Payment will be made by the County within thirty (30) calendar days of receipt of such invoice. The County's total payment under this MOU shall not exceed \$50,000.

### **4. RETENTION OF RECORDS AND AUDITS PUBLIC RECORDS REQUESTS**

The Parties to this MOU shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either Party in the performance of the services described herein. These records shall be subject to inspection, review or audit by duly authorized representatives of the Parties, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this MOU will be retained for six (6) years after expiration and the Office of the State Auditor, federal auditors, and any

persons duly authorized by the Parties shall have full access and the right to examine any of these materials during this period.

The Port shall provide copies of the original pre-award and post-award documentation, including any amendments if applicable, for the County's record keeping and/ or responses to audit or other information requested.

#### **5. PUBLIC RECORDS REQUESTS**

This MOU and any and all records related to this MOU shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, chapter 42.56 RCW (the "Act"). Records and other documents, in any medium, furnished by one Party to this MOU to the other Party, will remain the property of the furnishing Party, unless otherwise agreed. The furnishing Party shall mark documents "Confidential," or "Proprietary," that it reasonably believes are or may be subject to an exemption from disclosure under the Public Records Act prior to transmittal to the receiving Party. If a request is made for disclosure of documents or records designated as "Confidential" or "Proprietary" the receiving Party will not disclose or make available this material to any third parties without first giving notice to the furnishing Party and allow the furnishing Party ten (10) business days to obtain an injunction in accordance with RCW 42.56.2540. Each Party will utilize reasonable security procedures and protections to assure that records and documents provided by the other Party are not erroneously disclosed to third parties.

#### **6. INDEPENDENT CAPACITY**

The employees or agents of each Party who are engaged in the performance of this MOU 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.

#### **7. AMENDMENTS**

This MOU may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

#### **8. TERMINATION**

Either Party may terminate this MOU upon thirty (30) calendar days' prior written notification to the other Party. If expected or actual funding is withdrawn, reduced, or limited in any way prior to the expiration of this MOU, the County may terminate this Agreement in whole or in part for lack of appropriation and the costs associated with such termination, if any, shall not exceed the appropriation for the biennium budget cycle in which the termination occurs. In addition, funding for this MOU beyond the current biennium is conditional upon appropriation by the County Council of sufficient funds to support the Work described in this MOU. Otherwise, this MOU shall terminate on December 31 of the current biennium.

#### **9. DISPUTES**

Any disputes or questions of interpretation of this MOU that may arise between the Port and the County shall be governed under these Dispute Resolution provisions. The Port and the County agree that cooperation and communication are essential to resolving issues efficiently. If disputes about the implementation of this MOU arise, the Designated Representative for the Port and the County shall meet to discuss the issues and attempt to resolve the dispute in a timely manner. If the Designated Representatives are unable to resolve the dispute, then the Parties may, upon mutual agreement, endeavor to settle the dispute in an amicable manner by mediation or other agreed form of alternative

dispute resolution (ADR) prior to commencing litigation. At all times prior to resolution of the dispute, the Parties shall continue to perform and make any required payments under this MOU in the same manner and under the same terms as existed prior to the dispute.

#### **10. APPLICABLE LAW AND FORUM**

This MOU shall be governed by and construed in accordance with the laws of the State of Washington. The King County Superior Court in Seattle, Washington shall have exclusive jurisdiction and venue over any legal action arising under this MOU.

#### **11. ASSIGNMENT**

Neither Party shall assign any interest, obligation, or benefit under or in this MOU or transfer any interest in the same, whether by assignment or novation, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

#### **12. INDEMNIFICATION AND HOLD HARMLESS**

Each Party to this MOU will be responsible for the negligent acts or omissions of its own employees, officers, or agents in the performance of this MOU. Neither Party will be considered the agent of the other and neither party assumes any responsibility to the other party for the consequences of any act or omission of any person, firm, or corporation not a party to this MOU. To the maximum extent allowed by law, each Party shall protect, defend, indemnify, and save harmless the other Party, their officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, judgments, penalties, and/or awards of damages, arising out of or in any way resulting from the indemnifying Party's own negligent acts or omissions in connection with performance of activities under the terms of this MOU. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other Party only, and to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them. This indemnification shall survive the termination of this MOU.

#### **13. INSURANCE**

During the term of this MOU, each Party shall maintain insurance or self-insurance covering its liabilities arising out of activities of this MOU. All such liability insurance policies shall include the other Party. Where specified, each insurance policy shall include its officials, agents, and employees as additional insureds. Each Party shall maintain the following insurance coverage.

- A. Commercial General Liability insurance for bodily injury, personal and advertising injury, medical payments and property damage in an amount which is not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. The insurance shall cover liability arising from premises, operations, products completed operations, and liability assumed under an insured contract. Each Party's insurance shall be primary and non-contributory with respect to any insurance the other Party carries; and each Party's policy shall have a waiver of subrogation in favor of the other Party. This coverage shall be evidenced on a certificate of insurance with copies of the endorsement(s) that confirm the additional insured endorsement; waiver of subrogation; and primary and non-contributory coverage.

- B. Auto Liability - Each Party shall maintain auto liability coverage on a combined limit basis of no less than \$1 million per occurrence.
- C. Workers Compensation- Each Party is responsible for complying with the Washington State laws that pertain to industrial insurance (Reference Revised Code of Washington, Title 51 Industrial Insurance) for its employees. Each Party shall have a current worker's compensation account with the Department of Labor and Industries.
- D. Each Party has the option of using a program of self-funded insurance to meet the above insurance obligations or a combination of self-funded insurance and commercial or excess insurance.

**14. WAIVER**

A failure by either Party to exercise its rights under this MOU shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this MOU unless stated to be such in a writing signed by an authorized representative of the Party.

**15. SEVERABILITY**

If any provision of this MOU or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this MOU 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 MOU, and to this end the provisions of this MOU are declared to be severable.

**16. ALL WRITINGS CONTAINED HEREIN**

This MOU contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the parties hereto.

**17. CONTRACT MANAGEMENT**

Port of Seattle shall administer the funds under this MOU. For purposes of notice, the Designated Representatives for each of the Parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this MOU. Any notice required or permitted to be given pursuant to this MOU shall be by electronic mail to the Designated Representatives. The Port shall provide to the County any progress reports on the Contract resulting from the RFP, including copies of invoices, small and MWBE business participation goals and process documentation, and discuss any changes to the schedule prior to approval with the County.

**18. FORCE MAJEURE**

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil, or public disturbances, epidemics or pandemics, causing the inability to perform the requirements of this MOU. If either Party is rendered unable, wholly or in part, by a force majeure event to perform or comply with any obligation or condition of this MOU, upon giving notice and reasonably full particulars to the other Party, such obligation or condition shall be suspended only for the time and to the extent practicable.

**19. JOINT DRAFTING EFFORT**

This MOU shall be considered for all purposes as prepared by the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission, or other event of negotiation, drafting or execution thereof.

**20. AUTHORITY**

Each of the signatories below represents that they have the authority to execute this MOU on behalf of the Party for which they sign.

**21. COUNTERPARTS**

This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

EXECUTED BY THE UNDERSIGNED PARTIES effective as of the date last below written:

King County

Port of Seattle

\_\_\_\_\_  
X  
Department  
King County

\_\_\_\_\_  
Date

\_\_\_\_\_  
Stephen P. Metruck  
Executive Director  
Port of Seattle

\_\_\_\_\_  
Date

