

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

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into by and between the Port of Tacoma, a Washington municipal corporation, ("the Port") and the Port of Bellingham, a Washington municipal corporation ("Contractee") (collectively referred to herein as the "Parties").

WHEREAS, the Port and other public entities 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) and the United States Fish and Wildlife Service (USFWS), which are charged with the implementation and enforcement of federal laws including the Clean Water Act (CWA) and the Endangered Species Act (ESA);

WHEREAS, the Port and other public entities are required to obtain approvals from NOAA's NMFS and USFWS for the development, redevelopment, repair and maintenance of new and existing facilities, and for environmental mitigation and remediation activities, ("Project") within each jurisdiction;

WHEREAS, the Port of Tacoma employs Shandra O'Haleck (the "Assigned Individual") to assist and facilitate with obtaining federal permits through an Assignment Agreement with NOAA's National Marine Fisheries Service;

WHEREAS, in order to improve efficiency in obtaining, from federal agencies, the permits necessary for the development, redevelopment, repair and maintenance of new and existing facilities, the Contractee desires to retain the services of the assigned individual from the Port of Tacoma pursuant to the terms and conditions contained herein; and

WHEREAS, the Parties are authorized, pursuant to Chapter 39.34 RCW (the Interlocal Cooperation Act), to enter into this Interlocal agreement.

NOW, THEREFORE, the Parties agree as follows:

I. Scope of Agreement

A. Services Provided. The Assigned Individual shall provide to the Contractee, the following services ("Services"): (1) conduct Endangered Species Act (ESA)/Essential Fish Habitat reviews for Contractee as project applicant; (2) analyze the effects of proposed projects on aquatic biota, with emphasis on ESA-listed species; (3) conduct informal and formal ESA consultations for NMFS and FWS on such projects; (4) work with other federal agencies, including the Army Corps of Engineers and EPA,

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state agencies and tribes to facilitate environmental review; and (5) coordinate communication between the Contractee as a Project permit applicant and the other regulatory and resource agencies; and (6) any other related services that may be necessary to facilitate obtaining federal permits from NOAA's NMFS and USFWS for the development, redevelopment, repair and maintenance of Contractee's new and existing facilities and for environmental mitigation and remediation activities. The services of the Assigned Individual are subject to availability and must be scheduled through the Port representative designated in Paragraph VII of this Agreement.

B. Employment. During the term of this Agreement, the Assigned Individual shall remain a full-time employee of the Port and the Port shall continue to be responsible for the Assigned Individual's salary, benefits and retirement contributions. Nothing contained herein shall be construed as creating an employer/employee relationship between the Assigned Individual and the Contractee.

II. Administration of Agreement/Billing

A. Billing Rate. The Contractee will pay to the Port the hourly rate of \$68.21, including salary and benefits, for the Services provided herein. In addition to the hourly rate, the Contractee also shall pay to the Port a management/overhead fee equal to thirty-five percent (35%) of the amount billed to Contractee by the Port. 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. The total price to be paid by the Contractee to the Port for performance hereunder shall not exceed \$25,000 without the written consent of the Contractee.

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 sixty (60) days of receipt of invoice. Contractee shall provide the Port notice of any disputed charges within 30 days receipt of the invoice, or such disputes are waived. Disputes shall be resolved according to the process defined within Paragraph VI herein.

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 shall be two years from the effective date.

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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.

IV. Legal Relations

A. Independent Municipal Governments. The Parties hereto are independent governmental entities and nothing herein shall be construed to limit the independent government powers, authority or discretion of the governing bodies of each Party. It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives 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 Party.

B. Legal obligations. This Agreement does not relieve either party of any obligation or responsibility imposed upon it by law.

C. Timely Performance. The requirements of this Agreement shall be carried out in a timely manner according to a schedule negotiated by and satisfactory to the parties.

D. Recording. A copy of this Agreement shall be posted to the Port's web site.

V. 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 by each Party and shall be available for inspection and audit by representatives of either Party and any other entity with legal entitlement to review said records. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claims, or audit finding has been resolved, even though such litigation, claim, or audit continues past the six-year (6) retention period. This provision is in addition to and is not intended to supplant, alter or amend records retention requirements established by applicable state and federal laws.

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VI. Dispute Resolution

A. Process. The Parties' designated representatives under Paragraph VII herein shall use their best efforts to resolve disputes between the Parties. If the designated representatives are unable to resolve a dispute, then each Party's responsible Project Directors shall review the matter and attempt to resolve it. If the Project Directors are unable to resolve the dispute, the matter shall be reviewed by the department director or chief executive officer of each Party or his or her designee. The Parties agree to exhaust each of these procedural steps before seeking to further resolve the dispute in any other forum. Any controversy or claim arising out of or relating to this Interlocal Agreement, or the breach thereof, which is not settled by agreement between the Parties, shall be settled by mediation in the State of Washington, in Pierce County. In the event either Party reasonably believes mediation will not result in a solution to the disagreement, mediation is waived.

B. Controlling law & Venue. This Agreement shall be construed and enforced according to the laws of the State of Washington. All litigation pursued in connection with this Agreement shall be in the Superior Court, Pierce County, Washington.

VII. Notices

A. Contact Persons. Any notice, demand, request, consent, approval or communication that either Party desires or is required to give to the other Party shall be in writing addressed to the other Party at the addresses as follows unless otherwise indicated by the Parties to this Agreement:

Port of Bellingham:

Alan Birdsall, Strategic Projects Manager
P.O. Box 1677
Bellingham, WA 98227
alanb@portofbellingham.com

Port of Tacoma:

Director, Environmental Programs
PO Box 1837
Tacoma, WA 98401
jjordan@portoftacoma.com

B. Receipt. Notice shall be deemed "received" on the date of actual delivery or the first attempted delivery as shown on the return receipt if mailed with the United

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States Postal Service by certified mail, return receipt requested, otherwise receipt if presumed three days after deposit of mail into US Mail.

VIII. Indemnification and Hold Harmless

A. The Contractee releases the Port from, and shall defend, indemnify, and hold the Port and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of Contractee and/or its agents, employees, officers, and/or subcontractors, arising out of or in any way related to this Agreement, unless and except to the extent the same be caused in whole or in part by the negligence of the Port or its agents, employees, and/or officers.

B. The Contractee shall defend, indemnify, and hold the Port and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of any third parties and/or their agents, employees, officers, and/or subcontractors, arising out of or in any way related to this Agreement, unless and except to the extent the same be caused in whole or in part by the negligence of the Port or its agents, employees, and/or officers.

C. This Agreement includes a waiver of subrogation against all losses sustained by the Contractee and/or its agents, employees, officers, subcontractors, and/or insurers, arising out of or related to this Agreement except to the extent Contractee's losses are caused in whole or in part by the negligence of the Port or its agents, employees, and/or officers.

D. Each Party specifically assumes liability for actions brought by its own employees against the other Party and for that purpose each Party specifically waives, with respect to the other Parties only, any immunity under the Worker's Compensation Act, RCW Title 51.

E. Party recognizes that this waiver was the subject of mutual negotiation. In the event any Party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this Agreement against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party.

F. No liability shall attach to any of the Parties by reason of entering into this Agreement except as expressly provided herein.

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G. 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.

H. The provisions of this Article shall survive any termination or expiration of this Agreement.

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. Limits of Financial Obligations/Property ownership.

Except as provided above, each Party shall finance its own conduct of responsibilities under this Agreement. No ownership of property will transfer as a result of this Agreement.

XI. 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 approved by both parties in writing.

WHEREFORE, the parties have executed this Agreement this _____ day of _____, 2012.

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Port of Bellingham



Charlie Sheldon
Executive Director

Date 02/21/12

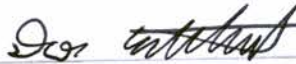
Approved:



Legal Counsel

Date 03/04/12

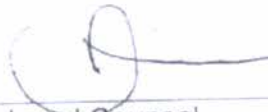
Port of Tacoma



John Wolfe
Chief Executive Officer

Date 3/12/12

Approved:



Legal Counsel

Date 3/12/12

**FIRST AMENDMENT
OF
MASTER INTERLOCAL AGREEMENT 069464
FOR
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This amendment reflects language changes and a funding increase in Section II - Administration of Agreement/Billing.

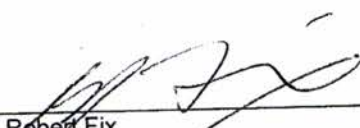
Section II is amended to read as shown below:

II. Administration of Agreement/Billing

A. Billing Rate. The Contractee will pay to the Port the hourly rate of \$ 96.67, for the Services provided herein. The billing rate of \$96.67 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. The total price to be paid by the Contractee to the Port for performance hereunder is being increased in the amount of \$25,000.00. The total value of this ILA shall not exceed \$50,000.00 without the written consent of the 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.

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.

Port of Bellingham


Robert Fix
Executive Director

7/2/13
(Date)

Port of Tacoma


John Wolfe
Chief Executive Officer

7-9-13
(Date)