

**MEMORANDUM OF AGREEMENT
BETWEEN THE PORT OF TACOMA & PIERCE COUNTY
FOR
REGIONAL MARITIME TRANSPORTATION DISASTER
RECOVERY EXERCISE PROJECT MANAGEMENT**

WHEREAS, the Port of Tacoma under the Port's public-sector applicant umbrella, received a Port Security Grant Program (PSGP) award to conduct a Regional Maritime Transportation Disaster Recovery Exercise; and,

WHEREAS, the Parties (Port of Tacoma and Pierce County) recognize that the Port operates in a dynamic, hazardous environment, and neither Party warrants that any system can prevent catastrophic events or incidents. However, the Parties acknowledge that the Port and our stakeholders are better served by possessing the capability to provide real-time disaster recovery expertise as well as enhancing the communication of safety, security, and maritime domain awareness information to waterfront personnel, first responders, and emergency management agencies; and,

WHEREAS, it is the intent of the Parties to memorialize their agreement to cooperate with and coordinate the Regional Maritime Transportation Disaster Recovery Exercise and to satisfy all Port Security Grant Program, Captain of the Port, Area Maritime Security Committee, and other State and Local requirements;

NOW THEREFORE in consideration of their mutual covenants, conditions and promises, **THE PARTIES HERETO DO HEREBY AGREE** as follows:

AGREEMENTS

A. DESCRIPTION AND FUNDING

The Pierce County Department of Emergency Management will act as the Port of Tacoma's exercise project manager and will be responsible for the following:

1. Serve as the Project Manager for the Regional Maritime Transportation Exercise Contract. Work with the contractor to develop a successful exercise program that meets the needs of four individual ports and for a regional recovery exercise.
2. Work with Port of Tacoma staff and management to develop exercise goals and objectives and share those objectives with the exercise contractor for the Port of Tacoma's individual port exercise in Phase I of the contractor's work.
3. Act as the point of contact for all Port of Tacoma related activities in the individual port exercise and the larger regional recovery exercise.

4. Encourage exercise participation by applicable city/county emergency management agencies, law enforcement, fire, health, Tribal, economic development, utilities and private sector businesses, along with appropriate elected and/or public officials.
5. Ensure contractor focuses on disaster recovery issues that are important to the maritime region, rather than disaster response.
6. Assist contractor in identifying a path forward for Continuity of Operations Planning (COOP) and Continuity of Government (COG) for the Port of Tacoma.

INCORPORATION BY REFERENCE, INTEGRATION, AND AMENDMENT

All appendices attached hereto are incorporated under this agreement. This Agreement constitutes the entire agreement between the Parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both Parties.

COMPENSATION

This will be accomplished on a fee for service basis through progress payments and will not exceed **\$50,000.00** without prior written approval from the Port. The County will be eligible for progress payments of 20% of the fee consideration upon completion of Phase 1 of the Regional Maritime Transportation Exercise Contract, 60% upon completion of Phase 2, and 20% upon completion of Phase 3. County will invoice the Port when the work has been accepted by the Port. (Note: Project Management, \$6,500; deliverables, \$43,500; progress payments of not more than monthly.)

County is responsible for working within the maximum consideration as agreed. Should the County incur costs beyond the fee consideration without an executed amendment to this contract, the County is solely responsible for the additional costs.

All invoices shall be mailed "Attention: Contracts Department". Invoices may be emailed to cpinvoices@portoftacoma.com. The email must include the required supporting documentation. Incomplete or improperly prepared invoices will be returned for correction without processing or payment.

County agrees to submit timely invoices as the work progresses. Invoices that are submitted for payment 90 days or more after the work was completed are subject to non-payment.

TERMINATION

1. The length of this agreement is from the date of execution to **May 30, 2014**.
2. In the event that the Department of Homeland Security eliminates or reduces the PSGP funds available for this project, the Port may, respectively and in writing, terminate all or part of this agreement, or reduce its scope of work and budget.

Notices

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:

Pierce County

DEM Operations Manager
Pierce County
2501 S. 35th Street, Suite D
Tacoma, WA 98409-7405
Office: (253) 798-6597
Cell: (253) 405-4528

Port of Tacoma

Director of Security
Port of Tacoma
P. O. Box 1837
Tacoma, WA 98401-1837
Office: (253) 383-9441
Cell: (253) 426-5956

HOLD HARMLESS AND INDEMNITY

1. "Liability" shall mean all loss or damages and all reasonable cost or expense (including costs of investigation and attorney's fees and expenses/costs at arbitration, trial or appeal and without institution of arbitration or suit), liability, claims and demands of whatever kind or nature arising out of an occurrence relating to this Agreement.
2. Pierce County shall indemnify and hold the Port and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the Port arising out of, in connection with, or incident to the execution of this Agreement and/or Pierce County's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the Port, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of Pierce County's negligence; and provided further, that nothing herein shall require Pierce County to hold harmless or defend the Port, its agents, employees and/or officers from any claims arising from the sole negligence of the Port, its agents, employees, and/or officers. No liability shall attach to the Port by reason of entering into this Agreement except as expressly provided herein.
3. The Port shall indemnify and hold Pierce County and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against Pierce County arising out of, in connection with, or incident to the execution of this Agreement and/or the Port's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of Pierce County, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the Port's negligence; and provided further, that nothing herein shall require the Port to hold harmless or defend Pierce County, its agents, employees and/or officers from any claims arising from the sole negligence of Pierce County, its agents, employees, and/or officers. No liability shall attach to Pierce County by reason of

entering into this Agreement except as expressly provided herein.

MISCELLANEOUS PROVISIONS

1. **NO AGENCY OR PARTNERSHIP.** The Parties agree that nothing contained herein shall be construed to create the relationship of principal and agent, partnership, joint venture, or any other form of legal association which would impose liability upon one Party for the act or failure to act of another Party. The Parties are contracting in their capacity as a municipal corporation and an agency of the State of Washington. The identity of the Parties hereto is as set forth hereinabove.
2. **AMENDMENT OR MODIFICATION.** No amendment, modification, or change to this Agreement shall be valid unless made in writing and signed by the Parties hereto.
3. **AUTHORITY.** Each signatory hereto represents and warrants that he or she has the right, power, legal capacity, and authority to enter into this Agreement and to bind the entity he or she represents to this Agreement and the obligations hereunder.
4. **INVALIDITY OF PARTICULAR PROVISION.** The Parties intend that each provision of this Agreement be enforceable to the fullest extent permitted by law. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a final decision of any court having jurisdiction on the matter, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect, unless such court determines that such invalidity or unenforceability materially interferes with or defeats the purposes hereof, at which time the City shall have the right to terminate the Agreement.
5. **COMPLIANCE WITH REGULATIONS AND LAWS.** The Parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein.
6. **CAPTIONS.** The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

(This section left blank intentionally)

CONTRACT SIGNATURE PAGE

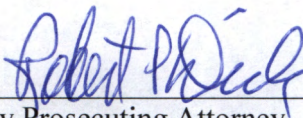
**PORT OF TACOMA REGIONAL MARTIME TRANSPORTATION DISASTER RECOVERY EXERCISE
PROJECT MANAGEMENT AGREEMENT Contract #: 069607**

IN WITNESS WHEREOF, the parties have executed this Agreement this 15th day of February, 20 13.

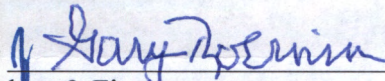
PIERCE COUNTY:

PORT OF TACOMA:

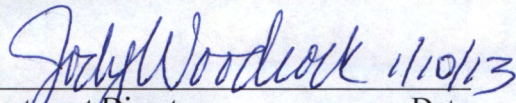
Approved as to legal form only:

By 
Deputy Prosecuting Attorney Date

Recommended:

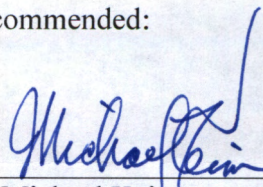
By  1/29/13
Budget & Finance Date

Approved:

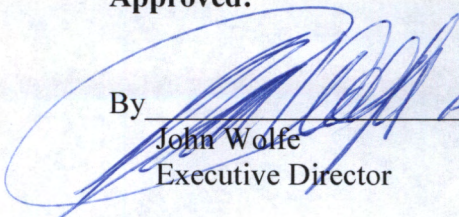
By  1/10/13
Department Director Date
(less than \$250,000)

By _____
Pierce County Executive Date

Recommended:

By  2/6/13
Michael Keim Date
Senior Contracts Administrator

Approved:

By  FEB 15, 2013
John Wolfe Date
Executive Director