

**INTERLOCAL AGREEMENT
BETWEEN**

PORT OF VANCOUVER

AND

CITY OF VANCOUVER

THIS IS AN INTERLOCAL AGREEMENT, entered into under authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, between the PORT OF VANCOUVER, hereinafter referred to as the "PORT" and the CITY OF VANCOUVER, a municipal corporation of the State of Washington, hereinafter referred to as the "CITY".

RECITALS:

WHEREAS, the Port of Vancouver (PORT) and the City of Vancouver (CITY) share interests related to economic development;

WHEREAS, the CITY regulates certain planning, studies and land use related to economic development, including multi-modal transportation, land use and the environment;

WHEREAS, the CITY provides and operates communications services for the benefit of its citizens of Clark County and the City;

WHEREAS, the PORT and CITY may choose to share funding and resources to support economic development efforts;

WHEREAS, the PORT and CITY benefit citizens of Clark County and the City by collaborating on appropriate projects and shared planning;

NOW, THEREFORE, the PORT and the CITY agree as follows:

SECTION 1. PURPOSE. The purpose of this Agreement is to engage in the development and execution of projects for various purposes as defined above.

SECTION 2. APPROVAL OF PROJECTS AND BUDGET

The PORT and CITY shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in under this agreement herein.

Each project executed under this agreement shall have written approval as defined by each agency's policy, and shall include the following:

- Determine purpose, scope, and parameters and deliverables to be accomplished.
- Determine which agency shall serve as lead on each specific project.

- Designate project leads to serve in behalf of the PORT and the CITY, as appropriate to the scope of work to manage each project executed under this agreement.
- Determine and agree upon time line and cost.

SECTION 3. BILLING PROCEDURE. Invoices shall be submitted at least quarterly, but no more often than monthly from the lead agency. Payment for approved and completed work will be made within 30 days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 60 days after the expiration date or the end of the fiscal year, whichever is earlier.

Invoices will be sent to the attention of the designated project lead.

Payments will be submitted to the attention of lead agency.

SECTION 4. RECORDS MAINTENANCE. The parties to this Agreement 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 service(s) described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials as authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after Agreement 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.

Records and other documents, in any medium, furnished by one party to this agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond consistent with the requirements of Washington State open public records laws. 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.

SECTION 5. 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.

SECTION 6. ASSIGNMENT/SUBCONTRACTING. Neither party shall transfer or assign, in whole or in part, any or all of its respective rights or obligations under this Agreement without the prior written consent of the other. The CITY shall not subcontract for the provision of any services it is to provide the PORT under this Agreement without the prior written consent of the PORT.

SECTION 7. AGREEMENT ALTERATIONS AND AMENDMENTS. This Agreement 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.

SECTION 8. TERMINATION. Either party may terminate this Agreement upon 30 days' prior written notification to the other party. If this Agreement is so terminated, the parties 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. This agreement may be terminated sooner as provided in the "TERMINATION FOR CAUSE" section below.

SECTION 9. TERMINATION FOR CAUSE. If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and

conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

SECTION 10. INDEMNITIES. The CITY agrees to indemnify, defend and hold harmless the PORT, its commissioners, officers, employees and agents from any and all liabilities, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, of whatsoever kind or nature, arising out of, or in connection with, or incident to, and to the extent of, the negligent performance of the terms and conditions of this Agreement by the PORT.

In the event that any suit based on such a liability, demand, claim, cause of action, suit or judgment is brought against the PORT, the PORT retains the right to participate in said suit, at its expense, if any principal of public law is involved.

This indemnity and hold harmless shall include any claim made against CITY by an employee of the PORT or subcontractor or agent of the PORT, even if the PORT is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the negligence of the CITY.

The indemnities herein shall survive the expiration or termination of this Agreement.

The PORT agrees to indemnify, defend and hold harmless the CITY, its council members, officers, employees and agents from any and all liabilities, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, of whatsoever kind or nature, arising out of, or in connection with, or incident to, and to the extent of, the negligent performance of the terms and conditions of this Agreement by the PORT.

In the event that any suit based on such a liability, demand, claim, cause of action, suit or judgment is brought against the CITY, the CITY retains the right to participate in said suit, at its expense, if any principal of public law is involved.

This indemnity and hold harmless shall include any claim made against CITY by an employee of the PORT or subcontractor or agent of the PORT, even if the PORT is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the negligence of the CITY.

The indemnities herein shall survive the expiration or termination of this Agreement

SECTION 11. DISPUTES. In the event of a dispute between the PORT and the CITY regarding the delivery of services under this Agreement which cannot be resolved by their respective designated contract managers, the Port of Vancouver Executive Director and the City Manager or their designated representatives shall review such dispute and options for resolution.

SECTION 12. GOVERNANCE. 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.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. Statement of work; and
- c. Any other provisions of the agreement, including documents incorporated herein by reference.

SECTION 13. ASSIGNMENT. The work to be provided under this Agreement, and any claim arising thereunder, 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.

SECTION 14. WAIVER. A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

SECTION 15. 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.

SECTION 16. ALL WRITINGS CONTAINED HEREIN. This Agreement 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 deemed to exist or to bind any of the parties hereto.

SECTION 17. PROJECT MANAGEMENT. The designated project lead 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 Agreement.

SECTION 18. NO THIRD PARTY BENEFICIARY. The PORT does not intend by this Agreement to assume any contractual obligations to anyone other than the CITY. The CITY does not intend by this Agreement to assume any contractual obligations to anyone other than the PORT. Both the PORT and CITY do not intend there be any third-party beneficiary to this Agreement.

SECTION 19. RATIFICATION AND CONFIRMATION. Acts taken prior to the execution of this Agreement that are consistent with the intent and purpose of the same are hereby ratified and confirmed.

SECTION 20. DOCUMENT EXECUTION AND FILING. The PORT and the CITY agree that there shall be two (2) duplicate originals of this Agreement procured and distributed for signature by the necessary officials of the parties. Upon execution, one executed original of this Agreement shall be retained by CITY and one shall be retained by the PORT. The Port of Vancouver shall cause a copy of this Agreement to be posted on their public website pursuant to Chapter 39.34.040 RCW. Upon execution of the originals and posting of a copy on the port of Vancouver's website, each such duplicate original shall constitute an agreement binding upon all parties.

SECTION 21. PERIOD OF PERFORMANCE. Subject to its other provisions, the period of performance of this Agreement shall commence on date of execution and shall continue through December 31, 2017. The Period of Performance may be extended per Section 7 of this Agreement.

IN WITNESS WHEREOF, the Port of Vancouver and the CITY have caused this Agreement to be executed in their respective names by their duly authorized officers and have caused this Agreement to be dated as of the 14 day of December, 2012.

PORT OF VANCOUVER,

By: 
Todd Coleman, Executive Director

CITY OF VANCOUVER,

By: 