

**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 and charter city of the first class of the State of Washington, hereinafter referred to as the "City", by which the City will provide construction management services to the Port on the West Vancouver Freight Access Project.

WHEREAS, pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act), one or more public entities may contract with one another to perform government services which each is by law authorized to perform; and

WHEREAS, the Port has requested the City provide such services to the Port;

NOW, THEREFORE, the Port and the City agree as follows:

SECTION 1. PURPOSE. The purpose of this Agreement is to provide the Port construction management services on the West Vancouver Freight Access Project. This Interlocal Agreement will establish service from the City to assist the Port in construction oversight and federal documentation associated with the Terminal 5 Unit Train Improvement project.

SECTION 2. STATEMENT OF WORK. The 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 Attachment "A" attached hereto and incorporated herein.

SECTION 3. PERIOD OF PERFORMANCE. Subject to its other provisions, the period of performance of this Agreement shall commence on the date of signature by the City, and be completed no later than September 30, 2010, unless terminated sooner as provided herein.

SECTION 4. PAYMENT. The parties have determined that the cost of accomplishing the work herein will not exceed \$ 250,000. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount. Compensation for service(s) shall be as set forth in accordance with the budget in Attachment "B" which is attached hereto and incorporated herein.

SECTION 5. BILLING PROCEDURE. The City shall submit invoices at least quarterly, but no more often than monthly to the Port of Vancouver. Payment to the City 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:
Port of Vancouver
3103 NW Lower Rover Road
Vancouver, WA 98660

Payments will be submitted to:
City of Vancouver
PO Box 1995
Vancouver, WA 98668

SECTION 6. 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 so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six 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.

SECTION 7. RIGHTS IN DATA. Unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the Port. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

SECTION 8. 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 9. 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 10. 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 11. 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 maybe terminated sooner as provided in the "TERMINATION FOR CAUSE" section below.

SECTION 12. 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 13. HOLD HARMLESS/INDEMNIFICATION. The City agrees to indemnify, defend, save and hold harmless the Port, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance of services by the City pursuant to this Agreement.

1. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the City, the Port retains the right to participate in said suit if any principal of public law is involved.
2. This indemnity and hold harmless shall include any claim made against the Port by an employee of the City or subcontractor or agent of the City, even if City 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 sole negligence of the Port. The City specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that the City provide the broadest scope of indemnity permitted by RCW 4.24.115.

SECTION 14. 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 Vancouver City Manager or their designated representatives shall review such dispute and options for resolution.

Any controversy or claim arising out of or relating to this Agreement or the alleged breach of such Agreement that cannot be resolved by the Executive Director and the City Manager may be submitted to mediation and if still not resolved, may be submitted to binding arbitration in accordance with the rules and procedures set forth in Chapter 7.04 RCW, and the judgment or award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

SECTION 15. 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.

SECTION 16. 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 17. 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 18. SEVERABILITY. If any provision of the 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 19. 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 20. CONTRACT MANAGEMENT. The program manager 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. The Contract/Program Manager for the City is:

Dan Swensen
City of Vancouver
PO Box 1995
Vancouver, WA 98668-1995
dan.swensen@ci.vancouver.wa.us

The Contract/Program Manager for the Port is:

Monty Edberg
Port of Vancouver
3103 NW Lower River Road
Vancouver, WA 98660
medberg@portvanusa.com

SECTION 21. 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 22. 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 23. 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 the Vancouver City Clerk and one shall be retained by the Port. The Port Records Officer shall cause a copy of this Agreement to be posted on the Port website. The Vancouver City

Clerk shall cause a copy of this Agreement to be posted on the City website pursuant to Chapter 39.34.040 RCW. Upon execution of the originals and posting of a copy on the websites, each such duplicate original shall constitute an agreement binding upon all parties.

IN WITNESS WHEREOF, the Port of Vancouver and the City of Vancouver 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 19th day of October, 2009.

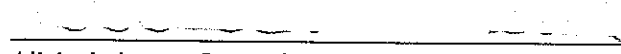
PORT OF VANCOUVER,

SIGNATURE ON FILE


Lawrence L. Paulson, Executive Director

Approved as to form:

SIGNATURE ON FILE


Alicia L. Lowe, Port of Vancouver Legal Counsel


CITY OF VANCOUVER,

SIGNATURE ON FILE


Pat McDonnell, City Manager

Attest:

SIGNATURE ON FILE


R. Lloyd Tyler, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:

SIGNATURE ON FILE


Ted H. Gathe, City Attorney

By: Judith Zeider
Chief Assistant City Attorney

ATTACHMENT "A"

INTERLOCAL AGREEMENT BETWEEN PORT OF VANCOUVER AND CITY OF VANCOUVER

Terminal 5 Rail Improvement Project a portion of The West Vancouver Freight Access Program

Attachment A – Scope of Services

This attachment will outline the scope of services that City of Vancouver ("COV") will provide to the Port of Vancouver ("POV" or "Owner") under the inter-local agreement.

"Contractor" will be selected through the competitive bidding process.

This summary of the scope of work can be modified as needed as the project progresses with the consent of both parties.

Contract Administration Services

COV will provide construction management services in compliance with the requirements for WSDOT federally funded projects. These services will include but not be limited to:

- Be lead point of contact between the Owner and the Contractor
- Facilitate all project meetings between Contractor and Owner, preparing meeting minutes.
- Prepare monthly progress pay estimates
- Prepare contract change orders, along with cost justification documentation.
- Process and track submittals and requests for information (RFIs)
- Maintain project records. Examples include:
 1. Requests for Information (RFIs) including tracking
 2. Contract Change Orders (COs)
 3. Correspondence files and meeting minutes
 4. Project submittals including tracking logs
 5. Materials documentation including certifications, verification sampling and testing reports
 6. Subcontractor approvals and certifications
 7. Wage interviews
 8. Coordination of project "as-builts"
- Administer all project-related correspondence between Owner and Contractor
- Review project and progress schedules submitted by contractor
- Track materials testing requirements and frequencies

ATTACHMENT "A"

- Provide assistance as requested for project audits during and after the project.
- Administer design and field changes

POV to provide all contractor payroll, EEO, DBE, training, prevailing wage tracking and reporting including ARRA employment reporting.

Contract Inspection Services

- COV shall provide part-time inspection assistance as required to fulfill the contract administrative services outlined above. Initial agreed project budget anticipates half-time involvement by COV inspector.
- Assist the lead POV field inspector with field inspections as requested.

Materials Testing Services

- COV will provide material testing services as follows:
 1. Subgrade density testing
 2. Material Proctor analyses
 3. Aggregate gradation testing
 4. Aggregate density testing
 5. HMA density testing
 6. HMA quality testing
 7. Cast-in-place concrete quality testing
- POV will provide all other testing services to meet the reporting requirements.

ATTACHMENT "B"

Port of Vancouver

West Vancouver Rail Access Project - T-5 Rail Improvement Project

September, 2009
Dan Swensen (360)487-7754

Estimate for City of Vancouver Personnel

Rate	September	October	November	December	January	February	March	April	May	June	July	Total Hrs	Total \$
Full Time Hours	168	176	144	176	152	152	184	176	160	176	168	1832	
Project Manager	\$82.15	20	40	144	176	152	184	176	160	176	84	1464	\$ 120,267.60
Office Engineer	\$53.06	0	40	144	176	76	92	88	80	88	0	860	\$ 45,631.60
Inspector	\$64.46	0	20	144	176	76	92	88	80	88	0	840	\$ 54,146.40
Inspector OT	\$79.50												
Lab	\$64.46	0	0	48	58	50	60	58	53	58	0	435	\$ 28,040.10
Total Estimate												\$ 248,095.70	

(1) Outside lab testing may be less than indicated - WSDOT ROM will tell us testing requirements when the ROM becomes available
 (2) Hourly rate includes all indirects and overhead