

Port of Tacoma

OCT 10 2013

Environmental Dept.

**INTERLOCAL AGREEMENT  
BY AND BETWEEN THE PORT OF TACOMA and  
THE CITY OF TACOMA  
FOR**

**Mutual Cooperation & Support Regarding Agency Storm Water  
Management**

The Port of Tacoma, a port district organized under the laws of the State of Washington (hereafter, "Port") and the City of Tacoma, a municipal corporation (hereafter, "City"), collectively "the Parties" enter into this Interlocal Agreement ("Agreement") pursuant to the Interlocal Cooperation Act (Chapter 39.34 RCW).

**RECITALS**

WHEREAS the Parties have a common interest in the proper management of surface water runoff (stormwater) to protect the water quality of Commencement Bay, its waterways and other receiving waters in and around the City and Port.

WHEREAS the Port of Tacoma and the City each have a responsibility to comply with their respective requirements set forth in the NPDES Phase I Municipal Stormwater Permit (MS4 Permit), issued by the Department of Ecology.

WHEREAS the Parties recognize there is a mutual benefit in cooperating and coordinating the integration of certain MS4 permit program elements to ensure better water quality in Commencement Bay, its waterways and other receiving waters, and have a shared interest in exploring ways to create efficiencies and cost savings with regard to stormwater management.

NOW, THEREFORE, in consideration of the mutual promises, benefits and obligations hereinafter set forth, the Parties agree as follows:

**TERMS OF AGREEMENT**

**A. PURPOSE**

The purpose of this agreement is to provide a cooperative framework for coordination by the Parties to eliminate barriers to compliance with the terms of their respective Phase I stormwater permit, which is allowed under Special Condition S3.B. of the MS4 Permit, and is in the public interest. In accordance with Special Condition S3.B., each party remains responsible for their permit compliance, and this Agreement does not transfer such responsibility.

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Cooperation is mutually beneficial because each party benefits by a coordinated approach that targets the reduction of pollutants in municipal stormwater to the maximum extent practicable within two independently owned and operated municipal stormwater systems.

## **B. COORDINATION**

The Port's Environmental Director and the City's Director or Interim Director of the Environmental Services Department will coordinate all activities included herein unless otherwise noted.

## **C. ROLES AND RESPONSIBILITIES**

### **1. The Port will:**

a. Fulfill all requirements, terms and conditions that are applicable in the Port's Phase I permit for the municipal separate storm sewers it owns and operates.

b. At no cost to the City, grant access to Port properties discharging to the City's storm-water system covered by its MS4 permit allowing City staff to map, provide spill/emergency response, and inspect, the City's storm water system in accordance with Port policies and Department of Homeland Security Rules and Regulations, including ensuring a TWIC-compliant escort is readily available for City personnel access.

c. Implement internal review for compliance with the Port's permit requirements for Port development/redevelopment projects that only discharge to Port-owned storm system covered under its MS4 Permit,. Upon request, the City's Environmental Services Department is available for consultation regarding applicable stormwater-related requirements for such projects in accordance with Section B.7 in Exhibit A, which is incorporated by reference into and made part of this Agreement.

d. Comply with the City of Tacoma Surface Water Management Manual and Tacoma Municipal Code 12.08 or as otherwise amended for Port development and redevelopment projects that discharge surface or stormwater to the City of Tacoma's MS4 storm sewers.

e. Compensate the City for certain storm water services as set forth in Exhibit A, when the Port has requested such services and the City has provided a written scope and cost estimate prior to performing work, provided however, the requirement for a written estimate is waived when imminent harm may occur to the environment without immediate response. In such cases, verbal authorization from the Port will suffice.

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f. Coordinate internal effort and assist City staff to ensure timely completion of the action elements in this Agreement.

2. The City will:

a. Implement the requirements that are applicable in the City's MS4 Permit for the separate municipal storm sewers it owns and operates.

b. Provide a courtesy stormwater review by Environmental Services, in conjunction with other required project reviews for Port projects that discharge to Port-owned MS4 infrastructure.

c. Implement the adopted Ordinance No. 13450, passed by the City Council on February 5, 2013, which added TMC 12.08.500 A.3, as may be amended by the City Council, which has the effect of reducing surface water fees for Port properties/tax parcels that do not flow through the City's municipal stormwater system but discharge directly through and from Port properties/tax parcels to receiving waters.

d. Implement Ordinance No. 13450, passed by the City Council on February 5, 2013, which added TMC 12.08.500 A.2, as may be amended by the City Council, which has the effect of reducing surface water fees for undeveloped Port-owned "open space" upland properties that are not planned for future development and can be demonstrated to provide a water quality benefit.

e. Meet annually with the Port to discuss maintenance of City-owned drainage ways (e.g., vegetation and sediment removal) and conveyance structures located within the Port District to assess whether such drainage ways or conveyance structures are causing property damage. Such review shall include identifying necessary infrastructure improvements and maintenance actions of the outfall structure and tidegate system for those parts of the drainage ways that are part of the City's storm-water system to address flooding of Port properties and portions of Milwaukee Avenue. (See, MS4 permit S5.C.9.e.) Infrastructure improvements and needed maintenance actions shall be subject to available funding, work prioritization by the City and, in the case of shared infrastructure, obtaining access and/or cost sharing agreements for such work.

f. At no cost to the Port, grant Port staff access to City infrastructure which discharges to the Port's storm-water system to map, provide spill/emergency response, inspect and perform other related activities in accordance with City policies.

g. Provide consultation regarding applicable stormwater-related requirements for Port projects and provide other stormwater-related services to the Port as set forth in Exhibit A.

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h. Meet annually or as otherwise requested by the Port and/or City to discuss stormwater ordinance modification proposals , if any, deemed necessary by either party to support their business objectives and the successful implementation of their respective MS4 permit programs.

#### **D. GENERAL PROVISIONS**

1. Effective Date. This Agreement shall be effective upon approval by both the Tacoma City Council and the Port Commission, and execution by all signatories below. The Agreement shall remain in effect for a period of five (5) years unless terminated sooner by either party for convenience.
2. No Real Property Transfers. No ownership of real property will transfer as a result of this Agreement.
3. Financial Obligations. Except for payment of stormwater-related services the City provides the Port upon Port request as set forth in Exhibit A, each Party is responsible to finance the obligations it agrees to undertake as a result of this Agreement.
4. Contacts. Each of the parties shall designate from its respective staff a contact person with responsibility for administration of the terms of this Agreement.
5. Limitation of Agreement. This Agreement does not relieve either party of any obligation or responsibility imposed upon it by law, including the obligations set forth in each Parties' respective MS4 Permit.
6. Timing. The requirements of this Agreement shall be carried out in a timely manner according to a schedule negotiated by the parties.
7. Incorporation Clause. This Agreement constitutes the complete and final agreement of the Parties, replaces and supersedes all oral and/or written proposals and agreements heretofore made by the Parties on the subject matter, and may be modified only by a writing signed by the Parties hereto.
8. Filing/Posting. In accordance with Chapter 39.34 RCW, a copy of this Agreement shall be recorded in the Office of the Pierce County Auditor or posted by each Party on their web site.
9. Record Retention. All project records shall be retained in accordance with each party's document retention schedule and available for review or audit by the other party during the term of this Agreement.
10. Disputes. The designated representatives herein shall use their best efforts to resolve disputes between the Parties. If the designated representatives

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are unable to resolve a dispute, then the responsible Project Directors for each Party 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 resolve disputes in a court of law or any other forum.

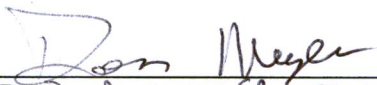
11. Indemnification. The City shall defend, indemnify and hold the Port, its officers, elected officials, employees and agents harmless from and against any and all costs, claims, demands, suits, actions, judgments, an/or awards of damages (collectively "Claims") resulting from this Agreement, which arise due to the Fault of the City, and persons acting on its behalf. This Agreement does not transfer to, or make the City responsible for any of the Port's MS4 Permit compliance obligations, and any Claims based on such compliance obligations are not covered by this paragraph.

The Port shall defend, indemnify and hold the City, its officers, elected officials, employees and agents harmless from and against any and all Claims resulting from this Agreement, which arise due to the Fault of the Port, and persons acting on its behalf, including any claims that arise due to the City's inability to perform because of access restrictions imposed by Port Security. This Agreement does not transfer to, or make the Port responsible for any of the City's MS4 Permit compliance obligations, and any Claims based on such compliance obligations are not covered by this paragraph. The term "Fault" as it is used in this Paragraph shall be defined according to RCW 4.22.015. This Indemnification section shall survive the termination of this Agreement.

**APPROVED BY** the Commissioners of the Port of Tacoma, State of Washington and signed in authentication thereof the 25<sup>th</sup> day of July 2013.

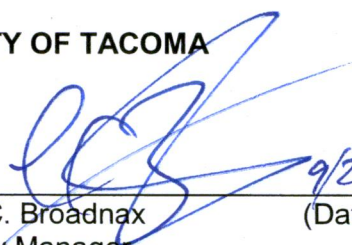
Signature authorized by the Tacoma City Council pursuant to Resolution No. 38724 on the 30<sup>th</sup> day of Sep., 2013

**PORT OF TACOMA:**


  
By DON MEYER, Chair,  
Port of Tacoma Commissioners

ATTEST:


**CITY OF TACOMA**

  
T.C. Broadnax  
City Manager

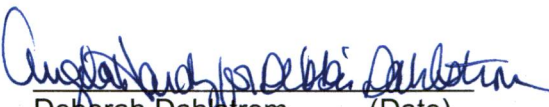
9/27/13  
(Date)

  
Michael P. Slevin, III, P.E. (Date)  
Director,  
Environmental Services Department

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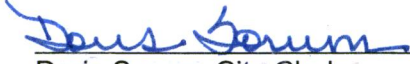
  
John Wolfe,  
Chief Executive Officer

7-26-13  
(Date)

  
Deborah Dahlstrom  
Risk Manager


(Date)

ATTEST:

  
Doris Sorum, City Clerk


9-30-2013

APPROVED AS TO FORM:

  
Carolyn Lake, Port General Counsel

APPROVED AS TO FORM:

  
Deputy City Attorney

  
Andy Cherullo  
Finance Director

9-23-2013  
(Date)

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## EXHIBIT A

The Port may request the City to provide the following stormwater-related services as set forth in this Exhibit A.

### **A. City Laboratory Services.**

If requested by the Port, the City agrees to provide certain analytical services at its Environmental Services Department Laboratory ("City Laboratory") for the parameters listed and analytical costs quoted in the attached document titled "Laboratory Analytical Services Quotation." The City may periodically update this document either to add or delete parameters and/or to update cost quotes for analytical services, and provide the Port with a copy of the same, upon request. The Port is responsible for requesting whether there are updated cost quotes at the time they seek analytical services from the City. The Port's costs for City Laboratory services shall be in accordance with and equal to the City's "Laboratory Analytical Services Quotation" in effect at the time analytical services are requested by the Port.

1. The laboratory cost quotes are for samples provided by the Port to the City Laboratory in an "analysis ready" format. The term "analysis ready" means the samples have been collected, stored and managed in accordance with an approved Quality Assurance Project Plan (QAPP) by persons trained and qualified to perform such sampling activities. The Port shall make every effort to assure the samples delivered to the City Laboratory are in an "analysis ready" format.

2. The cost quotes in the "Laboratory Analytical Services Quotation" do not cover any costs the City may incur to make a sample "analysis ready", which shall be the Port's responsibility to pay. The City will provide the Port an estimate in writing of such costs before incurring any such costs and receive approval for the estimated costs in writing.

3. Prior to requesting City Laboratory services, the Port shall: (i) provide the City with a copy of its QAPP at no cost; and (ii) schedule a meeting between the City Laboratory staff and Port's sampling personnel to discuss the QAPP and expectations for the analytical work. Each party shall bear its own costs associated with the effort described in this paragraph.

### **B. Other City NPDES Stormwater Permit - Related Services.**

1. Smoke Testing Pipe Infrastructure. Upon request, the City may "smoke-test" the Port's storm pipes (or sanitary pipes within the Port District) to detect illicit connections and illicit discharges to the Port's municipal stormwater system ("MS4 System"), per the cost schedule set forth in Section C below.

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2. GIS Database Information. City generated Geographic Information Services (GIS) information, and other stormwater-related records shall be made available to the Port upon request in accordance with the Public Records Act, Chapter 42.56 RCW. City-generated draft GIS mapping information of stormwater facilities and conveyance systems on properties within the Port district that discharge to the City's stormwater drainage system shall be provided to the Port for its review and comment prior to the City finalizing such information. If requested, the City may assist the Port with GIS mapping services for properties that drain to the Port's stormwater drainage system per the cost schedule set forth in Section C below. GIS layers depicting the Port's stormwater drainage system may be maintained and used by the City for mapping purposes subject to regulatory restrictions imposed by the United States Department of Homeland Security and Port policies implementing such regulations.

3. Source Control/Business Inspections. If requested, the City may assist the Port with stormwater source control inspections at businesses that drain to the Port's stormwater drainage system, per the cost schedule set forth in Section C below. Samples collected during such inspections shall be the Port's responsibility to manage and analyze in accordance with its QAPP.

4. Spill-Related Emergency Response. At the Port's written request, provide and/or assist the Port with spill-related emergency response services after regular business hours for spills and releases of oil or hazardous substances originating from Port properties in accordance with the cost schedule set forth in Section C below. Personnel costs shall be adjusted to be equal to the City's overtime rate for spill response assistance after 5 PM Monday through Friday, and anytime during a weekend or holiday. City assistance with spill coordination and cleanup activities shall continue until an authorized Port representative arrives or until the cleanup or response action is completed, whichever is earlier. The Port and City shall coordinate each agency's spill response process and procedures and work to achieve as much consistency as possible. The Port shall ensure that Port Security provides the City with timely access to Port properties for spill response purposes.

5. Use of City Decant Facility. (Tentative)<sup>1</sup>

Upon request, and if authorized by the City's Conditional Solid Waste Handling Permit, the Port may use the City's Decant Facility to "off-load" its vector truck decant material at such time(s) as may be approved by the City. Such material shall conform to any material specifications imposed by the City, and the City reserves the right to reject loads for non-conformance with its specifications. The Port's cost to use the Decant Facility is set forth below in Section C. The Port

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<sup>1</sup> This condition is marked "tentative" because the City's Conditional Solid Waste Handling Permit issued by the Tacoma - Pierce County Health Department currently authorizes the City to accept City-generated process educator and street sweeping wastes only.



shall maintain any generator responsibility it may have under federal and state laws for any decant material the Port off-loads at the City's Decant Facility.

6. Training Services.

The City will provide periodic notice to the Port about any scheduled "internal" stormwater management-related training provided by City staff. Port personnel may attend such training at the same cost charged for City employees. The Port may also request the City to provide separate training to Port staff regarding stormwater best management practices. The scope, timing, cost and duration of such training shall be determined by the City in coordination with the Port. If the City offers training provided by an outside consultant or other provider, then Port staff may attend such training at the same cost per attendee as the City pays, provided there is no objection by the training provider.

7. Development/Redevelopment Consultations.

Depending on the scope and extent of the development/redevelopment consultation undertaken in accordance with Section C.1.c. of this Agreement, the City may charge the Port for such consultation. Such charge shall be discussed with the Port in advance of the consultation. The City will provide a written estimate of charges for this activity and the Port will approve it in writing prior to any work being performed.

C. Costs for Non-Laboratory City Services.

Personnel Costs.

The non-overtime hourly rate for the City personnel providing the services described in Section B of this Exhibit is as follows:

	<u>Billing Rate</u>
• Senior Environmental Specialist:	\$71.66 per hour
• Senior Source Control Representative	\$61.70 per hour
• Source Control Representative	\$57.14 per hour
• Professional Engineer	Applicable Rate <sup>2</sup>

Overtime work shall be charged at the City's overtime rate. The above-listed hourly rates may be periodically updated by the City to reflect City Council-authorized changes in compensation for each of the job classifications listed. The Port is responsible for requesting whether there are updated cost quotes at the time they seek analytical services from the City. For services referenced herein where the Port has agreed to pay City costs, the Port shall pay the non-overtime

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<sup>2</sup> The term "Applicable Rate" means the hourly rate of the City-employed Professional Engineer providing the service requested by the Port.

hourly (and overtime) rate in effect at the time a City service is provided to the Port. Provided however, if the work requested by the Port is of a non-emergent nature which is the type of work that typically can be completed during normal working hours, unlike a spill event, for example, then the City shall charge the Port the non-overtime hourly rate.

#### Loaned Equipment.

The City may lend the Port smoke-testing equipment, or other equipment at a cost agreed to by the parties, which shall be documented in writing prior to the equipment loan occurring.

#### Cost to Use City Decant Facility (*Tentative*)

The Port may use the City's Decant Facility on a "per load" basis at a cost that reimburses the City's labor and facility operation costs to manage and dispose of the Port's load of vector waste material. The Port's cost shall be quoted in writing at the time the Port requests use of the City's Decant Facility.

#### Other Costs and Expenses.

For services referenced herein where the Port has agreed to pay City costs, materials, fuel, and supplies used by the City to accomplish the services provided in Section B of this Exhibit A shall be charged at the City's cost. For those portions of services referenced herein where the Port has agreed to pay City costs, the City may also assess a charge for use of its vehicles and equipment to accomplish the work covered under this section to cover depreciation and "wear and tear" of such vehicles and equipment.

#### **D. Payment.**

Invoices shall be accompanied with supporting data showing:

- a) Written summary of work performed for the period of the invoice;
- b) Staff charges by name, discipline, date of service, description of task and hourly rate;
- c) Costs for equipment, supplies or other expenses;
- d) Any markups, overhead or other fees comprising the total cost;
- e) A copy of any consultant agreement and invoice will also be provided when applicable.

All invoices shall be mailed "Attention: Contracts Department". Invoices may be emailed to [cpinvoices@portoftacoma.com](mailto: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.

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City agrees to submit timely invoices when the work is complete, unless a specific service requested by the Port takes longer than 60 days to complete, in which case the Port may ask the City to provide an invoice after the 60<sup>th</sup> day.

The Port agrees to pay all undisputed costs incurred for laboratory and non-laboratory services arising under this Exhibit A within thirty (30) calendar days of receiving a properly documented invoice from the City.

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