

A REIMBURSABLE AGREEMENT

BETWEEN THE

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE
CENTER FOR OPERATIONAL OCEANOGRAPHIC PRODUCTS AND
SERVICES

AND THE

PORT OF TACOMA

FOR

THE MANAGEMENT, OPERATION, MAINTENANCE AND REPAIR OF
NOAA’S TACOMA PHYSICAL
OCEANOGRAPHIC REAL-TIME SYSTEM (PORTS®)

NOS Agreement Code: MOA-2018-115/11677

I. PARTIES AND PURPOSE

- A. This Agreement is between the U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), through the Center for Operational Oceanographic Products and Services (CO-OPS) and the Port of Tacoma.
- B. The purpose of this Agreement is to provide funding for and to continue the partnership between NOAA and the Port of Tacoma, established under MOA-2013-059, which expired May 31, 2018, to allow NOAA to enhance, manage, operate, maintain, and repair NOAA's Tacoma Physical Oceanographic Real-Time System (Tacoma PORTS®). Tacoma PORTS® is a NOS program that supports safe and cost-efficient navigation.

II. BACKGROUND

- A. The Port of Tacoma is a public port district organized under the laws of the State of Washington within Pierce County. NOS and the Port of Tacoma have a common interest in the safe navigation and environmental management of the port and in the collection and dissemination of related oceanographic and meteorological data in near-real time.
- B. PORTS® is a program managed by the NOS CO-OPS that supports safe and cost-efficient navigation by providing ship masters and pilots with accurate real-time or near real-time information required for safe vessel loading and transit, and to avoid groundings and collisions. CO-OPS oversees the operation and maintenance of these systems with funding generally provided by the local communities. The quality control of all PORTS® data is maintained by CO-OPS through the Continuous Operational Real-Time Monitoring System (CORMS). CORMS is a 24-hour, 7-day watch to monitor all PORTS® data as well as data from the NOS National Water Level Observation Program stations. The automated system flags questionable data, and personnel then intervene and stop transmission of questionable data until the issue is resolved.
- C. Tacoma PORTS® was installed and is being operated at the request of the Port of Tacoma.

III. AUTHORITIES

- A. The legal authority for NOS and the Port of Tacoma to enter into this Agreement is the Coast and Geodetic Survey Act (CGSA), 33 U.S.C. § 883e, which authorizes the Secretary of Commerce to enter into cooperative

agreements or any other agreement, with, and to receive and expend funds made available by any State, or subdivision thereof, any Federal agency, or any public or private organization, or individual for surveys or investigations authorized under §§ 883a *et seq.*, or for performing related surveying and mapping activities, including special purpose maps and for the preparation and publication of the results thereof, and Chapter 39.34 Revised Code of Washington which authorizes any two or more public agencies to enter into agreements with one another for joint or cooperative action, including public agency of this state with agencies of the United States.

- B. The programmatic authority for NOS to enter into this Agreement is the CGSA, 33 U.S.C. §§ 883a *et seq.*, which authorize the Secretary of Commerce to conduct hydrographic and topographic surveys, tide and current observations, and analysis and prediction of tide and current data.

IV. THE TACOMA PORTS®

The Tacoma PORTS® consists of the following components:

- A. Water level station that includes an air acoustic water level sensor with protective well, data collection platform with Geostationary Operational Environmental Satellite (GOES) transmitter, line-of-sight radio modem, rechargeable battery, and solar panel and a water temperature sensor. This station also includes air temperature and barometric pressure sensors.
- B. Stand alone meteorological station nearby the Tacoma water level station that includes an anemometer, data collection platform with line-of-sight radio, rechargeable battery, and solar panels.
- C. A centralized Voice Data Response System (VDRS) located at NOS Headquarters, Silver Spring, Maryland, with access provided via a toll-free number.
- D. Additional data collection sites may be added in the future upon agreement of both Parties and identified by an amendment to this Agreement.

V. RESPONSIBILITIES OF THE PARTIES

PORTS® is a partnership program based on extensive collaboration between NOS and the Tacoma user community to identify local needs. The PORTS® partnership is founded on the principle that there are both local and national responsibilities. Funding for ongoing Operations and Maintenance (O&M) is the responsibility of the local sponsor.

- A. NOS agrees to provide, at no expense to Port of Tacoma:

1. Personnel and technical expertise required to assure that the operation, maintenance and repair of the Tacoma PORTS[®] are in accordance with NOS guidelines and standards.
 2. A centralized Voice Data Response System (VDRS) located at NOS Headquarters, Silver Spring, Maryland, with access provided via a toll-free number.
 3. Real-time quality control of all Tacoma PORTS[®] data in the form of a 24 hours per day/7 days per week Continuous Operational Real-time Monitoring System (CORMS) operation. This activity will be staffed by personnel contracted by CO-OPS to ensure that the data disseminated meets NOAA's standards for safe navigation.
 4. Communications costs associated with CORMS.
 5. Software maintenance and enhancements (which may be developed by NOS).
 6. Updates or refinements to the Mean Lower Low Water (MLLW) or other datum values as may be developed by NOS.
 7. Recommendations for hardware and equipment upgrades.
 8. Proposals for and final approval of all changes, additions, or modifications to the Tacoma PORTS[®].
 9. A local site representative. The site representative is NOS' contact listed in Section VII. NOS shall notify the Port of Tacoma if a new Tacoma PORTS[®] site representative is designated.
- B. NOS will provide the following items through use of Port of Tacoma funds described in Section VI below:
1. Personnel and expertise required to enhance, operate, maintain and repair the Tacoma PORTS[®] (this effort may utilize contractor support when appropriate).
 2. Routine maintenance and emergency repairs of the PORTS[®] instruments in accordance with NOS standards, including calibration of sensors.
 3. Recurring communication costs such as monthly Modem expenses.

4. Recapitalization costs for the purchase of equipment and supplies and reserve funds for the replacement of damaged or faulty equipment. This does not include major infrastructure repairs or station relocation, which require an amendment to the Agreement.

C. Port of Tacoma's responsibilities include:

1. Providing the funding described in Section VI hereof for the management, operation, maintenance, and repair of the Tacoma PORTS®.
2. Designating a local site representative. The site representative is the Port of Tacoma's contact listed in Section VII. The Port of Tacoma shall notify NOS if a new Tacoma PORTS® site representative is designated.
3. Agreement not to access, maintain, repair, modify, or upgrade any component of Tacoma PORTS®. Nothing contained in this Agreement gives or vests in Port of Tacoma the authorization to maintain, repair, modify, or upgrade any component of Tacoma PORTS® without written consent of all Parties.

VI. FUNDING, PAYMENT, AND REIMBURSEMENT ARRANGEMENTS

- A. With the signing of this Agreement, the Port of Tacoma will assume responsibility for funding, on an annual basis, the management, operation, maintenance, and repair of the Tacoma PORTS® for a period of five years for an amount not to exceed \$66,542. (See Appendix A for funding details).
- B. Following the signing of this Agreement by both parties, NOS will invoice the Port of Tacoma for \$6,500 for Period 1. These funds are required for the operations and maintenance (O&M) and repair of the Tacoma PORTS®. Period 1 of O&M shall begin when the Agreement is signed and end on May 31, 2019. NOS will invoice the Port of Tacoma annually for the next subsequent four periods in advance of the anniversary expiration dates in accordance with Appendix A, for a total not to exceed \$66,542 over the five (5) periods of the Agreement. These funds will be provided to NOS within 30 days of the annual invoice and subject to the same terms and conditions described above. There will be no required amendments to this Agreement unless there is a substantial change in service, costs or products.
- C. Fiscal and Accounting Data
 1. PORT OF TACOMA

DUNS¹ Number: 06-3341911
 Employer ID: 91-6001026
 Appropriation Symbol:

2. NOAA/NOS/CO-OPS
 DUNS Number: 78-4769085
 Employer ID: 52-0821608
 Appropriation Symbol: 13x1450
 BETC: COLL
 CBS ACCS number: 14-2018-1BK6XTP-P00-10-16-0000-00-00-00-00

- D. Any unused funds that remain at the conclusion of any period of performance shall be carried over into the following funding period. Any unused funds at the end of this Agreement that are not carried over by amendment to this Agreement, execution of a new agreement, or that remain after termination or cancellation of the Agreement shall be returned to Port of Tacoma.
- E. Unused funds that remain from the previous agreement (MOA-2013-059) shall be carried over into this agreement as "reserve funds" that are intended to fund the replacement of damaged or non-repairable, capital equipment and/or equipment removal in the event of the termination of Tacoma PORTS®. There are an estimated \$7,141.88 in reserve funds from MOA-2013-059, which will be held in reserve to cover capital expenses under this agreement.
- F. NOAA/NOS/CO-OPS will not achieve full cost recovery for the services it is providing. NOAA's contribution to the PORTS® partnership includes maintaining its Continuous Operational Real-time Monitoring System (CORMS) for data quality control, related PORTS® data dissemination infrastructure, and other technical and administrative oversight in the amount appropriated for PORTS® in the current fiscal year. Based upon several published studies of the economic benefits of PORTS®, the estimated annual benefit for each PORTS® is \$2.2M - \$4.5M, which include improvements in spill response, weather forecasts and storm surge forecasts that are in keeping with NOAA's mission to protect life and property, and exceeds NOAA's annual contribution.
- G. This Agreement is subject to the availability of funds. NOS participation in this Agreement is contingent on receipt of the Federal funding required to operate the CORMS. If NOS cannot participate due to lack of funds, NOS shall provide notice to the Port of Tacoma and the Part may terminate this Agreement pursuant to Section VIII D herein, below.

¹ Dun & Bradstreet Universal Numbering System

- H. Equipment used in this project shall remain NOS property. NOS will leave the Tacoma PORTS[®] equipment in place, as long as it remains operational.
- I. If the Port of Tacoma fails to provide necessary funds, NOS will monitor data quality and terminate dissemination of information when, at its sole discretion, the information quality approaches unacceptable limits.

VII. CONTACTS

- A. The Points of Contact (POC) for each of the Parties to this Agreement are:

NOS:
Brent Ache
CO-OPS Chief of Staff
NOAA/NOS/CO-OPS
1305 East West Highway
Silver Spring, Maryland 20910
(240) 533-0480 (p)
(301) 713-4392 (f)
brent.ache@noaa.gov

Port of Tacoma:
Dakota Chamberlain
Chief Facilities Development Officer

One Sitcum Plaza
Tacoma, WA 98421
(253) 592-6734
dchamberlain@nwseaportalliance.com

- B. For day-to-day operations and technical assistance, the NOS Site Representative for the Tacoma PORTS[®] is:

Mark Bailey, Site Representative
NOAA/NOS/CO-OPS/FOD
7600 Sand Point Way NE
Seattle, WA 98115
(206) 526-6910
(206) 979-1962 (c)
mark.bailey@noaa.gov

- C. The Financial Points of Contact (POC) for this Agreement are:

NOS:
Brian A. Johnson
Financial Analyst
NOAA/NOS/CO-OPS
1305 East West Highway
Silver Spring, Maryland 20910
(240) 533-0466 (p)
(301) 713-4392 (f)
brian.a.johnson@noaa.gov

Port of Tacoma:
Dakota Chamberlain
Chief Facilities Development Officer

One Sitcum Plaza
Tacoma, WA 98421
(253) 592-6734
dchamberlain@nwseaportalliance.com

- D. The Parties agree that if there is a change regarding the information in this Section, the Party making the change will notify the other Party in writing of such change. This change does not require a formal amendment.

VIII. DURATION OF AGREEMENT, AMENDMENTS, OR TERMINATION

- A. This five-period Agreement will become effective upon the signature of all Parties of the Agreement. Period 1 will begin upon signature and end on May 31, 2019 and will include the first year of O&M. The duration of each subsequent period of this Agreement shall be for one year, beginning on June 1 and ending on May 31. Thus, the second period will begin on June 1, 2019 and end on May 31, 2020. Periods three, four, and five shall follow the same schedule. The Agreement shall end on May 31, 2023. Any negotiated changes in Periods 2-5 of operation and maintenance funding from those listed in Appendix A will be addressed in a mutually agreeable amendment to this Agreement. Otherwise, NOS will receive payment subject to the provisions of Section VI, above.
- B. This Agreement may be amended within its scope or extended prior to its expiration through the written mutual consent of the Parties. The Parties will review this Agreement at least once every three years to determine whether it should be revised or terminated.
- C. The transfer of funds from Port of Tacoma to NOS will not require an amendment. However, if the amount to be transferred is greater or less than the amount cited in Appendix A, then an amendment will be required.
- D. All responsibilities under this Agreement are subject to the availability of appropriated funds. The Parties may terminate the Agreement either by mutual written agreement or upon 90 days' written notice by either party to the other. NOS participation in this Agreement is contingent on receipt of the Federal funding required to operate the CORMS. Should NOS be required to cancel this Agreement, all unexpended funds which were received from the Port of Tacoma will be returned to the Port of Tacoma. Should funds fail to be available to Port

of Tacoma, Port of Tacoma shall have the right to terminate this Agreement. In case of termination pursuant to this paragraph, NOAA shall be reimbursed only for costs incurred prior to the termination, so long as each cost is otherwise authorized and appropriate. NOS may also use remaining reserve funds, up to a max of \$50K, for the removal of equipment following termination.

- E. NOS reserves the right to resume maintenance and operation of the Tacoma PORTS® at any time if, in its sole discretion, it believes that such an action would be in the public's best interest.

IX. RESOLUTION OF DISAGREEMENTS

- A. Nothing herein is intended to conflict with current DOC or Port of Tacoma directives. If the terms of this Agreement are inconsistent with existing directives of any of the Parties entering into this Agreement, then those portions of this Agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the Agreement, all necessary changes will be accomplished by either an amendment to this Agreement or by entering into a new Agreement, whichever is deemed expedient to the interest of all Parties.
- B. Should disagreement arise as to the interpretation of the provisions of this Agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement will be stated in writing by each Party and presented to the other Party for consideration. If agreement on interpretation is not reached within 30 days, the Parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

X. OTHER TERMS AND CONDITIONS

- A. This Agreement in no way limits other government agencies (Federal, state, and local), port authorities, companies involved in maritime commerce, commercial fishermen, recreational boaters and fishermen, researchers, or the general public from having access to Tacoma PORTS® data through (1) telephone voice messaging and (2) the Internet.
- B. NOAA agrees to promptly consider and adjudicate any and all claims which may arise out of work under this agreement by NOAA or duly authorized representatives or contractors of NOAA and to pay for any damage or injury as

may be required by Federal law. Such adjudication will be pursued under the Federal Torts Claim Act, 28 U.S.C. 2671 et seq. or other such legal authority as may be pertinent. NOAA also agrees to consider and adjudicate any claims for damage or injury sustained by NOAA personnel in the performance of their official duties while doing the work under this agreement. Such adjudication will be made pursuant to the Federal Employees Compensation Act, 5 U.S.C. 8181 et seq., or other such legal authority as may be pertinent.

- C. NOAA shall cause its contractors to maintain during the performance of any work under the terms of this Agreement, and for one year after such work is completed or accepted, insurances with limits of liability not less than those stated in the Federal Acquisition Regulation (FAR) 28.307-2. See Appendix B.
- D. This Agreement shall be filed with the Pierce County Auditor or, alternatively, listed by subject on the Port's web site or other electronically retrievable public source, pursuant to RCW 39.34.040.
- E. In executing the terms and conditions of this Agreement, CO-OPS shall comply with all applicable federal, state, and local environmental laws, statutes, regulations, executive orders, and permits.

XI. APPROVALS

ACCEPTED AND APPROVED FOR THE
U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE

ACCEPTED AND APPROVED FOR THE
PORT OF TACOMA

BY: _____
Richard F. Edwing
Director
Center for Operational Oceanographic
Products and Services

BY: _____
John Wolfe
Chief Executive Officer

DATE: _____

DATE: _____

Appendix A

Tacoma PORTS®

Management, Operation, Maintenance, and Repair Cost Schedule

Measurement System	Annual Operations and Maintenance Costs				
	Period 1 Signature – 5/31/19	Period 2 6/1/19 - 5/31/20	Period 3 6/1/20 - 5/31/21	Period 4 6/1/21 – 5/31/22	Period 5 6/1/22 - 5/31/23
Tacoma Water Level	\$6,500	\$9,904	\$13,308	\$16,711	\$20,114
Total	\$6,500	\$9,903	\$13,306	\$16,719	\$20,114

Federal Acquisition Regulations

28.307-2 Liability.

- a) ***Workers' compensation and employer's liability.*** Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers. (See 28.305(c) for treatment of contracts subject to the Defense Base Act.)
- b) ***General liability.***
 - 1. The contracting officer shall require bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.
 - 2. Property damage liability insurance shall be required only in special circumstances as determined by the agency.
- c) ***Auto liability.*** The contracting officer shall require automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.
- d) ***Aircraft public and passenger liability.*** When aircraft are used in connection with performing the contract, the contracting officer shall require aircraft public and passenger liability insurance. Coverage shall be at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.
- e) ***Vessel liability.*** When contract performance involves use of vessels, the contracting officer shall require, as determined by the agency, vessel collision liability and protection and indemnity liability insurance.

<http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/Far1toc.htm>