

**MEMORANDUM OF AGREEMENT
BETWEEN THE PORT OF TACOMA & PIERCE COUNTY
REGARDING THE INSTALLATION AND OPERATION OF THE
PORT'S EMERGENCY WARNING SYSTEM (PEWS)**

WHEREAS, the Port of Tacoma under the Port's public-sector applicant umbrella, received a Port Security Grant Program (PSGP) award for the installation of an outdoor Emergency Warning System; 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 emergency information 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, the Puget Sound Captain of the Port, the Area Maritime Security Committee, and the Port's MTSA-regulated facilities must also develop procedures to (1) respond to any security instructions the Coast Guard announces; (2) evacuate the port facilities in case of safety or security threats or breaches of security; (3) communicate appropriate safety, security, and threat information to first responders, emergency managers, and other stakeholders at the federal, state, and local levels; and (4) facilitate the recovery of the Marine Transportation System; and,

WHEREAS, the Port of Tacoma Security Department provides communications center support, through its Port of Tacoma Patrol Control Center ("Control Center"), and supports other security measures throughout the land and water areas within the boundaries of the Port's owned and leased properties; and

WHEREAS, the Port currently invests in Port-wide routine and emergency communications systems, linking strategic, operational, emergency, and key safety, response, security, and law enforcement agencies in Tacoma and Pierce County; and

WHEREAS, it is the intent of the Parties to memorialize their agreement to cooperate with and coordinate the operation of the outdoor emergency broadcast/alert system 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

1. In 2007, the Department of Homeland Security awarded a \$1,417,292 port-wide security grant for the construction and installation of an integrated outdoor emergency broadcast/alert system (PEWS) throughout the Port of Tacoma facilities. The specific aim of the PEWS is to protect human life and property, providing a standardized outdoor emergency broadcast and response system compatible with Washington State and Pierce County's emergency alert systems. The grant period runs from 01 Jun 2007 to 31 May 2010.
2. Other funding of the respective obligations of the Parties, except as the one specifically provided above, shall be out of the respective general funds/current expenses of the Parties.
3. The port-wide PEWS is a key alert system that may (a) enhance the level of awareness for waterfront workers, (b) have a positive impact in minimizing injuries and loss of life, and (c) increase the safeguards throughout the Port's infrastructure. It gives Port and Terminal entities, as well as emergency management agencies, the capability to alert stakeholders of safety and security threats; furthermore, it provides the ability to support emergency management and response.
4. Specifically, the PEWS may provide tone, voice, and visual signals and notification devices to alert of potentially hazardous situations. This outdoor warning system may be used as one of several resources available to the Port, Terminals, and emergency responders to notify those within hearing and visual distance of a possible hazardous situation.
5. This system invests in people and emergency management, not only addressing mass-notification needs, but also taking a regional approach to the safety and security of the waterfront personnel as well as Port and its facilities within the Tideflats.

B. THE PORT AGREES TO:

1. Subject to Port Commission approval, the availability of the PSGP and cost share funds, the Port will purchase and contract for the installation of the outdoor PEWS within the Port and operating terminals' areas.
2. The Port shall perform the following services, as required: grant management; project bidding and award; construction and installation contract management and inspection; administration of warranties after acceptance; as well as other roles as necessary. The Port or its contractor will obtain all permits that may be necessary, including those required by the federal and state environmental policy acts.
3. The Port will coordinate and work cooperatively with its terminals, the City of Tacoma, Pierce County, the State of Washington, and contract installer to select the appropriate location(s) for the system. The location(s) shall be suitable and shall take into consideration terminal operations, system effectiveness, support infrastructure availability/suitability, grant and cost-share budget constraints, local and state requirements, and other considerations as necessary.
4. Performance of the duties of the Parties provided hereby shall be done in accordance with

Appendix A and the standard operating procedures and customary practices of the Parties. Yet, no provision of this Agreement shall relieve either Party of its public agency obligations and or responsibilities imposed by law.

5. In addition, if the proper connectivity is achieved, the Port authorizes Pierce County to provide overall (Port-wide) system back-up control for activation (including emergency activation support), live and silent testing, and monitoring.
6. The Port shall maintain the grant documentation, system records and manuals, maintenance logs, and other required documents. Whenever applicable, these records shall be protected in accordance with the federal sensitive security information laws and regulations (49 U.S.C. 114 (s) and 49 CFR 1520.7 (k)) and shall be maintained and retained in accordance with federal and state laws. Moreover, these records are subject to inspection, review, or audit by Department of Homeland Security's grants (FEMA) and operational (U.S. Coast Guard) personnel, the Office of the State Auditor, and other state or federal officials as authorized by law. These records may be shared with requesting agencies; nevertheless, each Party will employ the appropriate security procedures and protections to assure that records and documents provided are not erroneously disclosed to third Parties.

C. PIERCE COUNTY AGREES TO:

1. Coordinate and work cooperatively with the Port in achieving proper connectivity and maintaining the operational status of the remote access between its All Hazards Alert Broadcast (AHAB) Warning System to the Port's PEWS.
2. If successful communications connectivity is achieved between the Port of Tacoma and Pierce County Operations Center, Pierce County may provide PEWS back-up control for activation (including emergency activation support), live and silent testing, and/or monitoring. The tasks that Pierce County may execute will be determined by the capabilities of the remote controller as well as the connectivity achieved. Also, Pierce County will promptly notify the Port when connectivity, equipment, system intrusion, or other issues may prevent back-up activation for significant periods of time. The standard operating procedures for activation and testing are outlined in Appendix A.
3. After the successful installation, testing, and acceptance of the system, the County will provide overall (Port-wide) system oversight and back-up control for activation (including emergency activation support), live and silent testing, and monitoring. The PEWS system will be activated only during testing, exercises, or real emergency incidents. Standard operating procedures for activation and testing are outlined in Appendix A.
4. Performance of the duties of the Parties provided hereby shall be done in accordance with Appendix A and the standard operating procedures and customary practices of the Parties. Yet, no provision of this Agreement shall relieve either Party of its public agency obligations and or responsibilities imposed by law.
5. In addition, if the proper communications connectivity is achieved, the Port authorizes Pierce County to transmit regional and local warning Emergency Alert System (EAS) messages after receiving the alerts from their internal network, the National Weather Service, or other authorized agencies. These warning messages may include tsunami, lahar, and other similar regional and local warnings.

6. Pierce County will coordinate, fund, and arrange for preventive, routine, and emergency maintenance services/repairs to their remote controller system components. Preventive maintenance, troubleshoot/diagnosis, repairs, restorations, and replacements to their remote controller system should be executed as needed in order to preserve the system in good and safe working order.
7. Pierce County will coordinate, fund, and arrange for preventive, routine, and emergency maintenance services/repairs to the PEWS system components including all equipment inside Port terminals. Preventive maintenance, troubleshoot/diagnosis, repairs, restorations, and replacements to the PEWS system should be executed as needed in order to preserve the system in good and safe working order. Pierce County agrees to stock and maintain the standard repair components as suggested by the manufacturer to expedite repairs.
8. Pierce County shall maintain the remote system's records and manuals, maintenance logs, and other required documents. Whenever applicable, these records shall be protected in accordance with the federal sensitive security information laws and regulations (49 U.S.C. 114 (s) and 49 CFR 1520.7 (k)) and shall be maintained and retained in accordance with federal and state laws. Moreover, if the remote system components were acquired with federal grants, its records are subject to inspection, review, or audit by Department of Homeland Security's grants (FEMA). The records are also subject to inspection, review, or audit by the Office of the State Auditor and other state or federal officials as authorized by law. These records may be shared with requesting agencies; nevertheless, each Party will employ the appropriate security procedures and protections to assure that records and documents provided are not erroneously disclosed to third Parties.

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.

TERMINATION

1. This Agreement shall remain in effect until rescinded by mutual agreement or occurrence of one or more events leading to the permanent loss of remote connectivity or permanent system integration failure between Pierce County and the Port.
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.

CONTRACT SIGNATURE PAGE

PORT OF TACOMA EM WARNING SYSTEM AGREEMENT Contract #: 069106

IN WITNESS WHEREOF, the parties have executed this Agreement this 24th day of May, 2010.

PIERCE COUNTY:

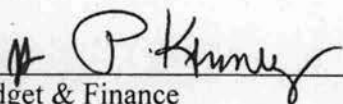
PORT OF TACOMA:

Approved as to legal form only:

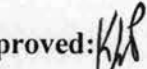
By 
Deputy Prosecuting Attorney Date

Recommended:

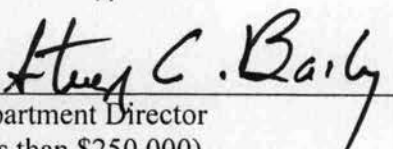
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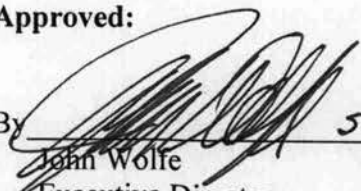
By  5-14
Budget & Finance Date

By:  5/20/2010
Dorcas Nepple Date
Director, Contracts & Purchasing

Approved: 

Approved:

By  5/5/10
Department Director Date
(less than \$250,000)

By  5-24-10
John Wolfe Date
Executive Director

By _____
Pierce County Executive Date

APPENDIX A
PEWS ACTIVATION AND TESTING PLAN
STANDARD OPERATING PROCEDURES

I. INTRODUCTION

1. This Plan provides specific procedures for the activation and testing of the Port's emergency broadcast system (PEWS). The port-wide PEWS is a key alert system that can enhance the level of awareness for waterfront workers, may have a positive impact in minimizing injuries and loss of life, and can increasingly safeguard the Port's infrastructure. It gives the Port and leased terminal entities, as well as emergency management agencies, the capability to alert stakeholders of safety and security threats; furthermore, it provides the ability to support emergency management and response.
2. These procedures shall be followed in response to real-life emergencies or occurrences which pose a danger to life or property. Participation in the Port's PEWS Activation and Testing Plan shall not be deemed to prohibit an agency, municipal corporation, or leased terminal entity from exercising independent discretion and responsibility in a given emergency situation or occurrence, including coordination with Federal, State, County, City, and Port first responders and other authorities.

II. PURPOSE

1. The purpose of this Plan is to outline the PEWS' standard activation and testing procedures. These procedures will permit the dissemination of emergency information and instructions during local or regional threats or emergencies that may affect the safety and security of waterfront employees.

III. CAPABILITY & AUTHORITY

1. Authorized entities, including the State's Emergency Management Division, County and City emergency management agencies, the Port, and leased terminals will have the capability and authority to execute activations and tests of the PEWS. Nevertheless, activations and tests may only be done as prescribed in order to prevent false alarms or accidental activations. Testing shall be coordinated amongst the parties beforehand.
2. Typically, activations will be executed through the local leased terminal controller(s), the Port's main controller(s), and/or first responder or emergency management agencies in representation of their jurisdictional authority.

IV. PEWS PROCEDURES

1. The Port will assume and retain primary responsibility for activation, live and silent testing, and monitoring for those portions of the system installed within the facilities operated by the Port of Tacoma and its leased terminals.
2. In general, activations may encompass or consider the following criteria:
 - a. Severity—the activation is crucial for, and will aid in preventing or minimizing the loss of life or the substantial loss of property.
 - b. Timing—activation require immediate action and knowledge to avoid adverse

impacts.

- c. Other means of disseminating the information are inadequate; i.e. the activation ensures the rapid delivery of emergency notifications.
3. PEWS connectivity may be achieved with local, county, and state first responders dispatch and emergency management centers. These remote access links will be connected through the Port's Control Center. If necessary, the Port may request remote activation support from the designated government agencies that have remote communications access and capabilities.
4. Government agencies with remote communications access may also transmit, when required, regional and local warning Emergency Alert System (EAS) messages after receiving the alerts from their internal network, the National Weather Service, or other authorized agencies. These warning messages include tsunami, lahar, and other similar regional and local warnings.
5. PEWS activations shall be included as part of the Port and leased terminal's safety and security plans. However, activations do not preclude the initiation of emergency notifications that must be made to local law enforcement, fire, rescue, and/or medical units that serve the Tideflats. It is therefore essential that established emergency notification and incident command procedures remain in place to alert and communicate with first responders, the Port, and other support agencies.
6. The Port Control Center, and designated remote access agencies shall coordinate live and silent testing to minimize the risk of accidental activations. Live and silent testing shall be executed at least monthly.