Washington Public Port District
Omnibus Mutual Aid Interlocal Agreement

This OMNIBUS MUTUAL AID INTERLOCAL AGREEMENT (the "Agreement") is an Interlocal Agreement pursuant to chapter 39.34 RCW and made and entered into by the undersigned Washington port districts (the "Members") to enable them to provide assistance to each other in preparation for and during emergencies.

WHEREAS, the Members have expressed a mutual interest in the establishment of an Agreement to facilitate and encourage assistance among Members to prepare for and respond to emergencies; and

WHEREAS, in the event of an emergency as defined herein or training for such an event, any Member to this Agreement may need assistance in the form of supplemental personnel, equipment, materials or other support; and

WHEREAS, each Member owns equipment, supplies and employs trained personnel and may, pursuant to the terms of this Agreement provide its equipment, supplies and personnel to other Members as provided herein; and

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, each undersigned Member agrees as follows:

1. **APPLICABILITY AND PURPOSE.** The purpose of this Agreement is to provide the terms and conditions under which various Members will provide assistance to other Members for emergency training or for an emergency as provided herein.

1.1. This Agreement is available for execution by all Washington port districts in counterparts which collectively will form one Agreement. It is the intent of the members that once executed the (i) various Members may elect to make their equipment, supplies and personnel available to other Members under the terms and conditions of this Agreement and (ii) various Members may utilize the equipment, supplies and personnel available of other Members under the terms and conditions of this Agreement.

2. **DEFINITIONS.** The following definitions shall be used in this Agreement:

2.1. "Asset" means anything that has value provided by a Member. Assets include, but are not limited to, any physical asset, or human resource, including, but not limited to equipment, disposable supplies, and/or personnel provided in support of an Event.

2.2. "Assistance" means the provision of Assets in support of an Event.

2.3. "Assistance Costs" means the usual and customary expenses incurred by a Lender in providing Assistance.

2.4. "Borrower" means a Member that has executed this Agreement and has made a request for Assistance and has received commitment(s) to deliver Assistance pursuant to the terms of this Agreement.

2.5. "Contact Person(s)" means the person or persons designated by each Member to request Assistance from or grant Assistance to another Member pursuant to the terms of this Agreement.

2.6. "Designated Representative" shall be identified and designated by each Member to serve as the representative of their respective Member in any meeting to coordinate the implementation of this Agreement.

2.7. "Emergency" means unforeseen circumstances beyond the control of the Member port that either: (a) present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. The term "emergency" includes, but is not limited to, any human-caused or natural event or circumstance which requires immediate action to preserve public health, protect life, protect public property, and which circumstance is causing or threatening loss of life, damage to the environment, injury to person or property, human suffering or financial loss, such as: fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of hazardous materials, contamination, utility or transportation emergencies, disease, infestation, civil disturbance, riots, act of terrorism or sabotage.

2.8. "Emergency Contact Information Form" is the form (supplied by the Lead Coordinating Agency) submitted to the Lead Coordinating Agency by each Member listing names, addresses, and twenty-four (24) hour phone numbers of the Contact Person(s) of each Member.

2.9. "Event" refers to an incident, emergency, disaster, training, drill or exercise which causes a Borrower to request assistance from a Lender under this Agreement.

2.10. "Lender" means a Member who has subscribed to this Agreement and has agreed to deliver assistance to another Member pursuant to the terms and conditions of this Agreement.

2.11. "Lead Coordinating Agency" is the Washington Public Ports Association (the "WPPA").

3. **PARTICIPATION.** Participation in providing equipment, supplies and personnel to a Member pursuant to this Agreement is purely voluntary. The execution of this Agreement in and of itself creates no legal obligation of a Member to provide such equipment, supplies and personnel; however if such equipment, supplies or personnel are provided the terms and conditions of this Agreement will apply to such action.

3.1. No Member shall be liable to another Member for, or be considered to be in breach of, or default under this Agreement on account of any delay in or failure to provide assistance under this Agreement.

3.2. Members who execute the Agreement are encouraged to:

a. Ensure that the Lead Coordinating Agency has their organization's most current Emergency Contact Information Form.

b. Supply a basic list of personnel, equipment, supplies and/or services they may be willing and able to loan.

c. Update Emergency Contact Information and available personnel, equipment, supplies and/or services annually or more often if necessary.

d. Possess a good understanding about how to request assistance under this Agreement.

e. Operate under the principles of the National Incident Management System (NIMS) and the Incident Command System (ICS).

4. **ROLE OF DESIGNATED REPRESENTATIVE OF MEMBERS AND OF LEAD COORDINATING AGENCY.** Each Member shall identify the Designated Representative on the signature page of this Agreement and keep the Lead Coordinating Agency informed of any change to the Designated Representative who shall serve on behalf of their respective Member to discuss implementation and/or amendment of this Agreement.

4.1. The Lead Coordinating Agency, as required, shall undertake the following actions. Any Member may participate in the discussions:

a. Participate in any meetings convened on the implementation of this Agreement.

b. Obtain and communicate to relevant Member departments the discussion items and decisions of the meeting, as they bear on interoperability among Members.

c. Maintain a copy of this Agreement (including amendments), a list of the Members and accompanying original Member signature pages.

d. Make available to each Member a copy of the signature page of newly executed Agreement(s).

e. Provide each Member with copies of the Emergency Contact Information Forms provided by the other Members. Each Member is responsible to provide the Lead Coordinating Agency with their current Emergency Contact Information.

f. The Designated Representative of each Member shall notify the Lead Coordinating Agency in writing upon their Member's withdrawal from this Agreement. In turn, the Lead Coordinating Agency shall notify all Designated Representatives of Members whenever a Member withdraws from this Agreement.

5. **TERM AND TERMINATION.** This Agreement is effective upon execution by two (2) or more Members, and shall remain in effect indefinitely until rescinded by all Members.

5.1. A Member opting to withdraw from this Agreement shall provide written withdrawal notification to the Lead Coordinating Agency. Notice of withdrawal becomes effective upon receipt by the Lead Coordinating Agency, or the date specified in the Member's written withdrawal whichever is later. Any withdrawing Member shall remain liable for all obligations incurred during its period of participation, until the obligation is satisfied. The Lead Coordinating Agency shall notify all participating Members' Designated Representative of any withdrawal by a Member.

6. **PAYMENT FOR SERVICES AND ASSISTANCE.** Borrower shall pay the Lender for all customary, usual, commercially reasonable and invoiced Assistance Costs within sixty (60) days of receipt of the Lender's invoice, for the assistance provided by the Lender. In the event Lender provides equipment, supplies or parts, the Lender shall have the option to accept payment of cash or in kind for the equipment, supplies or parts supplied.

6.1. Notwithstanding the foregoing, there shall be no charge for Assistance Costs incurred during the first eight (8) hours of a response in providing any Asset. The eight (8) hour period shall begin when the Lending Coordinating Agency begins to mobilize the Assets. Further agreements regarding costs are addressed herein.

6.2. This Agreement is valuable to each Member in that it provides a mechanism to receive Assets as provided herein. Therefore, each Member has determined that the payments received herein constitute "true and full" value as required by RCW 43.09.210.

7. **INDEPENDENT ENTITY.** Lender shall be and operate as an independent entity in the performance of any Assistance. Employees of Lender shall, at all times while providing assistance, continue to be employees of Lender and shall not be deemed employees of Borrower or "loaned servants" to Borrower for any purpose.

7.1. Wages, hours, and other terms and conditions of employment of Lender shall remain applicable to all of its employees who provide Assistance. Lender shall be solely responsible for payment of its employees' wages, any required payroll taxes and any benefits or other compensation. Borrower shall not be responsible for paying any wages, benefits, taxes, or other compensation directly to the Lender's employees. The costs associated with borrowed personnel are subject to the reimbursement process outlined in this Agreement. In no event shall Lender or its officers, employees, agents, or representatives be authorized (or represent that they are authorized) to make any representation, enter into any agreement, waive any right or incur any obligation in the name of, on behalf of, or as agent for Borrower under or by virtue of this Agreement.

8. **REQUESTS FOR ASSISTANCE.** A Member may request assistance from other Members for an Event. In the event of an emergency, a request for assistance may be made verbally followed up with a written request as soon as practical or within seven (7) days. The Lender shall give verbal approval of the request to the requesting Member. Lender shall follow up any verbal approval with written approval as soon as practical or within seven (7) days of the approval. The extent to which the Lender provides any assistance shall be at the Lender's sole discretion.

8.1. Members will, to the extent practicable, provide copies of all communications to the Lead Coordinating Agency for use in administering this Agreement and recommending modifications.

9. **GENERAL NATURE OF ASSISTANCE.** Member assistance may be in the form of resources, such as equipment, supplies, and personnel or the direct provision of services. The execution of the Agreement shall not create any duty to respond on the part of any Member. A Member shall not be held liable to any other Member for failing to provide Assistance. A Member has the absolute discretion to decline to provide any requested Assistance and to withdraw resources it has provided at any time without incurring any liability. Resources are "borrowed" with reimbursement and terms of exchange varying with the type of resource. The Members hereto recognize that time is critical during an emergency and diligent efforts shall be made to respond to a request for resources as rapidly as possible, including any notification(s) that requested resources are not available. A Member maintains the option of submitting a request for assistance directly to local emergency management coordinating organizations.

10. **LOANS OF EQUIPMENT.** At the sole discretion of the Lender, equipment may be made available upon request of a Member. Unless mutually agreed upon otherwise, the first eight (8) hours of use shall be without cost to the Borrower, after which use of equipment, such as construction equipment, vehicles, tools, pumps and motors, shall be at the Lender's actual cost or at their current equipment rate. Equipment and tool loans are subject to the following conditions:

a. Assets and equipment of a Lender shall continue under the command and control of the Lender, but shall be under the operational control of the appropriate officials within the incident management system of the Borrower.

b. At the option of the Lender, loaned equipment may be loaned with an operator.

c. Loaned equipment shall be returned to the Lender as soon as reasonably possible after Borrower's emergency or training needs end, or immediately upon the Borrower's receipt of an oral or written notice from the Lender for the return of the equipment. When notified to return equipment to a Lender, the Borrower shall make every effort to return the equipment to the Lender's possession within twenty-four (24) hours following notification, and in good operating condition.

d. Borrower shall, at its own expense, provide any consumable supplies needed to operate equipment unless mutually agreed upon otherwise. The Borrower shall take proper precaution in its operation, storage and maintenance of Lender's equipment. Members are responsible to ensure that equipment shall be used only by properly trained and supervised operators. Lender shall endeavor to provide equipment in good working order. All equipment is provided "as is," with no representations or warranties as to its fitness for particular purpose.

e. Lender's cost related to the transportation, handling, and loading/unloading of equipment, even within the initial eight (8) hour period, shall be borne by the Borrower unless mutually agreed upon otherwise. Lender shall provide copies of invoices for such charges and shall provide hourly accounting of charges for Lender's employees who perform such services.

f. Without effecting a Lender's right to indemnification as provided in this Agreement and even within the initial eight (8) hour period, in the event loaned equipment is lost or damaged while in the custody and use of the Borrower, or while being returned by Borrower to the Lender, Borrower shall promptly reimburse the Lender for the reasonable cost of repairing or replacing (as the case may be) said damaged equipment. If the equipment cannot be repaired or replaced within a reasonable time period then Borrower shall reimburse Lender for the cost of replacing such equipment with equipment that is of equal condition, quality, kind, and capability. If Lender must lease or rent replacement equipment for that which was loaned while the Lender's equipment is being repaired or replaced, Borrower shall reimburse Lender for such costs. Borrower shall have the right of subrogation for all claims against persons other than Members to this Agreement who may be responsible in whole or in part for damage to, or loss of the equipment. Borrower shall not be liable for damage or loss caused by the sole negligence of Lender's operator(s).

11. **EXCHANGE OF MATERIALS AND SUPPLIES.** Borrower shall reimburse Lender in kind or at Lender's actual replacement cost for use of partially consumed or non-returnable

materials and supplies, as mutually agreed between Borrower and Lender, even within the initial eight (8) hour period. Reusable materials and supplies which are returned (unused) to Lender in clean, damage-free condition shall not be charged to the Borrower.

12. **LOANS OF PERSONNEL.** Any Lender personnel providing assistance to Borrower shall remain under the command and control of the Lender, to include medical protocols, standard operating procedures and other protocols. The organizational units shall be under the operational control of the appropriate authorities within the incident management system of the Borrower. Lender shall not be liable for cessation or slowdown of work if Lender's employees decline or are reluctant to perform any assigned tasks if said employees judge such task to be unsafe. A Borrower's request for Lender's loaned personnel to direct the activities of others during a particular response operation does not relieve the Borrower of any responsibility or create any liability on the part of the Lender for decisions and/or consequences of the response operation. When supervisory personnel are loaned, the Lender may restrict the scope and duties of supervisory personnel loaned.

12.1. Any valid licenses, certifications, or other permits issued to Lender personnel by Lender or Lender's state, evidencing qualification in a professional, mechanical or other skill, may be recognized by the Borrower during the term of the borrowing Event and for purposes related to the borrowing Event. When notified to return personnel to a Lender, the Borrower shall make every effort to return the personnel to the Lender immediately after notification.

12.2. The Lender should take reasonable steps to see that loaned personnel have the ability, skill, and certification necessary to perform the work required to assist Borrower and may be obliged to disclose to Borrower the qualification(s) and training level of personnel identified to provide assistance.

12.3. Lender may, at its sole option, make such employees available to Borrower. Unless mutually agreed upon otherwise, these employees shall be provided without cost to the Borrower for the first eight (8) hours of service, after which they shall be loaned at Borrower's expense equal to Lender's full cost, including employee's salary or hourly wages, call back or overtime costs, benefits and overhead, and consistent with Lender's personnel union contracts, if any, or other conditions of employment. Costs to equip, transport, feed and house loaned personnel, if necessary, shall be chargeable to and paid by the Borrower.

12.4. Lender's employees, officers or agents, made available to Borrower, shall remain the employee of Lender while engaged in carrying out duties, functions or activities pursuant to this Agreement, and each Member shall remain fully responsible as employer for all taxes, assessments, fees, premiums, wages, withholdings, workers' compensation and other direct and indirect compensation, benefits, and related obligations with respect to its own employees. Likewise, each Member shall provide worker's compensation insurance (or equivalent USL&H insurance if required).

13. **RECORD KEEPING.** Time sheets and/or daily logs showing hours worked and equipment, supplies and materials used or provided by the Lender shall be recorded on a shift-by-shift basis by the Lender and/or the loaned employee(s) and shall be provided to the Borrower as needed. If no personnel are loaned, the Lender shall provide shipping records for materials, supplies and equipment, and the Borrower is responsible for any required documentation of use of material, supplies and equipment for state or federal reimbursement. Under all circumstances, the Borrower remains responsible for ensuring that the amount and quality of all documentation is adequate to enable any available reimbursement.

14. **INDEMNIFICATION AND LIMITATION OF LIABILITY.** Except as provided in this section 14 and to the fullest extent permitted by applicable law, the Borrower does hereby indemnify, hold harmless and defend each Lender, its officers, employees and agents from and against any and all costs, including costs of defense, claims, judgments or awards of damages asserted or arising directly or indirectly from, on account of, or in connection with providing assistance to the Borrower. Except that this release, indemnification, hold harmless and defense shall not apply to any such costs of defense, claims, judgments or awards of damages to the extent and in such proportion such was caused by the negligent or willful acts of the Lender.

14.1. The obligation under this section extends to any claim, demand and/or cause of action brought by or on behalf of any of its employees or agents. **FOR THIS PURPOSE, THE BORROWER, AND LENDER BY MUTUAL NEGOTIATION, HEREBY WAIVE, AS RESPECTS ANY INDEMNITY ONLY, ANY IMMUNITY THAT WOULD OTHERWISE BE AVAILABLE AGAINST SUCH CLAIMS UNDER THE INDUSTRIAL INSURANCE PROVISIONS OF TITLE 51 RCW OF THE STATE OF WASHINGTON.**

14.2. Any Member shall not be required under this Agreement to indemnify, hold harmless and defend any other Member from any claim, loss, harm, liability, damage, cost or expense caused by or resulting from the activities of any Member's officers, employees, or agents acting in bad faith or performing activities beyond the scope of their duties.

14.3. In the event of any liability, claim, demand, action or proceeding, of whatever kind or nature arising out of rendering of Assistance through this Agreement, the Borrower agrees to the extent permitted by law, to indemnify, hold harmless, and defend, to the fullest extent of the law, each signatory to this Agreement whose only involvement in the transaction or occurrence which is the subject of such claim, action, demand, or other proceeding, is the execution and approval of this Agreement.

14.4. No Member shall be liable to another Member for, or be considered to be in breach of or default under this Agreement on account of any delay in or failure to provide Assistance under this Agreement.

14.5. Each Member seeking to be indemnified, held harmless or defended under this section 14 with respect to any claim shall promptly notify the Borrower of such claim and shall

not settle such claim without the prior consent of Borrower, which consent shall not be unreasonably withheld. Any Member receiving notice of any claim which affects another Member shall promptly notify the other affected Member(s). Such Member(s) shall have the right to participate in the defense of said claim, at its own expense. Member's personnel shall cooperate and participate in any such legal proceedings if so requested by another affected Member, and/or required by a court of competent jurisdiction at no cost to the affected Member.

14.6. This indemnification shall not apply to property loss or damage to the extent that such property loss or damage is otherwise covered by applicable insurance of Lender. However, Borrower will be responsible for any self insured retention or deductible.

14.7. The provisions of this Article 14 shall survive termination of this Agreement.

14.8. To the extent permitted by any applicable insurance policy, Borrower expressly waives any subrogated claim against the Lender, which it may have on account of, or in connection with, the Lender providing assistance to the Borrower under this Agreement.

15. **MODIFICATIONS.** No provision of this Agreement may be modified, altered, or rescinded without 2/3 affirmative concurrence of the Members to this Agreement. Modifications to this Agreement must be in writing, must be approved by a 2/3 affirmative vote of the Members, and must be signed by the Designated Representative of each Member. Any Member which disagrees with the modification, alteration or rescission shall have the right to withdrawal as of the effective date of the modification, alteration or rescission, and any Member so choosing shall provide its intent to do so in writing to the Lead Coordinating Agency.

16. **NON-EXCLUSIVENESS AND PRIOR AGREEMENTS.** This Agreement is not intended to be exclusive among the Members. Any Member may enter into separate assistance agreements with any other entity. No such separate agreement shall terminate any responsibility under this Agreement. To the extent that prior agreements between Members are inconsistent with this Agreement, prior agreements for assistance between the port districts shall supersede this Agreement, until and unless the inconsistency is reconciled by the affected Members in writing.

17. **GOVERNMENTAL AUTHORITY.** This Agreement is subject to laws, rules, regulations, orders, and other requirements, now or as amended, of all governmental authorities having jurisdiction over the events covered by this Agreement. A Member and its employees providing Assistance under this Agreement shall be entitled to all privileges and immunities from liability as are authorized by the Washington Emergency Management Act, Chapter 38.52 RCW, and all other State or Federal laws.

18. **NO PUBLIC DUTY, THIRD PARTY BENEFICIARIES, PARTNERSHIPS.** No undertaking by one Member to, the other Member under any provision of this Agreement shall create any special duty to the public or otherwise enhance or modify the obligation of the Member with regard to the public or any person.

18.1. Nothing in this Agreement shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party. This Agreement shall not confer any right, or remedy upon any person other than the Members. This Agreement shall not release or discharge any obligation or liability of any third party to any Member.

18.2. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership among the Members or to impose any partnership obligation or liability upon any Member. Further, no Member shall have any authority or undertaking for or on behalf of, or to act as or be an agent or representative of, or to otherwise bind any other Member.

19. **NO SUCCESSORS AND ASSIGNS.** This Agreement and the rights, liabilities and obligations contained herein are not transferable or assignable, in whole or in part.

20. **GOVERNING LAW AND VENUE.** This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Washington.

20.1. Any action which may arise out of this Agreement shall be brought in the superior court of the State of Washington, within in the County of the Lender's jurisdiction.

21. **WAIVER.** Any waiver at any time by any Member of its rights with respect to this Agreement shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Agreement. Any delay in asserting or enforcing any right, except those related to the statutes of limitations, shall not constitute or be deemed a waiver.

22. **SEVERABILITY.** Should a court of competent jurisdiction rule any portion, section or subsection of this Agreement invalid or nullified, that fact shall not affect or invalidate any other portion, section or subsection; and all remaining portions, sections or subsections shall remain in full force and effect.

23. **NOTICES.** Any notice, demand, information, report, or item otherwise required, authorized, or provided for in this Agreement shall be given in writing and shall be deemed properly given if (i) delivered personally, (ii) transmitted and received by telephone facsimile device and confirmed by telephone, or (iii) sent by United States Mail, postage prepaid, to the Designated Representative for each Members at the address stated on the Member's signature page to this Agreement or as on file with the Lead Coordinating Agency.

24. **COPIES FILED WITH COUNTY AUDITOR OR POSTED ON MEMBERS' WEB SITE.** Copies of this Agreement shall either be filed with each Members' County Auditor's Office after execution or posted on each Members' website listed by subject or other electronically retrievable public source, as allowed by RCW 39.34.040, and shall be filed with the respective Members' authorities.

25. **COUNTERPARTS.** This Agreement may be executed in counterparts and by facsimile signature with the same force and effect as if all original signatures were set forth in a single document. The Lead Coordinating Agency shall maintain an original and/or a copy of each signature sheet for each participant.

26. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and incorporates all previous oral and written discussions. It is noted that prior agreements of the Members may take precedent over certain terms set forth in this Agreement.

IN WITNESS WHEREOF, the each Member hereto has caused this Agreement to be duly approved and executed by a duly authorized representative as of the date of their signatures.

SIGNATURE PAGE
WASHINGTON PUBLIC PORT DISTRICT
OMNIBUS MUTUAL AID INTERLOCAL AGREEMENT

IN WITNESS WHEREOF, the undersigned Washington public port district has (i) reviewed the terms and conditions of the Washington Public Port District Omnibus Mutual Aid Interlocal Agreement, (ii) approved the adoption of the Agreement and (iii) appointed the "Designated Representative" identified below.

THIS AGREEMENT CONTAINS INDEMNIFICATIONS, WAIVES OF LIABILITY AND A WAIVER ON IMMUNITY UNDER THE WASHINGTON INDUSTRIAL INSURANCE ACT (TITLE 51 RCW)

PORT OF QUINCY
840 F Street SW
Quincy, WA 98848

EXECUTED for the PORT OF QUINCY this 7TH day of July, 2014

By: _____
Curt Morris, Commissioner

MEMBER'S DESIGNATED REPRESENTATIVE

Name: **Curt Morris**
Phone: **(509) 787-3715**
Cell Phone: **(509) 797-3400**
Email: **camorris@martinmorris.com**