

After recording return to:

Clerk

Snohomish County Council

3000 Rockefeller Avenue, M/S 609

Everett, WA 98201

INTERLOCAL COOPERATION AGREEMENT
BY AND BETWEEN SNOHOMISH COUNTY AND THE PORT OF EVERETT
FOR MOORAGE OF EMERGENCY RESPONSE AND SUPPORT VESSEL

THIS AGREEMENT (the "Agreement") is entered into by and between Snohomish County, a political subdivision of the State of Washington (the "County"), and the Port of Everett, a municipal corporation of the State of Washington (the "Port"), as of this 5th day of March, 2013.

RECITALS

WHEREAS, the County is the recipient of Urban Area Security Initiative ("UASI") Grant Number E04-058, as amended (the "UASI Grant"), from the Washington Military Department; and

WHEREAS, A portion of the UASI Grant is identified for the acquisition of an emergency response and support vessel (the "ERSV"); and

WHEREAS, the ESRV will serve as a regional resource for homeland security for the UASI region (Snohomish County, Pierce County, King County, the City of Seattle and the City of Bellevue), as well as for Washington State Region One (comprised of Island, San Juan, Skagit, Snohomish, and Whatcom counties); and

WHEREAS, it is in the best interests of the region's first responders and the citizens they serve that the ESRV be moored in a strategically convenient location so that it may be available for use by the federal government, the state, its political subdivisions and municipal corporations as contemplated by RCW 38.52.110(1); and

WHEREAS, the Port is also located in a strategically convenient location and has offered to provide covered moorage for the ESRV on the terms and conditions set forth in this Agreement; and

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WHEREAS, Chapter 39.34 RCW authorizes two or more public entities to contract with each other to perform any governmental service, activity or undertaking that each is authorized by law to perform individually; and

WHEREAS, the Parties anticipate that a separate agreement will be negotiated and entered into between Snohomish County and the City of Everett to address the use of the ESRV by the region's first responders (the "Use Agreement"); and

WHEREAS, pursuant to this Agreement, the Port will receive consideration in the form of the ESRV's proximate location in the event it is needed for dispatch within its jurisdiction.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, the Parties agree as follows:

1. Term. This Agreement shall be effective as of the latter of (i) the date the ESRV is delivered to the Port for moorage, as provided in Section 4 hereof, or (ii) the date of the posting of this Agreement on Snohomish County's website as required by RCW 39.34.040. The term of this Agreement shall end on December 31, 2014 unless terminated by the either Party pursuant to either Section 8(a) or Section 8(b) hereof or unless terminated by mutual agreement of the Parties. This Agreement may be renewed, at the discretion of the Parties, for successive one (1) year terms, PROVIDED, HOWEVER, that such renewals shall be evidenced by a writing signed by authorized representatives of the Parties and, PROVIDED, FURTHER, that the cumulative duration of the initial term of the Agreement and all renewals thereto shall not exceed twenty (20) years.

2. Ownership. The ESRV and all equipment associated with the ESRV, including its motors and all equipment installed or located on it, shall be owned by the County.

3. Insurance.

(a) By the County. The County will provide adequate insurance or self-insurance to cover liability and property damage for the ESRV with, in the case of insurance, such deductibles as the County determines. At its sole expense, the County shall keep its activities, vessel and equipment covered by this Agreement continuously insured (or self-insured) throughout the term of this Agreement against claims for injuries to persons or property damage. The insurance shall be as follows:

(i). Marine Hull and Machinery insurance for the vessels utilizing the Everett Marina facility, with such amount to be specified by the County, all loss payable to the County or other designated loss payee (e.g., the vessel owner).

(ii). Marine Protection and Indemnity, Collision Liabilities and Pollution insurance or equivalent with:

A. coverage in the amount of not less than a combined single limit of One Million Dollars (\$1,000,000.00) per occurrence;

B. as applicable, coverage for liability under the Jones Act, the Longshoremen's and Harbor Workers' Act and the Federal Water Quality Improvement Act of 1970; and

C. no exclusion for marine losses (e.g. losses at the Everett Marina facility).

(iii) Coverage in the minimum amount set forth herein shall not be construed to relieve the County from liability in excess of such coverage.

(iv) Except for coverage's self-insured, the insurance policy or policies shall:

A. contain appropriate endorsements that name the Port, its officers, elected officials, agents and employees named on its policy as an "additional insured" during the performance of this Agreement;

B. include a waiver of subrogation for the Port;

C. not be changed or canceled without prior notice to the Port; and

D. be primary with respect to any insurance the Port may have except that such insurance shall not be primary to any deductible, self-insurance, retention, or insurance the Port may have with respect to its liability or potential liability to its employees or other person arising out of, or related to, the acts or omissions of the Port and its officials, employees, agents and contractors in the performance of this Agreement.

(v) The County shall furnish the Port proper evidence of such insurance (or self-insurance) upon execution of this Agreement.

(b) By the Port. The Port shall comply with the following insurance provisions:

(i) Liability.

A. The Port shall obtain and maintain continuously at its own expense, for the term of this Agreement, commercial general liability insurance or Comprehensive Marine General Liability to include Wharfingers Liability, Terminal Operators Liability and Marina Operators Legal Liability with endorsements as provided herein. Minimum limit of coverage shall be \$1,000,000 combined single limit on an occurrence basis.

B. Liability insurance(s) shall be endorsed to include the County, its officers, elected officials, agents, and employees as an additional covered entity and shall not be reduced or canceled without thirty (30) days' written prior notice to the County.

C. Prior to the execution of this Agreement, the Port shall provide the County with a certificate of insurance with an additional insured endorsement as evidence of coverage and have the County, its officers, elected officials, agents and employees named on its policy as an additional insured. Approval of insurance is a condition precedent to approval of this Agreement by Risk Management.

(ii) Workers' Compensation. The Port shall provide evidence of workers' compensation insurance coverage to meet the Washington State Industrial Insurance regulations, Jones Act coverage and USL&H (if not exempt).

4. Moorage. Upon delivery by the County, the ESRV shall be moored by the Port at its Everett Marina facility in Everett, Washington (the "Marina"). Except when removed from the Marina for maintenance or for dispatch as provided in the Use Agreement, the ESRV shall be moored inside a fully-covered and secured facility at the Marina. By Port definition a secured facility is that area behind locked gates to which marina tenants have access. No monetary compensation shall be paid to the Port pursuant to this Agreement for the moorage of the ESRV.

5. Direction and Control. The Port agrees that it will perform the moorage services specified under this Agreement as an independent contractor and not as an agent, employee, or servant of the County. The Parties agree that the employees of the Port are not entitled to any benefits or rights enjoyed by employees of the County. The Port specifically has the right to direct and control its own activities in providing the agreed services in accordance with the specifications set out in this Agreement. The County shall have the right only to ensure performance. Nothing in this Agreement shall be construed to render the Parties partners or joint venturers.

6. Hold Harmless and Indemnification. Each party shall hold harmless, indemnify and defend the other party, its officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the acts, errors or omissions of it, its employees, agents or subcontractors, in the performance of this Agreement, PROVIDED, HOWEVER, that a party's obligations hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence or willful misconduct of that party, its officers, officials, employees or agents acting within the scope of their employment, and PROVIDED, FURTHER, that in the event of the concurrent negligence of the parties, a party's obligations hereunder shall apply only to the percentage of fault attributable to it, its employees, agents and subcontractors.

With respect to a party's obligations to hold harmless, indemnify and defend provided for herein, each party further agrees to waive, as respects the other party only, its immunity under the Industrial Insurance Act, Title 51 RCW, for any injury or death suffered by its employees caused by or arising out of its acts, errors or omissions in the performance of this Agreement. This waiver is mutually negotiated by the Parties.

A party's obligations hereunder shall include, but are not limited to investigating, adjusting, and defending all claims alleging loss from action, error, omission or breach of any common law, statutory or other delegated duty by it, its employees, agents, or subcontractors.

7. Dispute Resolution. In the event differences between the Parties should arise over the terms and conditions or the performance of this Agreement, the Parties shall use their best efforts to resolve those differences on an informal basis. If those differences cannot be resolved

informally, the matter shall be referred for mediation to a mediator mutually selected by the Parties. If mediation is not successful, either of the Parties may institute legal action for specific performance of this Agreement or for damages. The prevailing party in any legal action shall be entitled to a reasonable attorneys' fee and court costs.

8. Withdrawal; Termination.

(a) Termination for Breach. If either Party breaches any of its obligations hereunder, and fails to cure the same within ten (10) days of written notice to do so by the other Party, the latter Party may terminate this Agreement.

(b) Termination for Convenience or Otherwise. Either Party may terminate this Agreement upon thirty (30) days' written notice to the other Party for any reason other than stated in subparagraph (a) above.

(c) Return of ESRV on Termination. Upon the expiration or termination of this Agreement, the ESRV and all associated equipment and records shall be returned or delivered to the custody of the County. That return shall be accomplished promptly at a time and in a manner, and then agreed to by the Parties, that will assure the continued availability of the ESRV for the uses and the purposes for which it was acquired.

(d) Other Rights Not Affected. Termination shall not affect the rights of the Parties under any other section or paragraph herein.

9. Notices. All notices and other communications shall be in writing and shall be sufficiently given and shall be deemed given on the date on which the same has been mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the County: Snohomish County Sheriff's Office
3000 Rockefeller Avenue
Everett, Washington 98201
Attention: Kevin Prentiss
Support Services Bureau Chief

If to the Port: Port of Everett
P.O. Box 538
Everett, Washington 98206
Attention: Jeff Lindhout
Marina Director

Either Party may, by notice to the other Party given hereunder, designate any further or different addresses to which subsequent notices or other communications to it shall be sent.

10. Amendments. No changes or amendments shall be made in this Agreement except as agreed to by both Parties, reduced to writing and executed with the same formalities,

including filing with the Snohomish County Auditor, as are required for the execution of this Agreement.

11. Compliance with Laws. The Parties shall comply with all applicable federal, state and local laws, rules, and regulations in performing this Agreement.

12. Nonassignment. The Port shall not subcontract or assign any of its rights, duties or obligations under this Agreement without the prior express written consent of the County. The County shall not subcontract or assign any of its rights, duties or obligations under this Agreement without the prior express written consent of the Port.

13. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Any lawsuit regarding this Agreement must be brought in Snohomish County, Washington.

14. Authority. Each Party represents that it has full and sufficient authority to execute this Agreement on its behalf and that, upon its execution and recording pursuant to Section 21 hereof, this Agreement shall constitute a binding obligation of the County or the Port, as the case may be.

15. Conflicts Between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text of this Agreement, the text shall prevail.

16. Severability. Should any clause, phrase, sentence or paragraph of this Agreement be declared invalid or void, the remaining provisions of this Agreement shall remain in full force and effect.

17. Liability; No Third Party Beneficiaries. No liability shall attach to any of the Parties by reason of entering into this Agreement except as expressly provided herein. None of the Parties to this Agreement assume any duty to any third party.


18. Complete Agreement. This Agreement constitutes the entire understanding of the Parties on the subjects hereof. Any written or verbal agreements not set forth herein or incorporated herein by reference are expressly excluded.

19. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

20. Ratification. Acts taken in conformity with this Agreement but prior to its execution are hereby ratified and confirmed.

21. Website Posting. Upon execution, executed original signature pages of this Agreement shall be returned to the Clerk of the Snohomish County Council, who shall cause a fully executed original of this Agreement to be posted on the Snohomish County website in accordance with RCW 39.34.040. The Clerk of the Snohomish County Council shall thereafter distribute duplicated conformed copies of the Agreement to each of the Parties hereto.

SNOHOMISH COUNTY:

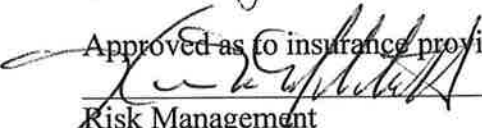

County Executive

PETER B. CAMP
Executive Director
3/5/13

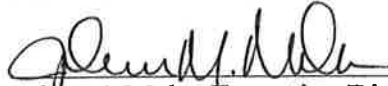
Approved as to form only:


Deputy Prosecuting Attorney 2/26/13
Date

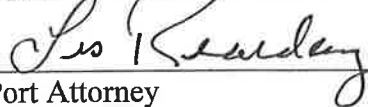
Approved as to insurance provisions only:


Risk Management 2-25-13
Date

PORT OF EVERETT:


John M. Mohr, Executive Director

Approved as to form only:


Port Attorney 2/14/13
Date