

**INTERLOCAL AGREEMENT
BETWEEN THE PORT OF EVERETT AND THE CITY OF EVERETT
NORTH MARINA FOR COMBINED SEWER OVERFLOW
FACILITIES**

THIS INTERLOCAL AGREEMENT (this "Agreement") is entered into under the provisions of Chapter 39.34 between the City of Everett, a first class charter city under the laws of the State of Washington (the "City") and the Port of Everett, a port district under the laws of the State of Washington (the "Port") for the mutual benefits described herein.

RECITALS

1. The Port and the City have certain common interests relating to the development of properties within the City limits and the utilities that will serve such development.

2. The Port is the lead agency involved in development of the North Marina Project. Development activity by the Port will require that existing City utilities be relocated to facilitate development. Replacement now of these utilities with new systems will improve the beneficial life of these systems.

3. The City maintains a NPDES permit from the Department of Ecology with respect to the facilities subject to this Interlocal Agreement.

4. Two Combined Sewer Overflow ("CSO") pipes will likely be impacted in part by the development activity proposed by the Port. The subject two CSO pipelines were installed in 1947 and have an estimated remaining expected beneficial life of approximately 40 years or 50%.

5. The Port and the City will benefit by sharing in the cost to evaluate and develop reports and contract documents to replace and/or relocate the existing lines and will further benefit from the ultimate replacement and/or relocation of the subject CSO pipelines.

6. Pursuant to the powers accorded to the City and the Port pursuant to Chapter 39.34 RCW, the Port and the City possess the authority and desire to execute an Interlocal Agreement for this purpose.

A G R E E M E N T

NOW, THEREFORE, the parties to the Agreement, through their legislative bodies and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, agree as follows:

1. **Shared Cost for Evaluation and Development of Reports.** The Port and the City agree to share the cost to hydraulically evaluate and develop reports and contract documents for the Department of Ecology (DOE) for the replacement and/or relocation of the two CSO pipelines.

A cost estimate for the hydraulic evaluation has been obtained by the City and shared with the Port. The City will contract with a consultant to hydraulically review and develop reports for the purpose of obtaining DOE approval of replacement work for the two CSO pipelines.

The Port and City shall verify the accuracy and will share with the other party invoices from the consultants or contractors work efforts with the intention of having the other agency pay for one-half the cost identified by the invoices within 30 days after receiving such invoices and the other agency agrees it will make such timely payment.

2. **Development and Construction.** The Port will develop the design and contract documents for relocation and/or replacement of the CSO pipeline(s) and share the design and contract documents with the City. Upon concurrence from the City, the Port shall undertake construction of the CSO pipeline(s) that are required to be relocated and/or replaced as a result of the Port's development activity. The City shall reimburse the Port for fifty percent (50%) of the design, engineering and construction costs for the CSO pipeline relocation and/or replacement.

The Port and City shall verify the accuracy and will share with the other party invoices from the consultants or contractors work efforts on a monthly basis with the intention of having the other agency pay for one-half the cost identified by the invoices within 30 days after receiving such invoices and the other agency agrees it will make such timely payment.

3. **Duration.** This Agreement shall be in full force and effect from the date of execution and shall remain in full force and effect for a period of three (3) years unless sooner terminated by completion of the relocations and/or replacement of the subject CSO. This Agreement may be extended by the parties in the event additional time is required to complete the CSO relocation and/or replacement project.

4. **Administration of this Agreement.** The City shall administer the hydraulic evaluation of the subject CSO's. The Port shall administer the development of design and construction documents for the replacement and/or relocation of the subject CSO's and well as the public works project to accomplish the replacement and/or relocation. No separate entity is created by this Agreement. Each party shall remain solely responsible for the direction of its own employees and promises to hold harmless and indemnify the other party from any employee-related claim by its employees against the other entity, provided, however, that nothing herein shall be interpreted to waive the immunity provided by RCW Title 51.

5. **No Third Party Benefit.** This Agreement is entered into for the benefit of the parties to this Agreement only and shall confer no benefits, direct or implied, on any third persons.

6. **Dispute Resolution.** In the event of any dispute or difference arising by reason of this Agreement or provision or term thereof, the dispute or difference shall be resolved jointly by the Mayor of the City of Everett and the Executive Director of the Port of Everett. Such decision shall be arrived at as expeditiously as possible. In the event the parties are unable to reach a decision, the parties can agree to mediation or arbitration. In the event the parties cannot agree to either, then the matter will be subject to the jurisdiction and venue of the Snohomish County Superior Court.

7. **Costs and Expenses.** Each party shall bear its own expenses and costs to their respective obligations under the provisions of this Agreement. No joint budgeting or funding is provided for by this Agreement.

8. **Administrator.** Except for the limited provision for dispute resolution in Section 6 above, no provision is made by this Agreement for an administrator or joint board.

9. **Provisions Required by Statute.** This Agreement has been adopted pursuant to the authorization of Chapter 39.34 RCW relating to the Interlocal Cooperation Act. As such, it is required to address certain provisions. The following list covers provisions or requirements not set forth elsewhere within this Agreement or in clarification and furtherance of such provisions. In the event of conflict, the more specific provisions shall control.

9.1 **No Joint Property.** No joint ownership of property is contemplated under this Agreement. In the event that any property is, in the future, jointly acquired by the parties, they shall hold title in proportion to their joint contribution to the purchase or acquisition price of such property. In the event of dissolution, the party who has contributed the majority of value or money toward purchase or acquisition may buy out the remaining party at that party's pro-rated share of the depreciated value of the property.

9.2 **Filing.** This Agreement shall be filed with the Snohomish County Auditor or, alternatively, listed on the respective parties' website or other electronically retrievable public source in accordance with the requirements of RCW 39.34.040.

10. **Entire Agreement.** This instrument constitutes the entire agreement between the City and the Port and supersedes all prior agreements. No modification or amendment shall be valid unless evidenced in writing, property agreed to and signed by both parties.

WHEREFORE, the respective parties have executed this Agreement on the date(s) set forth below.

CITY OF EVERETT



Mayor Ray Stephanson 6/26/06

PORT OF EVERETT



Executive Director John Mohr

ATTEST:



Sharon Marks
City Clerk

APPROVED AS TO FORM:



Elmer E. "Ned" Johnston, Jr.
City Attorney

APPROVED AS TO FORM:



Brad Cattle
Port Attorney