



## ***PUBLIC WORKS***

March 3, 2014

Attn: Lisa Lefeber  
Port of Everett  
PO Box 538  
Everett, WA 98206

Dear Lisa,

Attached is your signed original of the Agreement between The City of Everett and the Port of Everett for the Installation of Traffic Medallions.

If you have any questions please contact Tim Miller @ 425-257-8977 or email at [tmiller@everettwa.us](mailto:tmiller@everettwa.us)

Sincerely,

A handwritten signature in blue ink that reads "Heather Magnuson".

Heather Magnuson  
City of Everett

Attachment

**AGREEMENT BETWEEN THE CITY OF EVERETT AND PORT OF EVERETT  
REGARDING TRAFFIC MEDALLIONS**

This Agreement Regarding Traffic Medallions ("**Agreement**") is dated for reference purposes January 29, 2014, and is between the CITY OF EVERETT (the "**City**") and the PORT OF EVERETT (the "**Port**") (individually a "**Party**" and collectively the "**Parties**").

**RECITALS**

A. The Port has requested that the City install about twenty (20) aluminum medallions on street light poles on West Marine View Drive in Everett. An example of a medallion is attached as Exhibit A to this Agreement. For the purposes of this Agreement, these medallions are referred to as the "**Port Medallions.**"

B. The City has agreed to install the Port Medallions and to allow the Port Medallions to remain on the light poles, subject to the provisions of this Agreement.

C. The Port has received a grant from Snohomish County to develop a way finding system from I-5 to the waterfront. The Port Medallions will integrate into that system and serve to highlight the Port's waterfront development area.

**AGREEMENT**

The Parties agree as follows:

**SECTION 1: INSTALLATION**

The Port will provide the Port Medallions to the City, which will install the Port Medallions on the City light poles. The City will invoice the Port for all labor, materials, supplies and vehicle costs related to such installation. The Parties agree that the intent of this Agreement is that the installation be at no cost to the City. The invoice will document in reasonable detail the amounts expended by the City related to the installation. The Port will pay the invoice(s) and inspect the installation of the Port Medallions within thirty (30) day after receipt. The Port shall notify the City of any problems found by the Port inspection and the City shall promptly remedy those problems to the Port's reasonable satisfaction. Except to the extent that the City does not so remedy any such problems, the City shall be deemed for all purposes under this Agreement to have properly installed the Port Medallions and to have fully complied with all duties of care associated with such installation.

**SECTION 2: PORT MEDIALLION OWNERSHIP**

The Port Medallions are the property of the Port and will remain the property of the Port. All materials used to connect the Port Medallions to the light poles become the property of the Port upon installation. The City at no time has any obligation or duty to inspect the Port Medallions or the materials used to connect the Port Medallions to the

light poles. The Port shall, to the extent the Port determines it necessary, from time to time inspect the Port Medallions and the connection materials.

### SECTION 3: PORT MEDALLION REMOVAL

The City may remove Port Medallions from light poles after notifying and consulting with the Port regarding the issue requiring removal; provided that the City may remove a Port Medallion without prior notification and consultation if required by an emergency situation that threatens public safety. Upon removal, the City will make the removed Port Medallion(s) available for Port pick-up. The Port will pay for such reasonable costs of such removal in the same manner as for installation under Section 1 above.

### SECTION 4: ALLOCATION OF RISK

A. The Port acknowledges that the City would not agree to installation of the Port Medallions if the Port Medallions created any financial risk for the City. Accordingly, the Port has agreed to the defense and indemnity provisions under this Section 4.

B. To the fullest extent permitted by law, the Port will defend and indemnify the City from and against any and all Claims arising from or relating to any Port Medallion or the installation of the Port Medallions, except for those Claims arising from the City's sole negligence. "**Claims**" means any and all actions, liabilities, losses, demands, claims, suits, judgments, liens, awards, and damages of any kind or character whatsoever, including without limitation claims for injury to or death of any person, loss of or damage to any property, and costs, expenses and reasonable attorneys' fees.

C. The Port defense and indemnity obligation under this Section 4 includes without limitation all Claims arising from or relating to:

(i) any injury or other damages caused by any structural or other failure of any Port Medallion or the materials used to connect the Port Medallion to the light poles, including without limitation any failure of any connection point (such as tabs or plates) related to wind action or materials fatigue;

(ii) any injury or other damages caused by a Port Medallion detaching from a light pole if the light pole is struck by a car or other vehicle; and

(iii) any damage to a light pole caused by a Port Medallion or connecting materials, such as corrosion.

### SECTION 5: GENERAL PROVISIONS

A. [Not Used].

B. Duration/Expiration. This Agreement expires upon the removal of all Port Medallions from City light poles.

C. Governing Law. The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.

D. Venue. The Parties shall bring any litigation arising out of or relating to this Agreement only before the Snohomish County Superior Court.

E. Complete Agreement. This Agreement constitutes the entire agreement of the parties relating to the subject matter of this Agreement. This Agreement supersedes and replaces all other written or oral agreements thereto.

F. Amendment. No amendment to this Agreement will be effective unless in writing and signed by the Mayor of the City and by an authorized representative of the Port.

G. Waiver. No waiver of satisfaction of any condition or nonperformance of an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation.

H. Severability. If any provision of this Agreement is unenforceable to any extent, the remainder of this Agreement, or the application of that provision to any persons or circumstances other than those as to which it is held unenforceable, will not be affected by that unenforceability and will be enforceable to the fullest extent permitted by law.

I. Notice. For a notice under this Agreement to be valid, it must be in writing and the sending party must use one of the following methods of delivery: (A) personal delivery to the address stated below; (B) first class postage prepaid U.S. Mail to the address stated below; or (C) nationally recognized courier to the address stated below, with all fees prepaid. **Notice to City Notice to Port** City of Everett Attn: Traffic Engineer 3200 Cedar St. Everett, WA 98201 Port of Everett Attn: Properties Director PO Box 538 Everett, Washington 98206. A party may change its address by delivering written notice to the other party of the new address.

J. Attorneys Fees and Costs. The prevailing party in any action brought to enforce any obligations under this Agreement shall be entitled to recover from the non-prevailing party or parties an amount equal to the reasonable attorneys fees and costs incurred by the prevailing party, including without limitation any costs incurred on appeal or in any bankruptcy proceeding.

K. No Third-Party Beneficiaries. The provisions of this Agreement are for the sole benefit of the parties to this Agreement. No other persons have any rights or remedies under this Agreement.

**EXHIBIT A EXAMPLE MEDIALLION**

