

**INTERLOCAL AGREEMENT BETWEEN
THE PORT OF EVERETT AND SNOHOMISH COUNTY
FOR BOAT LAUNCH DREDGING ACTIVITIES**

This Interlocal Agreement (hereinafter the “Interlocal Agreement”) is entered into this 10th day of March 2022, by and between the Port of Everett, a municipal corporation, hereinafter referred to as “Port” and Snohomish County, a charter county hereinafter referred to as “County.” The Port and the County may collectively be referred to herein as the “Parties.”

RECITALS

WHEREAS, it is in the public’s interest for these Parties, as public entities, whenever possible and practicable, to share facilities and resources; and

WHEREAS, the Jetty Landing Boat Launch Facilities (the “Boat Launch Facilities”) are owned in common by the Port, the County and the City for the benefit of the citizens of all three entities as well as the general public; and,

WHEREAS, in order to properly operate the Boat Launch Facilities, renovation dredging needs to occur in order to remove accumulations of sand and other deposited materials that can restrict vessel movements and/or access; and

WHEREAS, the Port is the Party with primary responsibility for initiating and completing dredging activities at the Boat Launch Facilities; and

WHEREAS, the County has agreed to contribute Five Hundred Thousand Dollars (\$500,000.00) to Boat Launch Facilities dredging costs.

WHEREAS, the Port and the County have agreed to the County’s contribution for Boat Launch dredging costs and this Interlocal Agreement implements those terms; and

WHEREAS, the Port has agreed to cooperate with the County, as specified in this Interlocal Agreement, in the County’s day-use renovation activities at Kayak Point Park (“Park Renovation”).

NOW, THEREFORE, in consideration of the mutual benefits of this Interlocal Agreement, the Parties agree as follows:

1. **Authority.** Subject to the provisions of this Interlocal Agreement, the Port and the County each, respectively, hereby authorize this Interlocal Agreement and commit their own agency.
2. **Dredging.** The Port shall obtain the necessary permits to conduct any required renovation dredging in and around the Boat Launch Facilities and shall follow proper procedures

to procure a competent contractor to undertake and complete the permitted dredging activities in and around the Boat Launch Facilities.

3. Funding For Dredging.

3.1 The Port shall be responsible for the costs of planning, engineering, permitting and contracting to undertake and complete the dredging activities in and around the Boat Launch Facilities subject to the financial contribution from the County as specified in subsection 3.2 below.

3.2 The County shall pay the Port the sum of Five Hundred Thousand Dollars (\$500,000.00) to be used by the Port to undertake and complete the dredging activities in and around the Boat Launch Facilities in addition to other Port funds utilized for such purposes. The County shall pay the Five Hundred Thousand Dollars (\$500,000.00) to the Port on or before February 28, 2022. Provided, however, that such payment is contingent upon legislative approval and appropriation of same.

4. Park Renovation Cooperation.

4.1 In the event that excess quantities of sand and/or other dredged materials generated by the dredging activity contemplated in this ILA (“Dredged Materials”), which are determined by the County to be suitable for Park Renovation by the County, and which excess quantities are available, the Port agrees to support the County’s Park Renovation project by providing dredged material quantities the Port and County determine are available for such restoration purposes, without charge by the Port. If it is necessary to undertake any activities, procedures and/or permitting including, without limitation, materials testing to determine the suitability of the Dredged Materials for Park Renovation, transportation of materials, and application of materials at County site(s), those costs shall be borne by the County.

4.2 The County in utilizing excess quantities of Dredged Materials agrees that all Dredged Materials removed from the Boat Launch Facilities are non-returnable for any reason whatsoever. By removing the Dredged Materials, the County forever and irrevocably accepts custody of the Dredged Materials. The County agrees that as to any Dredged Materials made available to it under this Interlocal Agreement, it has inspected the Dredged Materials and accepts the condition of the Dredged Materials in their present state, “AS-IS, WHERE IS.” The Port has not made, and the County is not entering this Interlocal Agreement in reliance upon any representations by the Port as to the quality or nature of the Dredged Materials. The Port explicitly disclaims, and the County acknowledges such disclaimer as to any warranty, express or implied, of the fitness or merchantability of the Dredged Materials for any particular purpose or use. The Port explicitly disclaims, and the County acknowledges such disclaimer as to any warranty, express or implied, of the presence or absence of any hazardous substances as that term is herein defined¹ in the Dredged Materials. All warranties, including any implied warranty of

¹ As acknowledged in Subsection 4.2, the Port has made no representation as to the condition of the Dredged Materials, including the presence or absence of “**Hazardous Substances**” within the Dredged Materials, which shall mean any substance, chemical, material or waste now or in the

merchantability and any implied warranty of fitness for a particular purpose and warranties regarding the environmental condition of the Dredged Materials and the presence or absence of hazardous substances, are hereby excluded.

4.3 If Dredged Materials are available to the County under this Interlocal Agreement, it shall be the sole responsibility of the County to obtain any necessary permits and further required agreements, if any to remove the Dredged Materials from where located and relocate the Dredged Materials to the County's Park Renovation project site.

5. Notice/Contacts. Each Party's Point of Contact; subject to written notification to the other Party:

Port of Everett

Jeff Lindhout

Title: Chief of Marina Operations

Address: PO Box 538

City: Everett, WA 98206-0538

Phone: 425.388.0669

Email: jefflin@portofeverett.com

Snohomish County

Name: Tom Teigen

Title: Director of Conservation and Natural Resources

Address: 6705 Puget Park Drive

City: Snohomish, WA 98296

Phone: 425.388.6600

Email: tom.teigen@co.snohomish.wa.us

future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant" or "pollutant" within the meaning of or regulated or addressed under any federal, state, or local environmental law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., the Clean Air Act, 42 U.S.C. Sections 7401 7661, et seq., the Safe Drinking Water Act, 42 U.S.C. Section 300f, et seq., the Occupational Safety and Health Act, 29 U.S.C. Chapter 15, et seq., the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 1376, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136, et seq., the Model Toxics Control Act, Chapter 70.105D RCW, the Hazardous Waste Management Act, Chapter 70.105 RCW, the Water Pollution Control Act, Chapter 90.48 RCW, and all regulations adopted thereunder, as well as any and all state and local analogs. All releases and indemnities in this Interlocal Agreement extend to any Claims arising from the presence or release of Hazardous Substances from the Dredged Materials or the removal of Dredged Materials pursuant to this Interlocal Agreement.

6. Indemnification.

6.1 Each party agrees to and shall defend, indemnify and hold harmless each respective party, its officials, officers, agents and employees from and against any and all claims, losses, damages, judgments, or liabilities of whatever nature, including any portion thereof, arising from or related to the indemnifying party's acts, omissions or performance under this Interlocal Agreement. Each party's obligations herein shall be limited to the extent of the liability attributable to said party. Notwithstanding the foregoing, the scope of the County's indemnity shall include payment of any charges, fees or other expenses resulting from RCW 79.140.110 in the event a determination is made the County's use or transfer of any materials received from the Port are not used for a public purpose.

6.2 This Section shall survive termination of this Agreement.

7. Insurance. Each Party agrees to maintain liability insurance or self-insurance to cover claims, losses, damages, judgments or liabilities arising from their own acts, omissions or performance under this Interlocal Agreement or those of its officials, officers, agents and employees.

8. General Interlocal Agreement Provisions.

8.1 The Parties will not form a separate entity to carry out the purposes of the Interlocal Agreement. The Port shall be the administrator of the interlocal cooperative undertaking with authority, including but not limited to, undertaking Project planning, design, engineering, permitting and contracting for the maintenance dredging activities in and around the Boat Launch Facilities. The Port shall periodically report to the County on mutually acceptable intervals and provide reasonable documentation so that the County is informed. The Port will also respond to inquiries made by the County about the interlocal cooperative undertaking.

8.2 Property that is acquired as a result of the Interlocal Agreement will be held in the name of the Party acquiring the property unless it is determined and agreed by the Parties otherwise.

9. Dispute Resolution. In the event of any dispute or difference arising by reason of this Interlocal Agreement or provision or term thereof or the use of and/or payment for any facility or resource for the purpose of this Interlocal Agreement, the dispute or difference shall be resolved jointly by the County Executive, and the Port Executive Director, or their respective designee(s). Such decision shall be arrived at as expeditiously as possible. In the event it is not resolved after the Parties have discussed the issues and attempted to resolve the matters for a period of twenty (20) days, then either Party may commence a lawsuit in Snohomish County Superior Court.

10. **Third Party Beneficiaries.** There are not third-party beneficiaries to this Interlocal Agreement, and this Interlocal Agreement shall not be interpreted to create such rights.

11. **Integrated Agreement/Amendment.** This Interlocal Agreement constitutes the entire agreement of the Parties and may be amended at any time in writing by mutual agreement.

12. **General Provisions.**

12.1 This Interlocal Agreement shall be effective upon the last of the authorized signatures of the Parties' representatives and shall terminate after a period of five (5) years unless extended by mutual agreement of the Parties, by written amendment.

12.2 Notice of this Interlocal Agreement shall be provided as required by RCW 39.34.040.

PORT OF EVERETT

DocuSigned by:
By: Lisa Lefer
Title: CEO/Executive Director
Date: March 10, 2022

Approved as to form:

DocuSigned by:
Jordan Stephens
Port Attorney

SNOHOMISH COUNTY:

Lacey Harper Digitally signed by Lacey Harper
Date: 2022.02.16 13:41:02 -08'00'
By: _____
Title: _____
Date: _____, 2022

COUNCIL USE ONLY	
Approved	<u>2/16/2022</u>
ECAF #	<u>2022-0062</u>
MOT/ORD	<u>Motion 22-034</u>

Approved as to form:

/s/ Sean Reay 12/23/21
Deputy Prosecuting Attorney