

PORT OF POULSBO

AN INTERAGENCY AGREEMENT BETWEEN CITY OF POULSBO AND THE PORT OF POULSBO FOR SAILING PROGRAM

THIS Agreement (the "Agreement") is entered into by and between the Port of Poulsbo, a municipal corporation of the State of Washington, (the "Port") and the City of Poulsbo, a Washington city, (the "City")

WHEREAS, the PORT owns the Poulsbo Marina within the City.

WHEREAS, the Port has shallow near shore moorage space that has limited tidal dependent access.

WHEREAS, the City Parks and Recreation Department operates a dinghy sailing program (the "Sailing Club").

WHEREAS, the Sailing Program promotes recreational boating in the Port district thereby providing continued demand for Port services and brings tourism to the Port district in the form of sailing regattas.

WHEREAS, pursuant to RCW 53.08.255, this Agreement will encourage tourism by helping promote the regattas.

WHEREAS, pursuant to RCW 53.08.260, this Agreement will provide a public recreational facility to more fully utilize the limited access moorage spaces in the Poulsbo Marina.

NOW THEREFORE, pursuant to chapter 39.34 RCW the Port and the City agree as follows:

1. Use of Moorage Spaces. The Port shall provide the City with the use of its moorage space designated by the Port for the Sailing Program without fee and subject to the terms and conditions of this Agreement.
2. Parking and Gate Access. Parking privileges (which normally are granted to moorage tenants) do not apply. The Port and the City shall mutually agree from time to time as to how many gate access keys will be required for the Sailing Program. If no agreement can be reached, the Port will issue the number of keys it deems sufficient.
3. Fuel. The City shall pay the Port for fuel acquired from the Port and consumed by the Sailing Program. Fuel shall be recorded as consumed by the Port according to its normal procedure and invoiced to the City monthly. Payments are due within 30 days of date of invoice by the Port.
4. City Indemnification. To the extent permitted by law, the City shall indemnify and hold harmless the Port, its commissioners, employees and agents from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature including, but not limited to, claims arising under federal, state, or local environmental laws by reason of, or arising out of, any negligent act or omission of the City, its employees, or anyone other person arising from the

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operation of the Sailing Program on Port property, but only to the extent and in proportion that the said negligent acts or omissions caused or contributed thereto.

5. Port Indemnification. To the extent permitted by law, the Port shall indemnify and hold harmless the City, its elected and appointed officials, employees and agents from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature including, but not limited to, claims arising under federal, state, or local environmental laws by reason of, or arising out of, any negligent act or omission of the Port, its commissioners, employees and agents, but only to the extent and in proportion that the said negligent acts or omissions caused or contributed thereto.

6. Damage to Property. The City shall pay the replacement or repair cost of any Port property that is damaged or destroyed as the result of City's use of the moorage. The Port shall pay the replacement or repair cost of any Port property that is damaged or destroyed as the result of Port actions. If such property damage results from the concurrent negligence of the City (including anyone on the Port property as part of the Sailing Program) and the Port this provision shall only be valid and enforceable only to the extent of the negligence of each.

7. Duration. This Agreement shall become effective upon, and shall continue for one year from the date of mutual execution and shall automatically renew from year to year. Notwithstanding the foregoing, this Agreement may be terminated by either party upon forty-five (45) days written notice from either party for any reason or no reason.

8. Survivability. All covenants, promises and performance which are not fully performed as of the date of termination shall survive termination as binding obligations.

9. Agreement Coordinators and Notices. The individuals named below are designated the Agreement Coordinators for this Agreement. They shall act as the contact for the respective parties. Either party may change the Agreement Coordinator by providing written notice to the other. All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing, addressed to the Agreement Coordinators and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

The Port:

Port of Poulsbo
PO Box 732
Poulsbo, WA 98370
360-779-9905

The City:

City of Poulsbo
200 NE Moe Street
Poulsbo, WA 98370
360-779-9898

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or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

10. Amendment. No modification, termination or amendment of this Agreement may be made except by written agreement signed by all parties, except as provided herein.

11. Waiver. No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

12. Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement.

13. Neutral Authorship. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

14. Governing Law. This Agreement, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action, venue shall lie exclusively in Kitsap County, Washington.

16. Entire Agreement. The entire agreement between the parties hereto is contained in this Agreement, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the parties subsequent to the date hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement this 18th day of April, 2014.

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PORT OF POULSBO

PORT OF POULSBO

By: B. Miller

Title: Executive Director

CITY OF POULSBO

By: [Signature]

Attest: Kylie Purves

Kylie Purves, City Clerk

Approved as to form:

By: James E. Hays
City Attorney

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