

**INTERLOCAL AGREEMENT
BY AND BETWEEN THE PORT OF TACOMA and
THE CITY OF TACOMA**

The Port of Tacoma, a port district organized under the laws of the State of Washington (hereafter, "Port") and the City of Tacoma, a municipal corporation (hereafter, "City") enter into this Interlocal Agreement under authority of the Interlocal Cooperation Act (RCW 39.34), the laws governing the operation of the Port, and the State constitution Art. XI § 10, RCW 35.22.030. and RCW chapter 35.22, the laws governing the City.

The Port of Tacoma is a port district organized under the authority of Chapter RCW 53.

The City of Tacoma is a Charter city organized pursuant to and the State constitution Art. XI § 10, RCW 35.22.030. and RCW chapter 35.22.

The Tacoma Fire Department ("Tacoma Fire") is a department of the City.

The Parties have a common interest in the safety of the waterways in and around Tacoma and the Port of Tacoma;

The Port of Tacoma and other constituents in the Tacoma industrial Tidelands (Tidelands Area) are highly dependent upon safe and secure waterways to accommodate business and economic growth in the Tidelands Area;

The parties recognize the collective need for enhanced safety and security in and around the Tacoma Tidelands area in support of current maritime activities and anticipated future development plans;

The parties have a shared interest in exploring ways to create efficiencies and cost savings for all parties with regard to waterway safety and security; and

The parties also seek to provide deterrence of potential terrorist activities through the physical presence and public visibility provided by marine patrol actions.

NOW, THEREFORE, the parties agree as follows:

TERMS OF AGREEMENT

I. Scope of Agreement

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A. Purpose. The intent of this Agreement is to provide a cooperative framework for the use, operation and maintenance of a Patrol Boat owned by the Port and operated by the City Fire Department to provide waterside safety and security patrols in the waters near Tacoma.

B. Patrol Boat Ownership:

The Port has secured funding via grant from Federal Emergency Management Agency (FEMA) for the purchase of a patrol boat. The Port of Tacoma will purchase, and own, the patrol boat (Patrol Boat) referenced in this Interlocal Agreement. Title to the Patrol Boat and rights of ownership shall remain in the Port of Tacoma's name for the duration of this Agreement.

C. Patrol Boat Defined. The Patrol Boat for purpose of this Agreement is defined as "Patrol Boat obtained by Port through the Round 6, FEMA Grant Security funding".

D. Patrol Boat Operation and Use. Conditioned upon successful procurement of a Patrol Boat through the Round 6, FEMA Grant Security funding, the Port shall provide the Patrol Boat to the City of Tacoma for the sole operation by Tacoma Fire. The Port of Tacoma ("Port") authorizes Tacoma Fire to use and operate the Patrol Boat as conditioned and specified in this Agreement as follows.

1. Security Patrols:

Tacoma Fire shall use the Patrol Boat to provide patrol and monitoring services related to waterside safety, security, and environmental incidents within the following waterway areas: Where waters of the Puget Sound adjoin Port of Tacoma properties, more specifically the Blair, Sitcum, Hylebos and Foss waterways and areas of Commencement Bay and the Puyallup River where Port of Tacoma properties lie adjacent to these waterways.

Tacoma Fire shall use the Patrol Boat to observe and patrol terminals, docks, piers and shorelines of Port of Tacoma owned and Port tenant properties.

Tacoma Fire will perform a minimum of three (3) randomly scheduled patrols per week (including holidays) as staffing allows.

At the Port's request, Tacoma Fire will also undertake additional patrols for non-scheduled events or incidents deemed to threaten the safety and security of Port property, waterways, or personnel. The Port's additional patrol requests will be communicated through the Tacoma Fire

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Department Operations Bureau, Tacoma Fire will undertake these requests as staffing allows.

At no time shall Tacoma Fire perform activities associated with the marine patrol which are outside of their normal scope of duties as firefighters or in any manner that would jeopardize Fire Department personnel or public safety.

2. Security Communication and Patrol Activity Reporting.

Tacoma Fire shall communicate with the Port of Tacoma 24-hour Security Control Center at the start and end of a marine patrol. Tacoma Fire shall communicate the area expected to be patrolled and any relevant information. Upon the discovery of any security, safety or environmental incidents or discrepancies, on or near Port of Tacoma properties, Tacoma Fire will communicate the information to the Port of Tacoma Security Control Center. Tacoma Fire shall report any unusual circumstances or events that appear to be out of the ordinary to the Port of Tacoma Security Department.

3. Tacoma Fire Department – Other Authorized Uses:

Tacoma Fire Department may also use the Patrol Boat to provide support of local, regional and national operations providing response to natural and human-created events. Some examples include: to assist with the restoration and maintenance of order through emergency response; to ensure business continuity and economic resiliency; to help other city and Port partners in time of need as coordinated through the Tacoma Fire Department Operations Bureau.

The Port of Tacoma also recognizes the Patrol Boat may be used by Tacoma Fire Department for other functions such as Search and Rescue and Fire response.

4. Activity Reporting.

Tacoma Fire shall provide to the Port a regular accounting of the Patrol Boat's use on at least a monthly basis.

E. Optional Additional Patrol Boat Equipment.

The Port and Tacoma Fire have conferred on optional Patrol Boat equipment for inclusion to the Port's Patrol Boat Request for Proposals (RFP) as additional bid items. To the extent that the costs of the equipment exceed the grant funding already awarded to the Port, Tacoma Fire Department shall be responsible for the costs of such optional additional Patrol Board equipment. This cost shall be approximately \$180,000 and will be paid to the Port of Tacoma within 30 days of Tacoma Fire receiving an itemized list of the equipment from the Port. To the extent that the equipment can be removed from the Patrol Boat without disrupting

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the integrity of the Patrol Boat and/or remaining equipment, the optional additional Patrol Board equipment shall be returned to Tacoma Fire Department upon termination of this Agreement. If the equipment cannot be removed from the Patrol Board without disrupting the integrity of the Patrol Boat and or remaining equipment, the parties shall work out jointly, if possible, a reconciliation of these the costs for the remaining life of the equipment upon termination pursuant to Section VIII of this Agreement.

F. Maintenance, Operation and Repair:

Tacoma Fire Department will be responsible to ensure the maintenance and operation of the patrol boat.

The Port through its maintenance personnel shall provide (1) routine maintenance per the Original Equipment Manufacturers requirements, (2) all necessary repairs as determined in the Port's discretion and (3) any additional maintenance and repair for the Patrol Boat as requested by Tacoma Fire. All costs associated with the Patrol Boat maintenance and repair shall be paid by Tacoma Fire Department.

The Port shall maintain all maintenance and repair records, which shall be made available to Tacoma Fire Department on a semi-annual basis, or more frequently as requested.

Other than routine maintenance specified per the Original Equipment Manufacturers requirements, Tacoma Fire Department will review all maintenance and repair costs prior to Port's commencing such work. Tacoma Fire Department shall pay all maintenance and repair invoices submitted by the Port net 30 days.

Any disputes that arise from this section shall be resolved by the parties subject to section VIII of this agreement before work is authorized. If any dispute delays or prevents repair or maintenance that is necessary to the Patrol Boat's safe operation as determined by the Port, Tacoma Fire shall not operate the Patrol Boat until the dispute is resolved and the repair and or maintenance is completed.

G. Insurance Requirements.

The City of Tacoma shall maintain the following insurance as respects the Patrol Boat:

1. Hull & Machinery for an amount not less than the survey market value of the Patrol Boat. Port of Tacoma shall be included as Loss Payee.
2. Protection & Indemnity with limits not less than \$5,000,000. Protection & Indemnity to include liability under any Compensation Act. Port of Tacoma shall be included as an additional insured.
3. Pollution Liability with limits not less than \$5,000,000.

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4. The City of Tacoma shall immediately notify the Port of Tacoma of any claims, incidents, and actions which may trigger any of the coverage above.

H. Licensing and Permitting:

Tacoma Fire is responsible for all costs associated with licensing and permitting for the patrol boat. Tacoma Fire shall ensure the Patrol Boat shall bear logos as required by statute. Tacoma Fire shall also ensure any other markings will be in compliance with applicable National Fire Protection Association (NFPA) marine unit standards.

The Port of Tacoma retains vessel naming rights provided however the Port agrees the boat will not be named the "Commencement".

I. Training:

No Tacoma Fire Department Personnel shall crew the Patrol Boat for performance of patrols prior to successful completion of Security Awareness training provided by the Port. This training shall include observing and reporting suspicious activities, maritime related activities and security deficiencies.

II. Administration of Agreement

The terms of this Agreement shall be administered jointly by the parties. Each of the parties shall designate from its respective staff or consultants a contact person with responsibility for administration of the terms of this Agreement.

Except as provided herein, the parties shall finance the conduct of responsibilities under this Agreement each by providing for payment of its own employees and consultants, and by determining, from time to time, an appropriate division or assignment of responsibility for any additional costs.

No ownership of property will transfer as a result of this Agreement.

III. Effective Date & Termination

This Agreement shall be effective upon execution by all parties hereto and will stay in effect for a period of five years provided, however, that this Agreement shall terminate and neither party shall have any obligation to the other hereunder if the Port does not successfully purchase a Patrol Boat using Round 6 Port Security Grant funding from Federal Emergency Management Agency for the purchase of a Patrol Boat, and or if the Port in its discretion does not pursue purchase of the Patrol Boat.

This Agreement also may be terminated for convenience at the discretion of either party, upon thirty (30) days written notice by one party to the other. Upon termination of this agreement, the parties shall prepare jointly if possible, and separately if not, a reconciliation of all costs and obligations. All unpaid costs

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shall be resolved using if necessary the process described in section P of this agreement. Upon termination of this Agreement for any reason by either party, the Patrol Boat shall be returned to the Port of Tacoma in the same condition it was received save normal wear and tear.

VI. Changes

Any revision to this Agreement shall require the prior written consent of both parties.

V. Legal Relations

1. The parties do not by this Agreement create any separate or additional organization, legal or administrative entity. It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No employees or agents of any party shall be deemed, or represent themselves to be, employees of any of the other parties.
2. This Agreement does not relieve either party of any obligation or responsibility imposed upon it by law.
3. The requirements of this Agreement shall be carried out in a timely manner according to a schedule negotiated by and satisfactory to the parties.
4. A copy of this Agreement shall be recorded in the Office of the Pierce County Auditor as provided by law, and shall be posted to the Port's web site.
5. The provisions of this Article shall survive any termination or expiration of this Agreement.

VI. Liability & Indemnity.

1. Tacoma Fire releases the Port from, and shall defend, indemnify, and hold the Port and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, including but not limited to property damage, personal injury, or death, made by or on behalf of Tacoma Fire and/or its agents, employees, officers, and/or subcontractors, arising out of or in any way related to the Patrol Boat or the Tacoma Fire's use or control thereof during the term of this Agreement, unless and except to the extent the same be caused in whole

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or in part by the negligence of the Port or its agents, employees, and/or officers.

2. Tacoma Fire shall defend, indemnify, and hold the Port and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, including but not limited to property damage, personal injury, or death, made by or on behalf of any third parties and/or their agents, employees, officers, and/or subcontractors, arising out of or in any way related to the Patrol Boat or Tacoma Fire's use or control thereof during the term of this Agreement, unless and except to the extent the same be caused in whole or in part by the negligence of the Port or its agents, employees, and/or officers.
3. This Agreement includes a waiver of subrogation against all losses sustained by the Tacoma Fire and/or its agents, employees, officers, subcontractors, and/or insurers, arising out of or related to the Patrol Boat or Tacoma Fire's use or control thereof, except to the extent Tacoma Fire's losses are caused in whole or in part by the negligence of the Port or its agents, employees, and/or officers.
4. Each party specifically assumes liability for actions brought by its own employees against the other party and for that purpose each party specifically waives, as respects the other parties only, any immunity under the Worker's Compensation Act, RCW Title 51. Each party recognizes that this waiver was the subject of mutual negotiation. In the event any party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this Agreement against the other party, all such fees, costs and expenses shall be recoverable by the prevailing property.
5. No liability shall attach to any of the parties by reason of entering into this Agreement except as expressly provided herein.
6. Each party agrees that it will include in any contract which is related to the work of this Agreement a provision requiring the contractor to defend, indemnify and hold harmless all the parties to this Agreement against any claims arising out of or related to the work of the contractor.
7. The provisions of this Article shall survive any termination or expiration of this Agreement.

VII. Records and Audit

All enforcement records (patrol reports, incident report, etc.) associated with the Patrol Boat shall be retained by Tacoma Fire in accordance with Federal, State

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and Local laws regarding public records retention and destroying of public records.

During the term of this Agreement, and for a period not less than six (6) years from the date of termination, records and accounts pertaining to the work of this Agreement and accounting therefore shall be kept available by the Port of Tacoma for inspection and audit by representatives of any interested parties. Information designated as "Security Sensitive Information" shall be maintained in accordance with the Code of Federal Regulations 49 Part 1520.

VIII. Dispute Resolution

If the parties are unable to resolve a disagreement between them arising out of this Agreement, the parties will refer the matter to mediation to be performed in Pierce County and an independent third party selected by them for resolution. Such referral shall be a condition precedent before any party resorts to other remedies it may have.

IX. Severability

If any term or provision of this Agreement, or its application to any person or circumstance is ruled unconstitutional, invalid or unenforceable, the remainder of this Agreement will not be affected and will continue in full force and effect.

X. Notices

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing addressed to the other party at the addresses as follows:

Tacoma Fire Department: Fire Chief Ronald W. Stephens
901 Fawcett Avenue
Tacoma, WA 98402-5699

Port of Tacoma: Port Security Director
1 Sitcum Way
Tacoma, WA 98421

XI. Integration and Amendment

This Agreement constitutes the complete and final agreement of the parties, replaces and supersedes all oral and/or written proposals and agreements heretofore made by the parties on the subject matter, and may be modified only by a writing signed by the parties hereto.

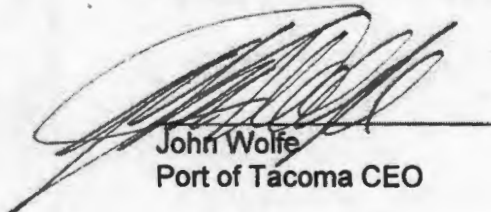
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PASSED BY the Commissioners of the Port of Tacoma, State of Washington and signed in authentication thereof this 4th day of October, 2010.

PASSED BY the City Council of the City of Tacoma, State of Washington and signed in authentication thereof this 4th day of October, 2010.

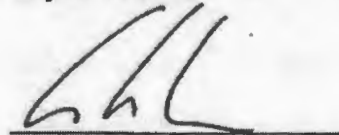
NOV WHEREFORE, the parties have executed this Agreement this 4th day of Oct, 2010.

Port of Tacoma



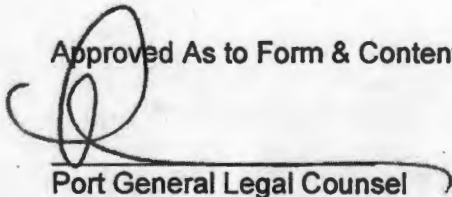
John Wolfe
Port of Tacoma CEO

City of Tacoma

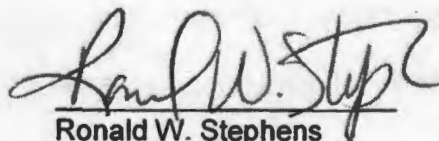


Eric Anderson
City Manager

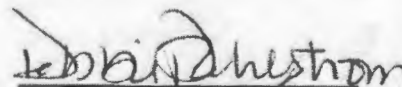
Approved As to Form & Content



Port General Legal Counsel



Ronald W. Stephens
Fire Chief

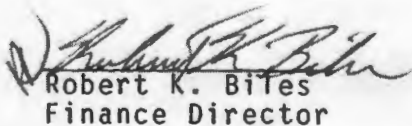


Debbie Dahlstrom
Risk Manager

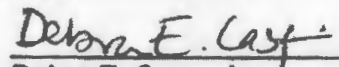
Doris Sorum 11-4-10

Doris Sorum
City Clerk

Approved As to Form



Robert K. Biles
Finance Director



Debra E. Casparian
Deputy City Attorney

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RESOLUTION NO. 38126

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A RESOLUTION relating to waterway safety and security; authorizing the execution of the Interlocal Agreement with the Port of Tacoma, in the amount of \$670,000, of which the City's portion is \$180,000, budgeted from the Fire Miscellaneous Special Revenue Fund.

WHEREAS Tacoma Fire Department ("TFD") staff and Port of Tacoma ("Port") staff developed the proposed Interlocal Agreement to purchase, operate, and maintain a fire suppression-equipped patrol boat for a five-year period, pursuant to the Port's application and award of approximately \$365,000 of Round 6 Federal Emergency Management Agency ("FEMA") Port Security grant funding, and

WHEREAS the patrol boat will be purchased by the Port, which cost is expected to be approximately \$670,000, using the FEMA funds and supplemented by a contribution from the Port, in the amount of \$122,000, and an initial contribution from the City, in the amount of \$180,000, and

WHEREAS the patrol boat will be operated by TFD and will be used for Port- and TFD-directed patrols, emergency response, search and rescue, and other duties, as needed and directed by the Port and TFD, as TFD staffing allows, and

WHEREAS, in some cases, the Port-owned/maintained patrol boat will be used in substitution for TFD's main fireboat "Commencement" thereby reducing operating costs and prolonging the life of the larger vessel, and

WHEREAS the proposed Interlocal Agreement was presented to the Public Safety, Human Services, and Education Committee and received a "do pass" on September 23, 2010; Now, Therefore,



BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

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That the proper officers of the City are hereby authorized to execute the proposed Interlocal Agreement with the Port of Tacoma, in the amount of \$670,000, of which the City's portion is \$180,000, budgeted from the Fire Miscellaneous Special Revenue Fund, said document to be substantially in the form of the proposed Interlocal Agreement on file in the office of the City Clerk.

Adopted OCT 19 2010

Mayor

Attest:

City Clerk

Approved as to form:

Diana E. Usp
Deputy City Attorney

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