

RESOLUTION R 3346 .....

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO SIGN ON BEHALF OF THE CITY OF KIRKLAND AN INTERLOCAL GOVERNMENTAL AGREEMENT PROVIDING FOR FINANCIAL PARTICIPATION BY THE PORT OF SEATTLE IN THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A TOUR BOAT DOCK FACILITY WITHIN THE CITY OF KIRKLAND

Whereas, the construction and operation of a dock suitable for accomodating tour boats within the harbor area of the City of Kirkland will provide economic benefits and promote commerce and tourism within the City and within the district of the Port of Seattle; and

Whereas, the City of Kirkland desires to provide for planning, design, construction, operation, maintenance and promotion of such a tour boat dock facility; and

Whereas, the Port of Seattle desires to participate with the City as a partner in the development of the tour boat dock by providing a portion of the financing for the facility; and

Whereas, the City of Kirkland and the Port of Seattle each has the authority to enter into an Interlocal Governmental Agreement to carry out such joint participation; now, therefore,

Be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Council of the City of Kirkland hereby approves that certain Interlocal Governmental Agreement between the City of Kirkland and the Port of Seattle, copy of which is attached to the original of this resolution as Exhibit "A" and by this reference incorporated herein.

Section 2. The City Manager for the City of Kirkland is hereby authorized and directed to sign on behalf of the City of Kirkland the Interlocal Governmental Agreement approved by this resolution and substantially in the form as set forth in Exhibit "A".

Passed by majority vote of the Kirkland City Council in regular, open meeting this 2nd day of February, 1987.

Signed in authentication thereof this 2nd day of February, 1987.

*Loris Cooper*  
\_\_\_\_\_  
MAYOR

ATTEST:

*Francis J. Perry* DEPUTY CLERK  
\_\_\_\_\_  
Director of Administration & Finance  
(ex officio City Clerk)

INTERLOCAL AGREEMENT

This INTERLOCAL AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1987, by THE CITY OF KIRKLAND, a Washington municipal corporation (the "City"), and THE PORT OF SEATTLE, a Washington municipal corporation (the "Port").

WHEREAS, the City and the Port each has the authority to enter into this Agreement for the purposes stated herein;

WHEREAS, the construction and operation of a dock suitable for accomodating tour boats in the City's harbor will provide economic benefits and promote commerce and tourism within the City and the Port district;

WHEREAS, the City desires to provide for the planning, design, construction, operation, maintenance and promotion of the tour boat dock; and

WHEREAS, the Port desires to participate with the City as a partner in the development of the tour boat dock by providing a portion of the financing for the facility;

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, the City and the Port agree as follows:

ARTICLE ONE

The Facility

The City shall construct a dock in the City harbor at a location to be determined by the City. The primary purpose of the dock shall be to provide moorage, for a fee, for tour boats. The dock shall be designed and constructed so as to substantially conform to the purposes and objectves of the City's "Harbortown Center Proposal", dated May 13, 1986, a copy of which is attached hereto as Exhibit A. The dock and all of its attendant structures and appurtenances are hereinafter collectively referred to as "The Facility".

ARTICLE TWO

Design and Permits

The City shall be responsible for all design and permitting for the Facility, and for the costs thereof. Such responsibilities shall include, but are not limited to, architectural and engineering services, soil and site analysis, preparation of an Environmental Impact Statement, and acquisition of any necessary permits.

ARTICLE THREE

Construction

The City shall arrange for and supervise construction of the Facility. Construction shall be specified and supervised so as to result in a sound

well-made structure. Construction of the Facility shall be complete and the Facility shall be ready for operation before the Port shall be obligated to make its financial contribution pursuant to Article Four.

#### ARTICLE FOUR

##### Port Contribution

After the Facility is complete and as soon as the Facility is ready to commence operations, the City shall notify the Port. Within sixty (60) days of such notice, the Port shall pay the City an amount equal to the cost of construction of the Facility, less the cost of design, engineering, Environmental Impact Statement and permits as set forth in Article Two, provided that the amount to be paid by the Port shall in no event exceed \$200,000. This amount is referred to hereinafter as the "Port Contribution".

#### ARTICLE FIVE

##### Term

The term of this Agreement (the "Term") shall be twenty years from the date of payment of the Port Contribution pursuant to Article Four (the "Contribution Date") unless sooner terminated pursuant to the terms of Article Fourteen.

#### ARTICLE SIX

##### Operation

The City shall be solely responsible for the operation of the Facility and the cost thereof. The Facility shall be operated so as to maximize tour boat visits to the Facility, while maintaining fees for use of the Facility at a rate compatible with market conditions. The Facility shall be operated in a professional, first-class manner.

#### ARTICLE SEVEN

##### Maintenance

The City shall be solely responsible for the maintenance of the Facility in a good, safe condition at all times during the Term, and for all costs associated with such responsibility.

#### ARTICLE EIGHT

##### Marketing

The City shall be solely responsible for marketing and promotion of the Facility, and for the cost thereof. The City shall use its best efforts to market and promote the Facility so as to maximize use of the Facility and the revenues generated by it; provided that in doing so, any conflicts with or adverse impacts upon the existing public parking, park and recreational facilities located within or adjacent to Moss Bay and the use thereof by the general public shall be minimized.

ARTICLE NINEDistribution of Revenues

9.1 Definition. "Revenues", as that term is used hereinafter, shall mean all money received by the City which is generated by operation of the Facility.

9.2 Best Efforts. The City shall use its best efforts to maximize Revenues; provided that in doing so, any conflicts with or adverse impacts upon the existing public parking, park and recreational facilities located within or adjacent to Moss Bay and the use thereof by the general public shall be minimized.

9.3 Minimum City Share. Each year of the Term, the City shall be entitled to retain the first \$5,000 of Revenues, provided that should the Revenues in any year be less than \$5,000, the City shall be entitled to retain all of such lesser amount. The foregoing amount is hereinafter referred to as the Minimum City Share. The Minimum City Share shall be applied by the City to the costs of operating, maintaining and marketing the Facility, it being understood, however, that the City's obligations with regard to operations, maintenance and marketing are not limited to \$5,000 per year.

9.4 Minimum Port Share. For years six through twenty (6 - 20) of this Agreement, the City shall pay the Port a minimum each year of \$6,000 or three percent (3%) of the Port Contribution, whichever is less. Such minimum payment is hereinafter referred to as the "Minimum Port Share". The City shall pay the Port the Minimum Port Share regardless of the amount of Revenues received by the City.

9.5 Additional Port Share. In addition to the Minimum Port Share, the Port shall be entitled to the following sums:

- A. In years one through five (1 - 5), all Revenues in excess of the Minimum City Share;
- B. In years six through twenty (6 - 20), eighty percent (80%) of all Revenues in excess of the sum of the Minimum City Share and the Minimum Port Share.

9.6 Additional City Share. In addition to the Minimum City Share, the City shall, in years six through twenty (6 - 20), be entitled to twenty percent (20%) of all Revenues in excess of the sum of the Minimum City Share and the Minimum Port Share. In years one through five (1 - 5), the City shall not be entitled to any Revenues in excess of the Minimum City Share.

ARTICLE TENPayments

All payments due to the Port by the City pursuant to Article Nine shall be remitted to the Port within sixty (60) days of the end of each year of the

Term. For purposes of this Agreement, each "year" during the Term shall be the twelve month period beginning on the Contribution Date or its anniversary.

#### ARTICLE ELEVEN

##### Return of Port Contribution

11.1 Repayment at End of Term. Should this Agreement remain in effect for the full Term, then not later than the last day of the last year (year twenty (20)) of the Term, the City shall repay the entire Port Contribution in cash.

11.2 Early Repayment. Should this Agreement terminate prior to the end of the Term for any reason, including, but not limited to, the reasons set forth in Article Fourteen, the City shall repay the entire Port Contribution in cash within one hundred and eighty (180) days of receipt of written notice from the Port.

11.3 Repayment Independent of Revenues. Repayment of the Port Contribution under this Article shall be in addition to, and independent of, any Revenues paid to the Port by the City pursuant to Article Nine.

#### ARTICLE TWELVE

##### Annual Report

Each year of the Term, not later than the date for payment set forth in Article Ten, the City shall provide the Port with a report (hereinafter referred to as the "Annual Report") which shall contain, at a minimum, the following:

- A. Financial data sufficient to permit the Port to confirm the Revenues for that year and the amount of such Revenues due the Port;
- B. Tour boat visit data, including number of vessel visits, number of visitors, any recommendations or suggestions from tour boat operators or visitors as to the operation, maintenance and marketing of the Facility;
- C. Projections for the following year for categories (A) and (B) of this Article.

#### ARTICLE THIRTEEN

##### Identification of Port and City

The nature of this Agreement as a partnership or joint effort of the City and the Port shall be reflected in all signs, brochures, advertisements and other promotional materials used to identify or market the Facility by displaying the name of the Port of Seattle prominently on all such materials.

ARTICLE FOURTEEN

Termination

This Agreement may be terminated by the Port as follows:

14.1 Insufficient Revenues. If, for any three (3) years of the Term, beginning in year six (6), Revenues are less than the sum of the Minimum City Share and the Minimum Port Share, the Port may, upon written notice given to the City after receipt of the Annual Statement, immediately terminate this Agreement in its entirety.

14.2 Default By the City. The Port may terminate this Agreement in its entirety in the event that the City:

A. Fails or refuses to promptly make payments as required in Article Ten;

B. In the Port's opinion, becomes insolvent or in unsound financial condition so as to endanger repayment of the Port's contribution; or

C. Fails to comply with, or otherwise defaults upon or breaches any other term or condition of this Agreement, where such failure, breach or default remains uncured following thirty (30) days of receipt of written notice thereof from the Port.

14.3 Failure to Obtain Permits or Construct Facility. In the event that the City is unable to obtain permits, funds or approvals sufficient to construct the Facility and make it ready for use by December 31, 1988, this Agreement shall terminate immediately upon written notice to the City by the Port, and the Port shall have no obligation to make the Port Contribution or any other obligations under this Agreement.

ARTICLE FIFTEEN

Assignment

This Agreement shall not be assigned or transferred by either party, either in whole or in part, unless the written consent of the other party is first obtained.

ARTICLE SIXTEEN

Liability, Indemnification and Insurance

Because the Port takes no active part in the design, construction, operation or maintenance of the Facility, and because the Port's participation in this Agreement is solely financial in nature, the Port assumes no liability for any claims, damages, or injuries arising out of the activities described in this Agreement.

The City agrees to protect, indemnify and save the Port, its elected and appointed officials, employees and agents, harmless from and against all claims, demands and causes of action of any kind or character, including the cost of defense thereof, arising in connection with the City's activities under this Agreement.

As to the obligations and responsibilities assumed by or allocated to the City pursuant to this Agreement, the City shall secure and maintain with responsible insurers such insurance as is customarily maintained by public bodies with respect to the activities which are the subject matter of this Agreement. Upon written request, the City shall make available to the Port a certificate that such insurance is in force.

#### ARTICLE SEVENTEEN

##### Rules, Regulations and Laws

The City, in carrying out the activities described in this Agreement, agrees to comply with all applicable, federal, state and local laws and regulations, including, without limitation, all laws and regulations intended to protect the environment and all laws and regulations intended to prevent or remedy discrimination.

#### ARTICLE EIGHTEEN

##### Miscellaneous

18.1 Waivers. No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this Agreement or a breach thereof, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the proper party. Termination under any provision of this Agreement shall not affect any right, obligation or liability of the City or the Port which occurred prior to such termination.

18.2 Enforceability. Each party to this Agreement hereby represents that it has taken all necessary action to authorize the execution, delivery and performance of this Agreement and that this Agreement when fully executed shall constitute a legal, valid and binding obligation which is enforceable in accordance with its terms, and shall be binding on the parties and their successors and assigns, if any.

18.3 Captions. The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

18.4 Entire Agreement. This Agreement shall constitute the whole Agreement between the parties regarding the activities to be undertaken by the City during the term of this Agreement. There are no terms, obligations, covenants or conditions other than those contained herein. No modification or amendment of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

18.5 Notices. Whenever notice, payment or written request is required in this Agreement, written notice shall be given to the intended party as provided in this Section. All notices and payments hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses:

To Port:

The Port of Seattle  
Post Office Box 1209  
Seattle, WA 98111  
Attention: Executive Director  
(with a copy to Port General Counsel)

To City:

City of Kirkland  
Kirkland, WA 98033  
Attention: City Manager

or to such other respective addresses as either party herein may hereafter from time to time designate in writing.

IN WITNESS WHEREOF the parties have signed this Agreement the day and year first written above.

CITY OF KIRKLAND

PORT OF SEATTLE

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Typed Name)

By: \_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

2741D



