

**INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE CITIES OF
AUBURN, FEDERAL WAY, KENT, RENTON, TUKWILA, AND THE PORT OF
SEATTLE, FOR CREATION OF THE**

VALLEY Civil Disturbance Unit

I. PARTIES

The parties to this Agreement are the Port of Seattle and the cities of Auburn, Federal Way, Kent, Renton, and Tukwila, each of which is a municipal corporation operating under the laws of the State of Washington.

II. AUTHORITY

This Agreement is entered into pursuant to Chapters 10.93, 39.34, and 53.08 of the Revised Code of Washington ("RCW").

III. PURPOSE

The parties hereto desire to establish and maintain a multi-jurisdictional Valley Civil Disturbance Unit (Valley CDU).

IV. FORMATION

There is hereby created a multi-jurisdictional team to be hereafter known as the "Valley Civil Disturbance Unit" ("VCDU"), the members of which shall be the Port of Seattle, and the cities of Auburn, Federal Way, Kent, Renton, Tukwila. The future admission or elimination of a jurisdiction as a member of the VCDU may be accomplished by an addendum to this Agreement.

V. STATEMENT OF PROBLEM

King County and municipalities within the Puget Sound area have experienced periodic large-scale civil disturbances. These disturbances manifest themselves in the form of civil disobedience, unlawful passive and active demonstrations, as well as riots. Mass arrest situations are likely to result from the aforementioned disturbances. Participants in this unlawful activity, or the tactics they employ will usually out-stretch the resources of any one single agency to effectively and efficiently handle the situation.

Law enforcement efforts directed at dealing with these types of civil disturbances have, for the most part, been conducted by law enforcement agencies working independently. A multi-jurisdictional effort to handle acts of civil disobedience, passive and active demonstrations, as well as riots will result in more effective pooling of personnel, improved utilization of municipal funds, reduced duplication of equipment, improved training, development of specialized expertise, and increased utilization/application of a combined civil disturbance unit. The results will be

improved services for all the participating agencies, increased safety for officers and the community, and improved cost effectiveness.

VI. TEAM OBJECTIVES

The individual CDU teams from each participating municipality will consolidate into one combined Civil Disturbance Unit, known as "the VCDU", servicing each participating jurisdiction. The VCDU shall also be available to outside law enforcement agencies as provided by chapter 10.93 RCW.

The objective of the VCDU shall be to provide enhanced use of personnel, equipment, budgeted funds, and training. The VCDU shall respond as requested by any of the participating jurisdiction and provide a coordinated effective resolution to civil disturbance incidents

VII. DURATION AND TERMINATION

The minimum term of this Agreement shall be one (1) year, effective upon the last signed below. This Agreement shall automatically extend for consecutive one (1) year terms without action of the legislative bodies of the participating jurisdictions, unless and until terminated pursuant to the terms of this Agreement.

A jurisdiction may withdraw its participation in the VCDU by providing written notice of its withdrawal, and serving such notice upon each Executive Board member of the remaining jurisdictions. A notice of withdrawal shall become effective ninety (90) days after service of the notice on all participating members.

The VCDU may be terminated by a majority vote of the Executive Board. Any vote for termination shall occur only when the police chief, or the designee, of each participating jurisdiction is present at the meeting in which such vote is taken.

VIII. GOVERNANCE

The affairs of the team shall be governed by an Executive Board ("Board"), whose members are composed of the police chief, or his/her designee, from each participating jurisdiction. Each member of the Board shall have an equal vote and voice on all Board decisions. Unless otherwise specified in this Agreement, all Board decisions shall be made by a majority vote of the Board members, or their designees, appearing at the meeting in which the decision is made. A majority of Board members, or their designees, must be present at each meeting for any actions taken to be valid. A presiding officer shall be elected by the Board together with such other officers as a majority of the Board may decide.

The Board shall meet quarterly or within a month following a VCDU deployment or major training exercise, or as otherwise determined by the Board. The presiding officer, or any Board member, may call extra meetings as deemed appropriate. The presiding officer shall provide no less than forty-eight (48) hours notice of all meetings to all members of the Board; PROVIDED, however, that in emergency

situations, the presiding officer may conduct a telephonic meeting or a poll of individual Board members to resolve any issues related to such emergency.

The Board shall develop VCDU written policies, regulations, and operational procedures within ninety (90) calendar days of the execution of this Agreement; PROVIDED, any policies, regulations, and operational procedures in effect pursuant to previous joint civil disturbance prevention operations shall remain in effect without action of the Board and until such time as they are subsequently altered by the Board. The VCDU written policies, regulations, and operational procedures shall apply to all VCDU operations. To the extent that the written policies, regulations, and operational procedures of the VCDU conflict with the policies, regulations, and operational procedures of the individual jurisdictions, the VCDU written policies, regulations, and procedures shall prevail.

IX. STAFF

A Tactical Commander, which shall be a command level officer, shall be appointed annually by the Board to act as the principal liaison and facilitator between the Board and the members of the VCDU. The Tactical Commander shall operate under the direction of the presiding officer of the Board. The Tactical Commander shall be responsible for informing the Board on all matters relating to the function, expenditures, accomplishments, training, number of events that the VCDU responds to, problems of the VCDU, and any other matter as requested by the Board. The Tactical Commander may be removed by action of the Board at anytime and for any reason, with or without cause.

The Tactical Commander shall prepare quarterly written reports to the Board on the actions, progress, and finances (if applicable) of the VCDU. In addition, the Tactical Commander shall be responsible for presenting rules, procedures, regulations, and revisions thereto for Board approval.

Each jurisdiction shall contribute a minimum (16) full-time commissioned officers, which shall include at least two (2) Sergeants or other first level supervisor, to be assigned as squad leaders on the VCDU. The personnel assigned to the VCDU shall be considered employees of the contributing jurisdiction. The contributing jurisdiction shall be solely and exclusively responsible for the compensation and benefits for the personnel it contributes to the VCDU. All rights, duties, and obligations of the employer and the employee shall remain with the contributing jurisdiction. Each jurisdiction shall be responsible for ensuring compliance with all applicable laws with regard to employees and with provisions of any applicable collective bargaining agreements and civil service rules and regulations.

The Board may, at its discretion, appoint one (1) or more legal advisors to advise the Board on legal issues affecting the VCDU. The legal advisor(s) shall, when appropriate or when requested by the Board, consult with the legal representatives of all participating jurisdictions before rendering legal advice.

X. COMMAND AND CONTROL

During field activation of the VCDU, an Incident Commander, VCDU Tactical Commander, and VCDU Team Leader(s) will be designated. The duties and procedures to be utilized by the Incident Commander, the VCDU Tactical Commander, and the VCDU Team Leader(s) shall be set forth in the standard operating procedures approved by the Board. The standard operating procedures approved by the Board may designate other personnel to be utilized during an incident.

XI. EQUIPMENT, TRAINING, AND BUDGET

Each participating jurisdiction shall acquire the equipment of its participating VCDU members. Each participating jurisdiction shall provide sufficient funds to update, replace, repair, and maintain the equipment and supplies utilized by its participating VCDU members. Each participating jurisdiction shall provide sufficient funds to provide for training of its participating VCDU members.

The equipment, supplies, and training provided by each jurisdiction to its personnel participating in the VCDU shall, unless otherwise determined by the Board, be equal to those provided by the other participating jurisdictions.

Each member jurisdiction shall maintain an independent budget system to account for funds allocated and expended by its participating VCDU members.

The Board must approve any joint capital expenditure for VCDU equipment.

XII. DISTRIBUTION OF ASSETS UPON TERMINATION

Termination shall be in accordance with those procedures set forth in prior sections. Each participating jurisdiction shall retain sole ownership of equipment purchased and provided to its participating VCDU members.

Any assets acquired with joint funds of the VCDU shall be equally divided among the participating jurisdictions at the asset's fair market value upon termination. The value of the assets of the VCDU shall be determined by using commonly accepted methods of valuation. If two (2) or more participating jurisdictions desire an asset, the final decision shall be made by arbitration (described below). Any property not claimed shall be declared surplus by the Board and disposed of pursuant to state law for the disposition of surplus property. The proceeds from the sale or disposition of any VCDU property, after payment of any and all costs of sale or debts of the agency, shall be equally distributed to those jurisdictions participating in the VCDU at the time of dissolution in proportion to the jurisdiction's percentage participation in the VCDU as of the date of dissolution. In the event that one (1) or more jurisdictions terminate their participation in the VCDU, but the VCDU continues to exist, the jurisdiction terminating participation shall be deemed to have waived any right or title to any property owned by the VCDU or to share in the proceeds at the time of dissolution.

Arbitration pursuant to this section shall occur as follows:

- A. The jurisdictions interested in an asset shall select one (1) person (Arbitrator) to determine which jurisdiction will receive the property. If the jurisdictions cannot agree to an Arbitrator, the chiefs of the jurisdictions participating in the VCDU upon dissolution shall meet to determine who the Arbitrator will be. The Arbitrator may be any person not employed by the jurisdictions that desire the property.
- B. During a meeting with the Arbitrator, each jurisdiction interested in the property shall be permitted to make an oral and/or written presentation to the Arbitrator in support of its position.
- C. At the conclusion of the presentation, the Arbitrator shall determine which jurisdiction is to receive the property. The decision of the Arbitrator shall be final and shall not be the subject of appeal or review.

XIII. LIABILITY, HOLD HARMLESS, AND INDEMNIFICATION

It is the intent of the participating jurisdictions to provide services of the VCDU without the threat of being subject to liability to one another and to fully cooperate in the defense of any claims or lawsuits arising out of or connected with VCDU actions that are brought against the jurisdictions. To this end, the participating jurisdictions agree to equally share responsibility and liability for the acts or omissions of their participating personnel when acting in furtherance of this Agreement. In the event that an action is brought against any of the participating jurisdictions, each jurisdiction shall be responsible for an equal share of any award for or settlement of claims of damages, fines, fees, or costs, regardless of which jurisdiction or employee the action is taken against or which jurisdiction or employee is ultimately responsible for the conduct. The jurisdictions shall share equally regardless of the number of jurisdictions named in the lawsuit or claim or the number of officers from each jurisdiction named in the lawsuit or claim. This section shall be subject to the conditions and limitations set forth in subsections A through G below.

- A. Jurisdiction Not Involved In VCDU Response. In the event that a jurisdiction or its personnel were not involved in the VCDU response to the incident that gives rise to a claim or lawsuit, and judgment on the claim or lawsuit does not, in any manner, implicate the acts of the particular jurisdiction or its personnel, such jurisdiction shall not be required to share responsibility for the payment of the judgment or award.
- B. Intentionally Wrongful Conduct Beyond the Scope of Employment. Nothing herein shall require, or be interpreted to require indemnification or sharing in the payment of any judgment against any VCDU personnel for intentionally wrongful conduct that is outside of the scope of employment of any individual or for any judgment of punitive damages against any individual or jurisdiction. Payment of any award for punitive damages shall be the sole responsibility of the

person or jurisdiction that employs the person against whom such award is rendered.

- C. Collective Representation and Defense. The jurisdictions may retain joint legal counsel to collectively represent and defend the jurisdictions in any legal action. Those jurisdictions retaining joint counsel shall share equally the costs of such representation or defense.

In the event a jurisdiction does not agree to joint representation, the jurisdiction shall be solely responsible for all attorneys fees accrued by its individual representation or defense.

The jurisdictions and their respective defense counsel shall make a good faith attempt to cooperate with other participating jurisdictions by, including but not limited to, providing all documentation requested, and making VCDU members available for depositions, discovery, settlement conferences, strategy meetings, and trial.

- D. Removal From Lawsuit. In the event a jurisdiction or employee is successful in withdrawing or removing the jurisdiction or employee from a lawsuit by summary judgment, qualified immunity, or otherwise, the jurisdiction shall nonetheless be required to pay its equal share of any award for or settlement of the lawsuit; PROVIDED, however, that in the event a jurisdiction or employee is removed from the lawsuit and subsection (A) of this section is satisfied, the jurisdiction shall not be required to pay any share of the award or settlement.

- E. Settlement Process. It is the intent of this Agreement that the jurisdictions act in good faith on behalf of each other in conducting settlement negotiations on liability claims or lawsuits so that, whenever possible, all parties agree with the settlement or, in the alternative, agree to proceed to trial. In the event a claim or lawsuit requires the sharing of liability, no individual jurisdiction shall be authorized to enter into a settlement agreement with a claimant or plaintiff unless all jurisdictions agree with the terms of the settlement. Any settlement made by an individual jurisdiction without the agreement of the remaining jurisdictions, when required, shall not relieve the settling jurisdiction from paying an equal share of any final settlement or award.

- F. Defense Waiver. This section shall not be interpreted to waive any defense arising out of RCW Title 51.

- G. Insurance. The failure of any insurance carrier or self-insured pooling organization to agree to or follow the terms of this section shall not relieve any individual jurisdiction from its obligations under this Agreement.

XIV. NOTICE OF CLAIMS, LAWSUITS, AND SETTLEMENTS

In the event a claim is filed or lawsuit is brought against a participating jurisdiction or its employees for actions arising out of their conduct in support of VCDU operations, the jurisdiction shall promptly notify the other jurisdictions that the claim or lawsuit has been initiated. Any documentation, including the claim or legal complaints, shall promptly be provided to each participating jurisdiction.

Any jurisdiction or member who believes or knows that another jurisdiction would be liable for a claim, settlement, or judgment that arises from a VCDU action or operation, shall have the burden of notifying each participating jurisdiction of all claims, lawsuits, settlements, or demands made to that jurisdiction. In the event a participating jurisdiction has a right, pursuant to section XIII of this Agreement, to be defended and held harmless by another participating jurisdiction, the jurisdiction having the right to be defended and held harmless shall promptly tender the defense of such claim or lawsuit to the jurisdiction that must defend and hold the other harmless.

XV. PROCESSING OF CLAIMS.

- A. Designation of Lead Jurisdiction. There shall be a lead jurisdiction for processing a claim that is filed with and against cities for alleged damages and injuries that occur as a result of VCDU activities. The lead jurisdiction shall be the jurisdiction within which the VCDU response occurred; PROVIDED, that in the event the jurisdiction within which the VCDU response occurred did not participate in the VCDU response, the lead jurisdiction shall be the jurisdiction within which the incident that required the VCDU response originated. In the event that a jurisdiction that was not involved in the VCDU response receives the claim, that jurisdiction shall notify the other jurisdictions in accordance with Section XIV of this Agreement, and shall use its best efforts to determine who is the appropriate lead jurisdiction.
- B. Assistance of Tactical Commander. The VCDU Tactical Commander shall assist the lead jurisdiction in responding to a claim. The VCDU Tactical Commander shall be responsible for gathering all records relating to the VCDU response. These records shall include, but are not limited to, incident reports, notes, transcripts, photos, evidence logs, recorded statements, documents from emergency dispatch centers, and warrants from all jurisdictions that participated in the VCDU response. The Tactical Commander shall also provide a list of personnel who participated in the response and their contact information. The Tactical Commander shall deliver all copies of the records to the lead jurisdiction promptly upon request.

C. Claims of \$5,000 or Less.

- i. Lead Jurisdiction Responsibilities. The lead jurisdiction shall be responsible for working with the Tactical Commander to gather records relating to the VCDU response. The lead jurisdiction shall provide records to its insurance provider and shall assist its insurance provider in assessing liability for acts associated with the claim. The lead jurisdiction shall notify the other jurisdictions of any determinations as to liability. In determining whether a claim should be paid, the lead jurisdiction and its insurance provider shall, at a minimum, consider the potential legal defenses to the claim and the costs of defending the claim.
- ii. Liability Determination – Apportionment of Damages. The lead jurisdiction, with the assistance of its insurance provider and risk manager, shall determine whether the VCDU is liable for damages set forth in a claim, and whether the payment of the claim would be in the best interest of the jurisdictions and/or the VCDU. In the event the lead jurisdiction determines that payment of a claim is appropriate, such determination shall be final and binding upon other jurisdictions and payment shall be apportioned equally among all jurisdictions that participated in the VCDU response. The insurance provider for the lead jurisdiction shall provide full payment to the claimant, and each jurisdiction that participated in the response shall reimburse the insurance provider for its equal share of such payment.

Prior to the payment of any claim, and as a condition of such payment, the insurance provider providing payment shall obtain from the claimant a complete and total release of liability on behalf of all jurisdictions participating in the VCDU and each and every officer, agent, or volunteer of those participating jurisdictions.

In the event the lead jurisdiction determines that the VCDU is not liable for damages set forth in a claim or that the payment of the claim would not be in the best interest of the jurisdictions and/or the VCDU, the lead jurisdiction shall notify the other jurisdictions of the determination, and such determination shall be binding on the other jurisdictions; PROVIDED, that another jurisdiction that determines that payment is appropriate may pay such claim in full, and shall not seek reimbursement from the other participating jurisdictions.

- iii. Letter From Insurance Adjusters. In the event a lead jurisdiction, in conjunction with its insurance provider, determines that payment of a claim is appropriate, the insurance provider shall provide each of the participating

jurisdictions with a letter stating the determination and the bases for such determination.

D. Claims over \$5,000.

- i. Lead Jurisdiction Responsibilities. The lead jurisdiction shall schedule a meeting with all jurisdictions participating in the VCDU to discuss the claim and to determine the appropriate manner in which to respond and/or defend the claim. The Board and persons listed in Section XVII of this Agreement shall be notified of the meeting.

XVI. PROCESSING OF LAWSUITS.

- A. Notification to Other Jurisdictions. In the event a jurisdiction is served with a lawsuit, that jurisdiction shall provide notice and documentation of the lawsuit to each of the other jurisdictions in accordance with Section XIV of this Agreement.
- B. Coordination of Initial Meeting. The jurisdiction that initially receives a lawsuit shall schedule a meeting with all of the jurisdictions participating in the VCDU to discuss the lawsuit and to determine the appropriate manner within which to respond and/or defend the lawsuit. The Board and persons listed in Section XVII of this Agreement shall be notified of the meeting.

XVII. NOTIFICATION OF CLAIMS AND LAWSUITS.

Section XIV of this Agreement requires that the jurisdiction receiving a claim or lawsuit notify the other jurisdictions of the claim or lawsuit and provide documentation of that claim or lawsuit to the other jurisdictions. Nothing in this Agreement shall be deemed a waiver by any participating jurisdiction of the requirements set forth in Chapter 4.96 RCW, and the fact that a participating jurisdiction provides notice or copies of a claim to another jurisdiction shall not be deemed compliance with the requirement that a party who files suit against a jurisdiction first file a claim with the jurisdiction in accordance with Chapter 4.96 RCW. Moreover, nothing in this Agreement shall be deemed acceptance of service of a lawsuit, and the fact that a participating jurisdiction provides notice or copies of a lawsuit to another jurisdiction shall not be deemed adequate service of such lawsuit in accordance with the State or Federal Rules of Civil Procedure or the Revised Code of Washington.

For the purposes of implementing Section XIV of this Agreement, the following persons from each jurisdiction shall receive any required notification or documentation:

<p><u>Auburn:</u></p> <p>Auburn City Attorney 25 West Main Street Auburn, WA 98001 (253) 931-3030</p>	<p><u>Kent:</u></p> <p>Kent City Attorney 220 4th Avenue South Kent, WA 98032 (253) 856-5781</p>
<p>Auburn Police Chief 101 N. Division Auburn, WA 98001 (253) 931-3080</p>	<p>Kent Risk Manager 220 4th Avenue South Kent, WA 98032 (253) 856-5285</p>
<p>Auburn Human Resources Director/Risk Manager 25 West Main Street Auburn, WA 98001 (253) 931-3040</p>	<p>Kent City Clerk 220 4th Avenue South Kent, WA 98032 (253) 856-5728</p>
<p>Auburn City Clerk 25 West Main Street Auburn, WA 98001 (253) 931-3039</p>	<p>Kent Police Chief 220 4th Avenue South Kent, WA 98032 (253) 856-5888</p>
<p><u>Port of Seattle:</u></p> <p>Port of Seattle Claims Manager P.O. Box 1209 Seattle, WA 98111</p>	<p><u>Federal Way:</u></p> <p>Federal Way City Clerk P.O. Box 9718 Federal Way, WA 98063</p>
<p><u>Tukwila:</u></p> <p>City Clerk City of Tukwila 6200 Southcenter Blvd. Tukwila, WA 98043</p>	<p>Federal Way City Attorney P.O. Box 9718 Federal Way, WA 98063</p>
<p><u>WCIA:</u></p> <p>Claims Manager WCIA P.O. Box 88030 <i>Tukwila, WA 98138</i></p>	<p><u>Renton:</u></p> <p>Renton Risk Manager 1055 So. Grady Way Renton, WA 98057</p>

XVIII. COMPLIANCE WITH THE LAW

The VCDU and all its members shall comply with all federal, state, and local laws that apply to the VCDU.

City Clerk, City of Renton Date

Joni Haggerty *5/24/11*

Mayor, City of Tukwila Date

Rachel Brun *5/10/11*

City Attorney, City of Tukwila Date

Melissa Hart, Acting *5/24/11*

City Clerk, City of Tukwila Date

Mayor, City of Kent Date

City Attorney, City of Kent Date

City Clerk, City of Kent Date

City Manager, City of Federal Way Date

City Attorney, City of Federal Way Date

City Clerk, City of Federal Way Date

Executive Director, Port of Seattle Date

Port Counsel, Port of Seattle Date

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