



**Project title:** Use Agreement for Port of Everett Access to Police Radio Channels

### City Council Agenda Item Cover Sheet

**Council Bill #**

**Project:** Radio Channel Access and Use Agreement

**Partner/Supplier:** Port of Everett

**Location:** N/A

**Preceding action:** N/A

**Fund:** N/A

**Agenda dates requested:**

11/16/2022

Briefing

Proposed action

Consent 11/16/2022

Action

Ordinance

Public hearing

Yes X No

**Budget amendment:**

Yes X No

**PowerPoint presentation:**

Yes X No

**Attachments:**

Agreement

**Department(s) involved:**

Police, Legal

**Contact person:**

Jeraud Irving

**Phone number:**

425-257-8461

**Email:**

jirving@everettwa.gov

**Fiscal summary statement:**

There are no costs or expenditures on the part of the City of Everett in relation to this use agreement.

**Project summary statement:**

The Port of Everett (POE) requests access to two police radio channels in the event of immediate, emergent situations that may occur on POE property. The purpose of this Agreement is to formalize how the POE may access and use these channels to ensure minimal interruption to police communications, and to preserve the integrity of these communications. The POE must purchase its own radios and work through SNO911 regarding their management and maintenance. Additionally, all POE personnel with access to the radios must meet the background check standards of non-criminal behavior required of commissioned police officers. This Agreement is effective November 1, 2022 and will automatically renew each year until terminated by either party.

**Recommendation (exact action requested of Council):**

Authorize the Mayor to sign the Radio Channel Access and Use Agreement with the Port of Everett at no cost to the City of Everett.

**Initialed by:**

DT

Department head

Administration

Council President

**RADIO CHANNEL ACCESS AND USE AGREEMENT**  
**(CITY OF EVERETT / PORT OF EVERETT)**

THIS RADIO CHANNEL ACCESS AND USE AGREEMENT (this “**Agreement**”) is dated for reference purposes November 1, 2022 (the “**Effective Date**”), by and between the CITY OF EVERETT, a Washington municipal corporation (the “**City**”) and the PORT OF EVERETT, a Washington port district (the “**POE**”). Throughout this Agreement, the City and the POE are each sometimes referred to individually as a “**Party**” and collectively as the “**Parties.**”

**RECITALS**

A. The City has a police radio system that it uses for police purposes. The POE has requested to be able access and use two radio channels: EVP-DISP and EVP\_DATA. These two radio channels are referred in this Agreement as the “**Sponsored Channels.**”

B. The purpose of this Agreement is to formalize how the POE may access and use the Sponsored Channels.

**AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. POE Use of the City Police Radio System. At no cost to the City, the POE may access and use the Sponsored Channels. The POE’s access and use of the Sponsored Channels under this Agreement is non-exclusive and is always secondary to the City’s access and use of the Sponsored Channels. The POE shall always access and use the Sponsored Channels in accordance with all applicable laws. Unless otherwise determined in writing by the City Chief of Police or by the City Chief of Police’s designee, the POE will always comply the following:

- The POE may use no more than five radios on the Sponsored Channels.
- The POE at its cost will purchase its own POE radios to access the Sponsored Channels.
- The POE will work through SNO911 (and not the City) to manage POE radios.
- The POE will only utilize radio communications on the Sponsored Channels for immediate, emergent situations. All non-emergent issues must be addressed through the City’s non-emergency line (425-407-3999) or 911.
- The POE will not use the Sponsored Channels for internal POE communications.
- The POE will vet all personnel (currently employed as well as newly hired) who access or use the Sponsored Channels or who will use POE radios that can access the Sponsored Channels. This vetting will include criminal background checks. All

such personnel must meet the background-check standards of non-criminal behavior required of commissioned officers.

- In the event of lost, damaged, or stolen radios, the POE (and not the City) will bear the sole responsibility to notify SNO911.
- The POE will keep POE radios secured and not accessible to non-vetted employees or to anyone else.
- The POE will ensure that all POE radio users are familiar with and follow proper radio procedures on the Sponsored Channels.
- The POE will have SNO911 disable the EMIRs in the POE radios before the POE radios access the Sponsored Channels.
- The POE will work with SNO911 so that SNO911 provides routine radio updates and programming to the POE.
- The POE will obtain the radio procedures manual from SNO911. The POE will comply with the manual (and all manual updates) in the POE's access to and use of the Sponsored Channels.
- The POE will use reasonable efforts to obtain an inter-operability channel from SNO911.

The City Chief of Police or the City Chief of Police's designee may impose additional requirements and limitations on the POE.

2. Term of Agreement/Termination. The term of this Agreement is a one-year term, beginning on the Effective Date. This Agreement will automatically extend for additional one-year terms. Either Party may at any time and for any reason terminate this Agreement effective on written notice to the other Party. Upon termination, the POE will cease all access and use of the Sponsored Channels.

3. POE Sole Risk. The City makes no warranties or representations about the useability, reliability, adequacy or availability of the Sponsored Channels for POE access and use. POE access and use of the Sponsored Channels is always strictly "as-is" and at the POE's sole risk.

4. Entire Agreement/Amendments. Except as specifically provided in this Agreement, this Agreement contains the entire agreement between the City and the POE relating to the Sponsored Channels. Either Party may request changes in the Agreement. Mutually agreed changes must be formalized by written amendments to this Agreement, which must be signed by the City Mayor and by the POE Executive Director.

5. Indemnification.

(a) Indemnity. The POE shall indemnify, defend and hold harmless the City against and from any and all claims, actions, damages, liability, costs and expenses, including attorney's fees, arising out of or relating to the POE's use of the Sponsored Channels, and from all costs, damages, attorneys' fees and liabilities incurred in defense of any such claim in any action or proceeding brought

thereon. This Section 5 shall survive the expiration or termination of this Agreement. For the purposes of this Agreement, the claims, actions, damages, liability and expenses for which the POE must indemnify, defend and hold harmless the City are referred to as “**Covered Claims**”.

(b) Concurrent Fault. This Section 5 does not purport to indemnify the City against liability for Covered Claims caused by or resulting from the sole gross negligence or willful misconduct of the City, its officers, employees and agents. If Covered Claims are caused by or result from the concurrent negligence of (i) the City, its officers, employees or agents, and (ii) the POE, its officers, employees or agents, then this Section 5 will provide the City the maximum indemnification permitted by law.

(c) Washington Law. This Section 5 is specifically and expressly intended to constitute a waiver of the POE’s immunity under Washington’s Industrial Insurance Act, RCW Title 51, to the full extent necessary to provide the City with a full and complete indemnity from claims made by the POE and its employees, to the maximum extent allowed by law. THE CITY AND THE POE ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

6. Notices. Any written notice required or permitted to be given herein shall be mailed by first class U.S. mail or shall be by delivery in person to the party which is the intended recipient of the notice, at the following addresses or to such other respective addresses as either Party hereto may from time to time designate in writing.

**To City:**

Chief of Police  
City of Everett  
3002 Wetmore Avenue  
Everett, WA 98201

**To Port:**

Security Director  
Port of Everett  
1205 Craftsman Way  
Everett, WA 98201

Notices sent by mail shall be deemed given when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence.

7. No Third Party Beneficiaries. Nothing in this Agreement is intended to create any rights in any third party. Nothing in this Agreement is intended to create any rights, claims or causes of action, in contract, tort or otherwise, in the name of or on behalf of any third party or entity.

8. Signatures. Execution and delivery of this Agreement by a Party shall be legally valid and effective through any of the following or by any combination of the following: (i) executing and delivering a paper copy, (ii) execution and/or transmittal by AdobeSign or DocuSign or other e-signature method, or (iii) transmitting an executed copy by email in pdf format or other electronically scanned format. This Agreement may be signed in counterparts.

**IN WITNESS WHEREOF**, the parties agree to this Agreement.

**CITY OF EVERETT:**

By: \_\_\_\_\_

Name: Cassie Franklin

Title: Mayor

Dated: \_\_\_\_\_

**Attest:**

**Approved as to form:**

\_\_\_\_\_  
Office of the City Clerk

\_\_\_\_\_  
Office of City Attorney

**PORT OF EVERETT:**

By: \_\_\_\_\_

Name: Lisa Lefeber

Title: CEO/Executive Director

Dated: \_\_\_\_\_