

PORT OF SEATTLE
STORMWATER UTILITY CHARTER

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1.0 UTILITY FORMATION

1.1 Utility Established. A Stormwater Utility (“Utility“) is formed by the Port of Seattle under the authority of RCW 53.08.040, RCW 53.08.043, RCW 35.67.010, RCW 35.67.020 and other statutes which authorize port districts to establish, operate, furnish and fund surface water and stormwater services, facilities, systems and programs, including pollution control and treatment of stormwater discharges.

1.2 Utility Service Area. The Utility shall serve all Port-owned land within King County.

1.3 Services and Obligations. The Utility shall provide services, facilities, systems, and programs for surface water and stormwater management and pollution control to customers within the service area as set forth in this Charter. The Port shall establish and periodically review and modify as appropriate the terms and conditions upon which such services, facilities, systems and programs shall be provided, including the rates and charges for the availability and use of such services, facilities, systems and programs.

2.0 DEFINITIONS AND TERMS

2.1 The following terms shall have the meanings indicated unless the context clearly requires otherwise.

Airport Utility means that portion of the Port stormwater system that is included in or related to the Seattle-Tacoma International Airport, as determined by the Director.

Charter means this charter document establishing the Utility.

Customer means any tenant, lessee, or occupant of any Port-owned parcel or premise.

Design Review means the work and process used by the Utility to review stormwater compliance associated with new development on Port properties.

Design Review Fee means the fees, costs and other charges incurred by the Utility for performing design review activities. Design review fees are not part of or incorporated into stormwater rates, system charges, or capital charges.

Director means the person appointed by the Port's Chief Executive to have overall management authority for the Utility. For purposes of taking any actions specified herein, the term Director shall include his or her duly authorized representative(s).

Marine Utility means that portion of the Port stormwater system that is located within the City of Seattle as determined by the Director.

Parcel means any Port-owned parcel of land that has been assigned a tax identification number by the King County Assessor, or any portion of a parcel or segregation of land that identifies a designated stormwater fee classification.

Port means the Port of Seattle.

Port Properties means all Port-owned land within King County.

Port Stormwater System means all of the stormwater services, facilities, systems and programs of the Utility, including the following: (i) management, planning, establishment, operation and funding of stormwater services, facilities, systems and programs; (ii) all physical stormwater facilities and systems, including sewers, drainage and conveyance facilities, and treatment, discharge and outfall facilities; (iii) pollution and stormwater control, education, treatment and prevention services and programs; and (iv) associated project review and permitting thereof.

Port Stormwater Facilities are part of the Port stormwater system and mean the entire physical system owned or operated by the Port, or for which the Port is responsible for meeting stormwater regulatory requirements, or over which the Port has right of use to handle the collection, conveyance, movement, treatment, control and discharge of surface water runoff, stormwater drainage, and flood protection, including both naturally occurring and man-made facilities.

Premise means any portion of a parcel, including buildings or structures thereon, that is subject to a lease, rental agreement, or other agreement providing less than full fee ownership of a parcel. The word 'premises' is generally used herein to reflect a leasehold estate.

Service Area means the Utility service area identified in Section 1.2.

Stormwater means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a storm water drainage system into a defined surface water body, or a constructed infiltration facility.

Stormwater Capital Charge means the Utility's charge for each customer's share of specific capital project cost incurred or to be incurred by the Utility to provide stormwater services or facilities to the customer's parcel or premises.

Stormwater Management Services means the management services provided by the Utility under the charter.

Stormwater Rate Category means the classifications of parcels and premises into groups based on their common characteristics (such as percentage of impervious surface) for purposes of establishing the stormwater service charge.

Stormwater Regulatory Requirements means the regulatory compliance responsibilities imposed on or assigned to the Port described in Section 4.2.2.

Stormwater Service Charge means the Utility's charge for stormwater management services upon all customers, premises and parcels within the service area.

Stormwater Utility Fund means the enterprise fund established for the Utility in accordance with Section 3.

Tenant or Lessee means a tenant or lessee of Port-owned property.

Utility means the Stormwater Utility established by this charter.

3.0 UTILITY ADMINISTRATION

3.1 Management. The Utility shall be managed by the Director. The Director may utilize Port staff as needed to carry out the functions and activities of the Utility. The Director shall report to the Chief Executive Officer of the Port.

3.2 Divisions. The Utility may operate with two divisions, known as the Marine Utility and Airport Utility, as determined by the Director to accommodate the different geographic locations of each division; its respective budgeting, billing and internal management systems; adjacent jurisdictions; differing surface water and stormwater facilities; differing surface water and stormwater drainage, permitting and management responsibilities; and other operational aspects of the division.

3.3 Port Properties that Discharge to Other Jurisdictions. In the event any stormwater drainage or discharge from any Port property drains or discharges to the stormwater facilities of another jurisdiction, the Director is authorized to make such arrangements as needed or appropriate with such other jurisdiction for the management of such drainage or discharge. Arrangements may include, but are not limited to, exclusion of such Port property from the Utility service area and/or payment of duly-incurred stormwater fees or charges of the receiving jurisdiction.

3.4 Stormwater Utility Fund. The Utility's operations shall be conducted through an enterprise fund to be known as the stormwater utility fund. All moneys, fees and charges received by the Utility shall be credited, placed in, or deposited to the stormwater utility fund for the purposes specified herein. The stormwater utility fund may be segregated by division as the Director determines appropriate or necessary.

3.5 Expenditures. All moneys in the stormwater utility fund will be expended on or for the benefit of the Port stormwater system, which shall include without limitation: (i) administering, operating, maintaining, and improving the Port stormwater system, including all or any part of the cost of planning, designing, acquiring, constructing, repairing, replacing, improving,

regulating, educating the public, or operating present or future Port stormwater facilities; (ii) adoption, administration, management and programming of and for the Utility; (iii) administration of applicable stormwater discharge and effluent management requirements; and (iv) payment or securing the payment of all or any portion of any debt issued for the foregoing purposes, including those related to reserve and coverage requirements. Moneys in the stormwater utility fund will not be transferred to other funds of the Port except to pay for expenses attributable to the Port stormwater system. The Port may transfer moneys from its other funds to the stormwater utility fund as necessary or appropriate, provided that any such transferred funds which are not timely expended or encumbered may, as determined by the Director, be returned to the fund from which they originated.

4.0 STORMWATER MANAGEMENT SERVICES

4.1 Management of the Port Stormwater System. The Utility shall manage, administer, maintain and operate the Port stormwater system, including without limitation: (i) all necessary or appropriate planning, design, funding, acquisition, construction, repair, replacement, improvement, and extension of present or future Port stormwater facilities; (ii) administration of stormwater collection, conveyance, treatment, discharge and effluent requirements; (iii) pollution and stormwater control, prevention, education programs, and treatment; and (iv) associated project review and permitting activities of the Utility. During the start up phase of the Utility, the Director shall determine the timing and order of implementation for each of the foregoing activities.

4.2 Administration of Stormwater Regulatory Requirements.

4.2.1 General. The Utility is authorized to implement and administer the stormwater management activities that are assigned to or imposed on the Port pursuant to and in accordance with all applicable stormwater regulatory requirements listed and described in Section 4.2.2.

4.2.2 Stormwater Regulatory Requirements. Stormwater regulatory requirements are the responsibilities relating to stormwater management that are imposed upon or assigned to the Port under applicable federal, state, regional and local statutes, regulations, permits, codes, rules and agreements as they may be amended or reissued from time to time, including but not limited to the following:

- Federal Clean Water Act, 33 U.S.C. 1251, regulations issued thereunder, and regulations issued by the U.S. Environmental Protection Agency
- Washington state statutes, including the Water Pollution Control Act, RCW Chapter 90.48, and regulations
- Washington Department of Ecology stormwater regulations, WAC Title 173
- NPDES Phase 1 Municipal Stormwater Permit (August 2013) (Marine)
- Phase 1 Stormwater Management Program Plan (March 2013) (Marine)
- Illicit Discharge Detection and Elimination Guidance Manual (November 2013) (Marine)
- NPDES Waste Discharge Permit No. WA-002465-1 (Airport)

- Other industrial, general, and municipal stormwater and state waste discharge permits
- Ordinances and regulations of other municipal jurisdictions, as applicable
- Interlocal agreements entered into by the Port, including those under RCW Ch. 39.34, including the Stormwater Code Interagency Agreement Between the City of Seattle and the Port of Seattle (June 1997), and the City of SeaTac/Port of Seattle Interlocal Agreement (2005)
- Lease agreements, rental agreements, and other agreements between the Port and its tenants, lessees, licensees and operators

4.3 Administration of Design Review. The Utility shall implement and administer the design review responsibilities falling within Section 4.2.2 above, as appropriate.

4.4 Right of Entry for Inspection. The Director, bearing proper credentials and identification, may enter at all reasonable times upon any and all parcels or premises within the Utility’s service area or served by the Utility which contain any portion of the Port stormwater system or which generate any stormwater runoff to the Port stormwater system, to assess, determine or verify (i) the applicable stormwater system charge; (ii) the applicable stormwater capital charge; (iii) the installation, operation, repair and maintenance of any Port stormwater facilities; (iv) compliance with stormwater regulatory requirements; and (v) records related to such activities. Such entry shall be made with the consent of the customer, their authorized representative or assignee, or other person in charge of the parcel or premises; or pursuant to the terms of any applicable lease or rental agreement of Port properties or the premises; or pursuant to lawfully issued warrant.

4.5 Emergency Entry. In the event of an emergency requiring immediate action to protect life or property, or to protect against an immediate threat to the environment, the public health, or the Port stormwater system, the Director, bearing proper credentials and identification, may enter upon any and all parcels, premises and other land for the purpose of determining or addressing the emergency. The Director shall thereafter, as soon as feasible, take steps to contact the customer or other appropriate person to advise of the entry and the actions taken.

4.6 Disclaimers and Limitations

4.6.1 Floods, inundation, surface water runoff or stormwater drainage (collectively “flooding”) may occur which exceeds the capacity of the Port stormwater system. The formation and operation of the Utility (i) does not imply that parcels or premises served by or receiving benefits from the Port stormwater system or Utility, or any other land, will always be free from flooding or associated damage; and (ii) does not purport to reduce the need or the necessity for the customer, owner, tenant or lessee to obtain flood or any comparable insurance, or to take necessary or appropriate actions, to avoid or mitigate impacts or damages from flooding.

4.6.2 Nothing herein shall affect, alter or change the liability, responsibility, or duties (collectively “obligations”) of any Utility customer, or any tenants under their leases with the Port, or their obligations under any stormwater regulatory requirements.

4.6.3 The Utility shall have no duty, obligation or responsibility to service, maintain, repair or operate stormwater pipes or physical stormwater facilities (i) that are not owned by the

Port, or (ii) where ownership of such facilities has not been acknowledged by the Utility. Nothing herein shall cause or create any liability to the Utility for stormwater pipes or physical stormwater facilities (i) that are not owned by the Port, or (ii) where ownership of such facilities has not been acknowledged by the Utility.

5.0 STORMWATER RATES AND CHARGES; DESIGN REVIEW FEES

5.1 Authorization for Utility Assessments and Reductions.

5.1.1 **Stormwater Service Rates and Charges.** The Utility shall assess each customer, parcel and premise the applicable stormwater service charges set forth in sections 5.2 and 5.3 below, as amended or imposed from time to time by action of the Commission.

5.1.2 **Design Review Fees.** The Utility shall assess fees to users of the Utility's design review services, as determined and adopted by the Director from time to time. Design review fees shall be payable in full at the time assessed by the Utility, and shall be nonrefundable unless otherwise specified. The Utility shall refrain from taking any action on a project requiring design review until such fees have been paid.

5.1.3 **Individual Customer Charges.** The Utility may assess an individual customer charge for providing specific services as requested or necessary to a given parcel, premise, or to stormwater facilities associated with one or more given parcels or premises. As example only, such services may include the cost of repairs, restoration and/or cleaning needed to bring a private stormwater facility up to its intended operating efficiency. The Director may adopt a fee schedule for such services, or may assess the cost of such services under Section 5.1.4. The Director may require deposits for the performance of services. All deposits required by the Utility shall be payable in full and in advance of providing such services.

5.1.4 **Administrative Costs.** In addition to the charges and fees enumerated herein, the Director may keep account of personnel and administrative time, direct and indirect costs, third-party charges, and outside consultant and legal counsel fees and costs incurred in taking any action authorized or required by this charter. If the Director determines such expenditures significantly exceed the applicable fee, or where no fee is applicable, the Director is authorized to bill the responsible party for such expenditures.

5.1.5 **Stormwater Capital Charges.** Whenever the Director determines that additional capital facilities are needed for the Port stormwater system to serve a specific Utility division or particular parcels, premises, or customers, the Utility may establish a stormwater capital charge to apportion all or part of the capital cost of the new facilities to the parcels, premises or customers served. Said charge may be imposed as a one-time charge or made payable in installments as determined by the Director.

5.1.6 **Rainwater Harvesting Reduction.** The Utility will provide a 10 percent reduction in the stormwater service charge assessed under Section 5.2 and 5.3 for customers having new or remodeled commercial buildings that, after July 27, 2003, install and utilize rainwater harvesting systems (RH System) that meet the following performance requirement: the RH System shall be sized to use the amount of rain that falls on the roofs of such buildings during a one year, 24-hour storm event. A RH System that involves indoor uses of rainwater must be permitted by

Seattle-King County or other applicable Department of Health to qualify for the RH System reduction. A RH System that relies solely on the capture and indoor use of rainwater shall qualify for the service charge reduction only if the RH System is sized to meet the performance requirement stated above. Qualifying for the service charge reduction does not relieve the customer from the obligation to comply with applicable stormwater regulatory requirements for the buildings and site.

5.1.7 Stormwater Facility Reduction Program. The Utility may establish a stormwater facility reduction program (“Reduction Program”) in accordance with this Section 5.1.7. The purpose of the Reduction Program shall be to reduce the annual stormwater service charge for any particular parcel(s) within the service area if one or more Utility-approved Port stormwater facilities are installed on the parcel(s) by the customer and such facilities meet the rules and criteria for the Reduction Program as adopted by the Director. The Reduction Program shall be effective on the date determined by the Director and may be terminated by the Director if the Reduction Program is not achieving its goals. The stormwater facility reduction shall not be applied to any parcel(s) until the Utility has first approved the proposed facility in writing pursuant to the Director’s rules and criteria. The maximum allowable reduction to the stormwater service charge per parcel, including any approved rainwater harvesting reduction, shall not exceed 50 percent of the stormwater service charge for the parcel. The Utility shall immediately terminate the reduction for any parcel, upon written notice, if (i) the customer does not maintain the facility in a clean and properly functioning manner and does not take all required corrective action within the time specified by the Utility; (ii) the parcel changes ownership; and/or (iii) the parcel is redeveloped or the parcel boundaries change.

5.2 Marine Utility Stormwater Service Charge.

5.2.1 Effective January 1, 2015, the Marine Utility stormwater service charge shall be as follows:

Stormwater Service Charge Per 1,000 Square Feet Billable Area			
Stormwater Rate Category	2015	2016	2017
Undeveloped (0%-15% Impervious Coverage)			
Regular	\$ 28.05	\$ 29.17	\$ 30.34
Low Impact	16.42	17.08	17.76
Light (16%-35% Impervious Coverage)			
Regular	43.37	45.11	46.91
Low Impact	34.12	35.48	36.90
Medium (36%-65% Impervious Coverage)			
Regular	63.00	65.52	68.14
Low Impact	50.68	52.71	54.81
Heavy (66%-85% Impervious Coverage)	84.53	87.91	91.42
Very Heavy (86%-100% Impervious Coverage)	99.98	103.98	108.14

5.2.2 Rate Factors and Categories. Rates set forth in Section 5.2.1 shall be based on the relative contribution of stormwater runoff from a given parcel or premise to the Port stormwater system. Relative contribution shall be based on the average estimated percentage of impervious surface, land use classification, total size of the parcel or premise, measured impervious surface

area, and other factors listed in RCW 35.67.020. The rate categories set forth in Section 5.2.1 shall have the same meaning and definition for such categories as set forth in Seattle Municipal Code chapters 22.801 et seq., as now or hereafter amended.

5.3 Airport Utility Stormwater Service Charge. Effective on the date determined by the Commission, the Airport Utility stormwater service charge shall be as follows:

[The stormwater service charge applicable to the Airport Utility shall be inserted here following approval by the Commission.]

5.4 Billing, Payment and Collection of Charges

5.4.1 General. The billing, enforcement and collection of stormwater system charges and stormwater capital charges shall be handled by or at the direction of the Utility, Marine Utility or Airport Utility as determined appropriate by the Director.

5.4.2 Port Properties. Billing, enforcement, and collection of stormwater system charges and stormwater capital charges for customers using Port properties will be handled in the same manner as billing, enforcement and collection procedures applicable to other utility charges under the Port’s leases, rental agreements, and other applicable property use agreements. The Director may exercise all remedies provided in the lease, rental agreement or property use agreement for failure to timely pay said charges.

5.5 Adjustment of Stormwater System and Capital Charges

5.5.1 Any customer receiving a stormwater system or capital charge (collectively “Charge”) may request an adjustment of such Charge (“adjustment request”). An adjustment request shall conform to the requirements of this section. Filing an adjustment request does not extend the period for payment of any pending or challenged Charge. Adjustment requests on delinquent accounts will not be acted upon until the delinquent amount is paid in full.

5.5.2 An adjustment request must be based on one or more of the following standards:

5.5.2.1 The parcel or premise does not fall within the Utility’s service area.

5.5.2.2 The parcel or premise qualifies as an exempt property.

5.5.2.3 The chargeable area of the parcel or premise is incorrect.

5.5.2.4 The actual percent of impervious surface places the parcel or premise in a different rate category than that assigned by the Utility.

5.5.2.5 The Utility has miscalculated or misapplied a reduction or offset allowable under the applicable rate category.

5.5.3 An adjustment request shall include the following information: (i) the name and address of the customer; (ii) a concise explanation of the dispute and the relief requested; (iii) a copy of the disputed billing; and (iv) any other supporting material. The Director may obtain

from the Utility, and may require the customer to submit, other information determined necessary or appropriate by the Director to decide the adjustment request.

5.5.4 To be timely, an adjustment request must be filed with the Director within 60 days of the date of the challenged billing or other Utility decision. Any adjustment request received after expiration of the preceding time period shall be effective only for Charges imposed in subsequent billing periods.

5.5.5 The customer bears the burden of proof by a preponderance of the evidence to show that the adjustment sought should be granted and meets the Utility's requirements.

5.5.6 The Director's decision shall be based on the information submitted by the customer and the Utility. Decisions shall be made within 60 days of receipt of a timely filed adjustment request unless additional information is required by the Director. If unusual circumstances require a longer period, the Director shall so advise the customer in writing. The Director's decision shall be in writing, shall include findings and conclusions supporting the decision, and shall be mailed to the customer at the address designated in the adjustment request. Decisions of the Director are final.

5.5.7 If the Director's decision grants an adjustment request which reduces the challenged Charge for the current year, the customer shall receive an adjusted bill or be refunded the amount overpaid. If the Director's decision determines that an adjustment should be made which increases the Charge due for the current year, the customer shall receive a supplemental bill that will be due within 60 days of its date of issuance. If the Director's decision alters the rate, classification or other aspect of a parcel or premise that affects the calculation of the Charge, then such determination shall be used for future billings until otherwise altered. If the Director's decision denies an adjustment request, the customer shall pay the assessed Charge in accordance with the Utility's requirements.

6.0 OBLIGATIONS OF UTILITY CUSTOMERS

6.1 Application of Charter. By receiving or utilizing the Port stormwater system or stormwater services, or other services or benefits provided by the Utility, each customer agrees to be subject to and comply with the terms of this charter.

6.2 Compliance with Applicable Stormwater Regulatory Requirements. Each customer shall comply with his/her obligations arising under this charter and all stormwater regulatory requirements that may apply to their activities.

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