

**PORT OF SEATTLE–CITY OF SEATTLE**  
**INTERLOCAL AGREEMENT**  
**REGARDING STORMWATER UTILITY OPERATIONS**  
**Seattle Public Utilities Agreement Number 15-083A**

This Interlocal Agreement (“ILA”) is made and entered into by the City of Seattle (“City”) and the Port of Seattle (“Port”), jointly referred to as “the Parties.” The effective date of this ILA is \_\_\_\_\_, 2016.

**RECITALS**

WHEREAS, the City’s Seattle Public Utilities (“SPU”) operates the City’s stormwater utility; and

WHEREAS, on January 1, 2015 the Port established a stormwater utility pursuant to RCW 53.08040, RCW 53.08.043 and other statutes which serves Port-owned land within the City limits as defined in the Port Stormwater Utility Charter approved by the Port Commission on November 25, 2014; and

WHEREAS, the City and the Port desire to enter into an Interlocal Agreement pursuant to RCW Ch. 39.34, and subject to City Council and Port Commission approval, that will serve as the operating agreement between the two utilities; and

WHEREAS, both the City and the Port are Permittees under the Phase I Municipal Stormwater Permit, pursuant to which both the City (under S5.C.3) and the Port (under S6.B) have a duty to coordinate stormwater-related policies, programs and projects within physically interconnected municipal separate storm sewer systems (MS4), and the Parties intend to address those requirements in part through this ILA; and

WHEREAS, the City and the Port recognize that interconnections between the two drainage utilities were constructed over a long period of time prior to the current land ownership, stormwater regulations, code requirements, and permits; and that the Parties accept stormwater flow from one another;

WHEREAS, the City and Port acknowledge that the control and regulation of stormwater has become increasingly stringent;

WHEREAS, the City and the Port agree that ongoing cooperation and exchange of information is in both of their best interests;

NOW THEREFORE, in consideration of the foregoing recitals, the Parties hereby agree as follows:

1. Cessation of Payment of SPU Drainage Fees on Port-owned Land.

1.1 The City recognizes the Port's authority to create and operate a stormwater utility under RCW 53.08.043 and 35.67.020. The City will modify the municipal code to expressly exclude all Port-owned property from the requirement to pay City stormwater and drainage fees after January 1, 2015. Exhibit A is a listing of the affected Port-owned property. SPU has removed the Port-owned property listed in Exhibit A from its drainage fee billing system.

1.1.1 Within 30 days after acquiring or disposing of property located within the City limits, the Port shall provide written notice to the City's Designated Representative identified in Section 6 regarding the ownership change, and shall annually update Exhibit A reflecting the change. Additions and deletions from Exhibit A shall not be deemed amendments to this ILA, and do not require written approval of the Parties.

1.2 When the Port disposes of property located within the City limits, the Port shall inform the new owner that, after sale, the property will be subject to the City's stormwater and drainage fees and rates.

1.3 Release of Claims. The City agrees to release any and all claims against the Port based on the alleged invalidity of the creation or existence of the Port's Stormwater Utility, or the Utility's authority to establish and assess rates, charges, fees or terms and conditions of service, and hereby covenants not to bring suit against the Port with respect to any such claim. The City's release of claims under this paragraph survives the termination of this agreement. Provided that, with respect to any utility service furnished by the Port's Stormwater Utility to the City (i.e., for property that the City leases from the Port), the City retains its rights as a customer or user to challenge the rates, charges, fees or terms and conditions of service applied to it by the Port.

1.4 Indemnification. The Port agrees to indemnify and hold harmless the City for any claims made against it based on (1) the alleged invalidity of the creation or existence of the Port's Stormwater Utility; (2) the Port Utility's authority to establish and assess rates, charges, fees or terms and conditions of service; (3) all additional terms of this ILA, other than those specified under this paragraph, and (4) the Port agrees to indemnify, hold harmless and defend the City for any claims made against it based on sections 1.1., 1.1.1, 1.2, 1.3, 1.5 and 1.6 of this ILA. The Port's indemnification under this paragraph, except for (3) of this paragraph, survives the termination of this agreement.

1.5 Consideration. In consideration for the release and settlement of all claims, and the other benefits to the Port that the City has provided in this ILA, the Port will pay to SPU \$3.993 million within thirty (30) days after signing this ILA.

1.6 On January 17, 1997, the City and the Port entered into an “Interlocal Agreement between the City of Seattle and the Port of Seattle” (the “January 1997 ILA”). Section 3 of the January 1997 ILA concerned a \$100,000 credit from the City to the Port on the annual drainage fee for in-kind services. Since this credit is no longer relevant or necessary, Section 3 of the January 1997 ILA is terminated.

## 2. Ownership and Maintenance of Drainage Pipes and Other Stormwater Facilities

2.1 The Parties have worked together to document, to the extent possible at this time, the physical location and ownership status of those stormwater systems and structures on or adjacent to Port property that interconnect with City of Seattle’s stormwater systems and structures, including proposed, active or abandoned portions of the stormwater systems. The result of this work is series of maps is known as the “Seaport Stormwater and City of Seattle Connections Map Books” (hereafter - “the SW Map Books”) and Exhibit B: City-Port of Seattle Drainage System Connection Table. This contains a comprehensive list of stormwater connections between the Port and the City, with status of issues that need resolution.

2.1.1 The Parties are committed to keeping the SW Map Books and City-Port of Seattle Drainage System Connection Table updated as a means to document location and ownership information, as well as the resolution of location and ownership disputes. Each Party shall maintain and update a copy of the SW Map Book throughout the year.

2.1.2 The Designated Representatives shall annually exchange their most current SW Map Books to assure that they remain consistent, and update the City-Port of Seattle Drainage System Connection Table. This exchange and update shall be coordinated with the annual meeting provided for in Section 8.1 of this ILA.

2.2 This mapping process has revealed that there are stormwater structures whose ownership status or precise location is unknown or disputed. The Parties recognize that infrastructure ownership questions exist and could arise in the future.

2.3 Specific structures with ownership questions were identified during the development of the SW Map Books for this ILA. The proposed ownership and agreed upon process and timeline for resolving these known issues is contained in Exhibit C.

2.4 The Parties agree to establish the following process for resolving future ownership status and location disputes:

2.4.1 Either Party may propose an ownership or location designation, and present the supporting information for that designation to the other Party at any time.

2.4.2 If the other Party disagrees with the proposed designation, it shall respond to the designation proposal by providing its supporting documents and information within six (6) months

2.4.3 If after the exchange of information and records, the Parties cannot reach agreement on the designation, then the Parties will utilize the Dispute Resolution process outlined in Section 8.4.

2.5 Where the Parties' MS4 drainage pipes interconnect, unless otherwise agreed upon and described in an agreement, the Parties agree that pipe ownership shall transfer at the point of connection, and that the "downstream" pipe owner shall own the connection point structure. The connection point shall typically be the first structure such as a maintenance hole or pipe that serves the downstream MS4. The "downstream" pipe shall be the pipe that carries the flow from the point of connection towards the point of discharge to the receiving water. This designation for transfer of ownership applies regardless of the boundaries of the surrounding property.

2.6 Each Party shall maintain its respective pipes and facilities in compliance with applicable City of Seattle Code requirements, the Phase I Municipal Stormwater Permit and any other applicable laws. The Port and the City are held to the same requirements.

### 3. City Municipal Authorities and Responsibilities

3.1 The City manages its drainage system and water quality within its jurisdiction through the Stormwater Code (SMC 22.800-808), Side Sewer Code (SMA Ch. 21.16 et seq.), Grading Code (SMC 22.170.010-250), and implementation of the City's Phase I Municipal Stormwater Permit.

3.2 The City has the authority to enforce all City ordinances, rules, and regulations including, but not limited to those governing non-stormwater discharges, construction phase stormwater pollution prevention measures, and post-construction stormwater management for new development and redevelopment. These authorities are not affected or diminished by the Port establishing and operating a stormwater utility on its property.

3.3 The Parties agree that prompt coordination about water quality inspections, investigations, spills and potential enforcement actions is desirable, and in certain situations, required by the Stormwater Code.

3.3.1 When a Party becomes aware that a violation of City Code may exist on Port property or in adjacent receiving waters, they will promptly notify the other Party by phone or email.

3.3.2 Any spills arising from the operations of the Port's Stormwater Utility or otherwise coming from Port property and entering the City's public drainage system, or discharging directly to receiving waters are required per codes in Section 3.1 to be reported to the City's Operations Response Center within 24 hours.

3.3.3 Spills to the Port's system are required to be reported to the Port's spill hotline (206-787-3350) within 24 hours.

3.3.4 The Party receiving the notification will promptly respond to the other Party by phone or email.

3.3.5 The City understands the Port's desire to work with tenants to address potential violations. The City will notify the Port of any potential enforcement actions relating to its tenants at least 48 hours prior to issuing notices of corrective action needed and notices of violation, as well as copy the Port on any such notices to the practical extent that the City has current information about Port tenants and locations. The City shall contact the designated representative regarding contact information for tenants.

3.3.6 If the City is responding to an emergency situation, the 48-hour notification by the City to the Port in Section 3.3.5 will not apply.

#### 4. City Connections to the Port Drainage System and Utility

4.1 The Port is developing a Stormwater Connection Agreement to allow property owners and drainage system operators who are located outside of the Port Service Area to connect to and use Port Stormwater Facilities under specified terms and conditions (example in Exhibit D).

4.2 Some Port properties have industrial National Pollutant Discharge Elimination System (NPDES) permits with effluent standards and benchmarks. Industrial permit holders must meet effluent standards at designated point(s). Discharges of stormwater or other sources can contribute to an industrial permit holder not meeting their benchmark requirements. Municipal NPDES permits (MS4) have different requirements than industrial permits and do not contain effluent standards and benchmarks.

4.2.1 Exhibit B identifies those connection points where the City discharges stormwater into Port-owned facilities that are subject to NPDES effluent standards and benchmark levels (i.e., column marked 'COS discharge to Port pipe with a discharge limit or requirement'). The Designated Representatives shall annually exchange any revisions to Exhibit B to correct or update the list of current connection points. This annual exchange shall be coordinated with the annual meeting provided for in Section 8.1 of the ILA.

4.3 For existing connections from the City drainage system to the Port drainage system, the City will not be required to enter into a Stormwater Connection Agreement.

4.3.1 The City is required to follow all municipal codes and requirements listed in Section 3.1.

4.3.2 The City does not intend for municipal stormwater discharge to create problems for the Port. Should either party become aware that a City connection is causing or could cause a problem for the Port, the party will promptly notify the other by phone or email. The party receiving the notice shall respond promptly. The Parties agree to work cooperatively to define the problem by sharing data, identifying potential solutions, costs, and cost allocation, and other pertinent information for resolving the issues.

4.3.3 The City does not intend that current or future municipal stormwater discharge into the Port stormwater infrastructure will impact the ability of the Port or Port tenants to achieve effluent standards or benchmarks requirements. If either Party identifies through quantitative data that City discharge is causing or contributing a site-specific benchmark to be exceeded, the Parties agree to notify one another and work cooperatively to identify solutions. The Parties recognize that solutions must be determined quickly due to the short time allowed to resolve Corrective Actions under industrial stormwater permits.

4.3.4 The resolution will be mutually agreeable. The City agrees to resolve its proportional contribution to these site-specific documented problems through options such as discharge diversion and treatment which may include contributing proportionally to the cost of treatment needed to reach benchmarks.

4.3.5 If the Parties cannot reach timely agreement on solutions to documented problems identified in Section 4.3.2 and 4.3.3, the Parties agree to use the Dispute Resolution process in Section 8.4. The Port or Port tenants may also use the City claims process to submit for damages.

4.4 The City does not intend to create new connections with Port, particularly to infrastructure on sites with industrial NPDES permits. However, should any new connections be needed or required, the City will enter into a Stormwater Connection Agreement with the Port (example shown in Exhibit D.)

4.5 In specific locations where the City leases property from the Port, the City will be a customer of the Port Stormwater Utility and is obligated to pay the related rates and charges.

4.6 The Port will not charge the City stormwater rates and charges except administrative fees as noted above for any new connections and for property that the City leases from the Port.

4.7 If Port property is being redeveloped, particularly sites with current or anticipated industrial permits, the Parties will work together to identify the feasibility of diverting municipal drainage away from Port infrastructure.

## 5. Property Access for Stormwater Systems

5.1 The Parties agree to work together to identify and define those areas where one Party's pipes or infrastructure are located on the other Party's property or in right of way without documented authorization that could include an easement, permit or other necessary approval. For infrastructure without the appropriate documented authorization at the time this ILA is signed, the Parties will strive to complete all required documentation by December 31, 2018. For areas identified after this ILA is signed, the Party needing an easement, permit or other necessary approval will proactively work to obtain the documented authorization within two years of identifying the need for the documented authorization.

5.2 The Parties agree to work together to identify existing easements with insufficient or inadequate terms and conditions, and to prepare appropriate amendments to correct the deficiencies. Until these existing easements can be amended, when a Party requires access for the purpose of maintaining pipes and facilities located on or under the other Party's property, the Parties agree that the generic guidelines listed below shall be used, unless the property owner provides alternative site-specific requirements:

5.2.1 Exhibit C identifies easements that SPU needs to obtain from the Port and a timeline.

5.3 Provide as much notice as practical prior to mobilizing to the site:

5.3.1 For Port property, notice shall be given by calling the Port's Marine Maintenance 24/7 dispatch 206-787-3350. The City may require the Port or Port tenants to move equipment and containers in order to access facilities and maintenance holes.

5.3.2 For access within City right of way, the Port shall follow conditions and notifications as required by the Seattle Department of Transportation. If Port access requires connection with the City drainage system, notice shall also be given by calling SPU's 24/7 Operations Control Center 206-386-1800.

5.3.3 On Port property, City staff or its contractors will be in City vehicles with City identification

5.3.4 For secure Port properties, City staff or its contractors shall either have TWIC credentials; or be accompanied by a Port or tenant escort with TWIC credentials, and in accordance with TWIC regulations.

5.3.5 For emergencies, the Parties will work together to coordinate access as quickly as possible. The Parties recognize that critical and after hours responses to protect infrastructure and natural resources may require immediate access without advance coordination. The Parties may need to work together to meet regulatory emergency requirements.

## 6. Designated Representatives

6.1 The Director of SPU shall designate a Representative and an Alternate Representative.

6.2 The Port's Stormwater Utility Director shall designate a Representative and an Alternate Representative.

6.3 Each Party may change its Designated Representative at any time, with thirty days written notice to the other Party.

## 7. Confidentiality and Use of Information.

7.1 Confidential Information. From time to time, the Parties may either (1) elect to disclose or transmit confidential information to each other, or (2) be under a duty

to disclose confidential information. Confidential information may be disclosed to or transferred among the Parties orally or in writing or by any other appropriate means of communication. Written communication that a party deems confidential shall be marked “confidential” by that Party.

7.2 Compelled Disclosure. Both Parties are public agencies subject to Washington’s Public Disclosure Act. If confidential information becomes the subject of a Public Disclosure Act request, or an administrative or judicial order requiring disclosure, the Party may satisfy its confidentiality obligations under this ILA by notifying the other Party of the substance of the request or order at least five (5) business days prior to any such required disclosure.

8. Ongoing Communication and Dispute Resolution.

8.1 The Parties shall maintain open communications throughout the year to flag potential issues with stormwater runoff and the terms of this Agreement. The Designated Representatives, and other legal and technical staff as deemed necessary, shall meet annually to discuss matters pertaining to this ILA, including but not limited to: operation of the interconnected utility systems; exchange of GIS shape files or other documents to confirm ownership of the interconnected stormwater systems; updates to Exhibits A and B; policy and technical areas of concern; status of property rights documentation; the control of pollutants between the two stormwater systems; coordination with NW Seaport Alliance; and any other plans, policies and regulations related to stormwater management proposed by the Parties and other items as identified by the Parties.

8.2 The Designated Representatives, and other legal or technical staff as deemed necessary, will schedule and implement regular telephone calls or in-person meetings to address and resolve any issues related to implementation of this ILA. The Parties will set the call and meeting schedule as necessary to accomplish the goals of this ILA.

8.3 The Parties shall conduct a comprehensive evaluation of the ILA every five years. Should NPDES permit changes require modifications to this ILA, the Parties may shorten the review schedule to account for those changes in a timely way.

8.4 Every effort will be made to resolve disputes amicably first at the Designated Representative level. Disagreements that cannot be resolved at the Designated Representative level shall be elevated to the SPU Director and the Port’s Stormwater Utility Director. If and when there is a disagreement between the Parties concerning any aspect of this ILA that cannot be resolved after good faith negotiation by the Parties, either Party may request appointment of a neutral mediator from a professional mediation service to resolve the dispute. Such request shall be a condition precedent to resorting to other remedies that either Party may have. The mediator shall be selected by common agreement and the Parties shall share the responsibility for paying the fees of the mediator. Each Party shall pay its own internal costs for participating in



the mediation process. The entire mediation process shall last no longer than fourteen (14) days, starting with the request for appointment of the mediator. Participation in this dispute resolution process shall not imply any waiver of legal claims.

9. Utility Tax. The City has amended its drainage utility tax ordinance, SMC 5.48.050, so that the tax will apply to revenues from the Port's stormwater utility. The tax rate applicable to the Port's Stormwater Utility as defined in SMC 5.48.050 is the same as the corresponding rate applied to the City's drainage utility.

10. No Admission of Liability. A Party's agreement to and compliance with this ILA shall not be considered an admission of liability, or a waiver of any right or defense by either Party.

11. Enforceability by Third Parties. This ILA is not intended for the benefit of any person or entity not a signatory to this ILA, and is not enforceable by any third party.

12. Amendment and Termination. Except as provided below, this ILA may be amended or terminated only in writing by the approval of both Parties. Such amendments shall become effective on the date of signature by both Parties, or at such time as is stated in the amendment.

12.1 Additions and deletions from Exhibits A and B shall not be deemed amendments to this ILA, and do not require written approval of the Parties.

12.2 .Either Party may terminate this Agreement upon 30 days' written notice to the other if: (1) the other Party materially defaults in performing its obligations under this Agreement and does not commence to cure the default within 30 days after receiving written notice of the default and does not diligently proceed to fully cure the default; or (2) if compliance with this Agreement becomes impossible due to: changes in the Municipal Stormwater NPDES permit issued to the Port or to the City of Seattle; or to changes to any local, state or federal law, and the parties are unable to satisfactorily amend the agreement to address the impossibility within a reasonable time; or other changed circumstances; or (3) the Port ceases to operate a stormwater utility under RCW 53.08.043, RCW 35.67.010 and RCW 35.67.020.

12.3 Paragraphs 1.3 (release of claims), 1.4 indemnification (except for (3) in paragraph 1.4) and 1.5 (covenant not to sue) are not subject to the termination provisions of paragraph 13.2. Paragraphs 1.3, 1.4 and 1.5 describe obligations of the parties that survive the termination of any other provisions of this agreement.

13. Severability. If any provision of this ILA is deemed invalid or unenforceable, the balance of the ILA shall remain in full force and effect.

14. Counterparts. This ILA may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

15. Governing Law. This ILA shall be construed under and in accordance with laws of the state of Washington and venue shall lie in King County Superior Court.

16. Entire Agreement. This ILA, including documents incorporated by reference, constitutes the entire understanding of the Parties with respect to its subject matter.

IN WITNESS WHEREOF, the Parties hereto enter into this ILA. Each person signing this ILA represents and warrants that he or she has been duly authorized to enter into this ILA by the municipal corporation on whose behalf the person is signing.

CITY OF SEATTLE

PORT OF SEATTLE

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**List of Exhibits**

**Exhibit A: List of Port Parcels Removed from SPU Drainage Billing**

**Exhibit B: City-Port of Seattle Drainage System Connection Table**

**Exhibit C: Stormwater Infrastructure Ownership Resolution and SPU Easements Needed from the Port of Seattle**

**Exhibit D: Example Connection Agreement**