

**INTERLOCAL AGREEMENT
BETWEEN
PORT OF SEATTLE AND CITY OF BURIEN
FOR RELOCATION OF STORMWATER LINE**

This Interlocal Agreement (“Agreement”) is entered into on this _____ day of _____, 20____, pursuant to Chapter 39.34 RCW, between the Port of Seattle, a Washington municipal corporation (“Port”) and the City of Burien, a Washington municipal corporation (“City”).

RECITALS

WHEREAS, the Port entered into a Consent Decree dated September 9, 2015, with the Washington State Department of Ecology (“Ecology”) for the cleanup of the Lora Lake Apartments site (“Site”) depicted on attached Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, the City owns a storm water line (“Line”) that traverses the Site and conveys storm water from approximately 83 acres of property within the City (the “83 Acres”) to Lora Lake; and

WHEREAS, the Line must be removed and replaced to complete the remedial action at the Site, as required by the Consent Decree; and

WHEREAS, the Port costs to remove and relocate the Line as part of the remedial action are estimated at \$278,000; and

WHEREAS, the City has agreed to relocate the Line from the Site to the 8th Avenue City right-of-way and relocation of the Line will prevent it from further discharging onto the remediated Site; and

WHEREAS, structures/improvements cannot be built over the Line and its relocation will facilitate and enhance future Port development at the Site by eliminating the encumbrance; and

WHEREAS, the City has requested a Water Quality Grant from Ecology in the amount of \$1,455,632 to partially fund the relocation and treatment for the storm water discharge from the 83 Acres; and

WHEREAS, the City’s total costs to design and construct the storm water line relocation exceeds Water Quality Grant funding amount;

NOW, THEREFORE, the Parties agree as follows:

1. Purpose: The Port is entering into this Agreement in order to facilitate its cleanup of the Site, eliminate the need for future monitoring of stormwater discharges on the Site, and to enhance the Site's future development potential. The City is entering into this Agreement to leverage the Port's capital contribution toward the relocation of the City's stormwater infrastructure to the right-of-way, which will improve access for maintenance.
2. Duration: Subject to Paragraph 4 below, this Agreement shall commence on the date first noted above and shall terminate when the City completes the Project (defined in subparagraph 3.1 below) and the Port pays the City in accordance with subparagraphs 3.3 and 3.4 below.
3. Responsibilities of the City and the Port:
 - 3.1. The City shall cap the storm drain pipe on the Site at the manhole located approximately 235 feet south of SR-518 to South 152nd Street, and construct a storm drain pipe along 8th Avenue South, then east along South 152nd Street from 8th Avenue South and into the Port's Vacca Mitigation site (the "Vacca Site"). At the Vacca Site the City will (i) remove approximately 120 feet of twelve inch (12") storm drain pipe and replace it with a new 24 inch (24") storm drain pipe; and (ii) augment existing rip-rap (the "Project"). It is anticipated the City will complete the Project by April 30, 2017.
 - 3.2. The Port and the City are collaborating in the Project. The Port will review and approve the City's Project design within the Vacca Site and will inspect the Project work on the Vacca Site.
 - 3.3. Subject to Paragraph 4 below, the Port shall pay to the City an amount equal to the difference between the final Project cost and the \$1,455,632 provided by the Water Quality Grant; notwithstanding the foregoing, the Port's payment to the City under this Agreement shall not exceed Two Hundred and Seventy-eight Thousand Dollars (\$278,000).
 - 3.4. The Port shall pay the City under this Agreement no later than thirty (30) days after either (i) the receipt of a City invoice and copies of supporting progress payments pursuant to a schedule agreed to by the Parties or (ii) the receipt of a City invoice and copies of supporting progress/final payment, documenting Project costs.
4. Termination: The Parties recognize that the City's contribution as outlined in Paragraph 3, above, assumes the City's receipt of a Water Quality Grant from Ecology in the amount of \$1,455,632. Should the City not receive the Grant or should the Project cost exceed the City's budgeted funding for the Project, thereby making the City's participation in this

Agreement financially impracticable, the City has the right to terminate this Agreement. The City shall invoke this Paragraph by written notice to the Port.

5. Indemnification and Hold Harmless Agreement by the City:

5.1. The City shall defend, indemnify, and hold harmless the Port, its Commissioners, officers, employees, and agents (hereafter, collectively, the "Port") from all liability, claims, damages, losses, and expenses (including, but not limited to attorneys' and consultants' fees and other expenses of litigation or arbitration) caused, or alleged to have been caused, as a result of or in connection with any of the City's activities undertaken pursuant to this Agreement; *provided*, however, if and to the extent that this Agreement is construed to be relative to the construction, alternation, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving or demolition in connection therewith, and therefore subject to Section 4.24.115 of the Revised Code of Washington, it is agreed that where such liability, claim, damage, loss or expense arises from the concurrent negligence of (i) the Port, and (ii) the City, its agents, or its employees, it is expressly agreed that the City's obligations of indemnity under this Paragraph shall be effective only to the extent of the City's negligence. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any person or entity described in this Paragraph. This Paragraph shall not be construed so as to require the City to defend, indemnify, or hold harmless the Port from such claims, damages, losses or expenses caused by or resulting from the sole negligence of the Port.

5.2. The City shall pay all attorneys' fees and expenses incurred by the Port in establishing and enforcing the Port's right under this Paragraph, whether or not suit was instituted.

5.3. In any and all claims against the Port by any employee of the City, its agent, anyone directly or indirectly employed by either of them, or anyone for whose acts any of them may be liable, the indemnification obligation of this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation benefits payable by or for the City or other person under applicable industrial insurance laws (including, but not limited to Title 51 of the Revised Code of Washington), it being clearly agreed and understood by the Parties hereto that the City expressly waives any immunity the City might have had under such laws. By executing this Agreement, the City acknowledges that the foregoing waiver has been mutually negotiated by the parties.

6. Indemnification and Hold Harmless by the Port:

6.1. The Port shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, and agents (hereafter, collectively, the "City") from all liability,

claims, damages, losses, and expenses (including, but not limited to attorneys' and consultants' fees and other expenses of litigation or arbitration) caused, or alleged to have been caused, as a result of or in connection with any of the Port's activities undertaken pursuant to this Agreement; *provided*, however, if and to the extent that this Agreement is construed to be relative to the construction, alternation, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving or demolition in connection therewith, and therefore subject to Section 4.24.115 of the Revised Code of Washington, it is agreed that where such liability, claim, damage, loss or expense arises from the concurrent negligence of (i) the City, and (ii) the Port, its agents, or its employees, it is expressly agreed that the Port's obligations of indemnity under this Paragraph shall be effective only to the extent of the Port's negligence. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any person or entity described in this Paragraph. This Paragraph shall not be construed so as to require the Port to defend, indemnify, or hold harmless the City from such claims, damages, losses or expenses caused by or resulting from the sole negligence of the City.

6.2. The Port shall pay all attorneys' fees and expenses incurred by the City in establishing and enforcing the City's right under this Paragraph, whether or not suit was instituted.

6.3. In any and all claims against the City by any employee of the Port, its agent, anyone directly or indirectly employed by either of them, or anyone for whose acts any of them may be liable, the indemnification obligation of this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation benefits payable by or for the Port or other person under applicable industrial insurance laws (including, but not limited to Title 51 of the Revised Code of Washington), it being clearly agreed and understood by the Parties hereto that the Port expressly waives any immunity the Port might have had under such laws. By executing this Agreement, the Port agrees that the foregoing waiver has been mutually negotiated by the Parties.

7. Waiver: Failure at any time of the Port to enforce any provision of this Agreement shall not constitute a waiver of such provision or prejudice the right of the Port to enforce such provision at any subsequent time. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written amendment signed by the Parties
8. Partial Invalidity: If any provision of this Agreement is or becomes void or unenforceable by force or operation of law, all other provisions hereof shall remain valid and enforceable.
9. Comply with All Laws: The City shall at all times comply with all federal, state and local laws, ordinances and regulations, including but not limited to all environmental laws, which in any manner apply to the performance of this Agreement.

10. Integration: This Agreement, together with the attached Exhibit A, constitutes the entire agreement between the Parties and unless modified in writing by an amendment executed by the Parties, shall be implemented only as described herein.
11. Governing Law and Venue: This Agreement shall be governed by the laws of the State of Washington. Any action arising out of this Agreement shall be brought in King County.
12. Notices: Notices to the Port shall be sent to the following address:

Port of Seattle
P. O. Box _____
Seattle, WA 98121

Notices to the City shall be sent to the following address:

City of Burien

13. Audits and Retention of Records: The City shall retain and make all books, records and documents (the "Records") relating to the performance of this Agreement open to inspection or audit by representatives of the Port or Washington State during the term of this Agreement and for a period of not less than six (6) years after termination of the Agreement; *provided*, that if any litigation, claim or audit arising out of, in connection with or related to this Agreement is initiated, the City shall retain such Records until the later of (a) resolution or completion of litigation, claim or audit; or (b) six (6) years after the termination of this Agreement.
14. Amendment: This Agreement may only be amended by written agreement of the Parties.
15. Dispute Resolution: The Parties shall use their best, good faith efforts to cooperatively resolve disputes that arise in connection with this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement as of the date first set forth above.

PORT OF SEATTLE

CITY OF BURIEN

By: Theodore J. Fick
Its: CEO

By: _____
Its: _____