

**1ST Amendment To
Interlocal Agreement Between City of Auburn and Port of Seattle Regarding
Wetlands Construction, Infrastructure Improvements, and Property Transfer**

THIS 1ST AMENDMENT TO an INTERLOCAL AGREEMENT dated March 18, 1998, is made and entered into, pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington, on the _____ day of _____, 2012, by and between the CITY OF AUBURN, a municipal corporation of the State of Washington (“City”), and the PORT OF SEATTLE, a municipal corporation of the State of Washington (“Port”).

WITNESSETH:

WHEREAS, the Parties entered into an Interlocal Agreement on March 18, 1998 (“Agreement”) for the purpose of addressing the Port’s conversion of the property owned by the Port (“Property”) and identified in the City’s comprehensive plan for residential development to uses that would not be residentially developed and would not share in the extension of public infrastructure since the property was proposed as mitigation for the filling of certain wetlands at the Seattle-Tacoma International Airport; and,

WHEREAS, the Property was specifically constructed by the Port for Wetland Mitigation purposes. In response to learning of the Port’s plans, the City requested and the Port agreed to construct the wetland mitigation deeper in order to create additional flood storage that could benefit the City and other properties in the area as a way to partially compensate the City for the loss of development potential of the site and lost opportunity for financial participation in the future extension of roads and utilities, which is typically a requirement of development; but not applicable to wetland mitigation construction; and

WHEREAS, In 2003, the Parties had several additional issues to address including right-of-way alignment, utilities, and flood plain capacity control. It was agreed to by the Parties not to finish the negotiation at that time as it would have delayed City permits being issued for the Port’s construction of the wetlands that were required in order to advertise the project. A delay in advertising could have caused a one to three year delay in the project and would have caused problems with the third runway development at the Seattle-Tacoma International Airport. Subsequently the issues relating to rights-of-way and utilities were handled outside of the Inter-local agreement. The remaining issue, flood plain capacity, is the subject of this Amendment to the Interlocal Agreement.

WHEREAS, in addition to creating additional flood storage capacity on the Property, the Port paid Auburn \$442,000 specifically for lost development potential of the Property and specifically the lost opportunity for financial participation in the future extension of roads and utilities and \$180,000 for lost storm and sanitary sewer system development charges; and,

WHEREAS, the City agreed to, and did, defer use of the flood storage capacity during the period of initial establishment of the wetland mitigation to avoid adverse impacts due to potential changes in hydrology from use of the floodplain; and

WHEREAS, as part of the Agreement, the Parties intended that the City have control over use of new flood storage capacity that was created on the Property to mitigate floodplain filling by the City or other private development designated by the City; and,

WHEREAS, the Agreement did not specifically reflect the Parties' intent regarding control of the new flood storage capacity, and the Parties wish to clarify that intent through this Amendment.

NOW THEREFORE in consideration of their mutual covenants, conditions and promises, **THE PARTIES HERETO DO HEREBY AGREE** as follows:

1. Section 6 of the Agreement is hereby amended by designating the existing Section as Subsection 6.1 "Floodplain Change" and by adding a new Subsection 6.2 "Control of Created Flood Storage Capacity" to read as follows:

6.2 Control of Created Flood Storage Capacity.

1. As a result of the Port's construction of wetlands, floodplain volume was created on the Property as indicated in the Federal Emergency Management Agency Conditional Letter of Map Revision application (FEMA CLOMR) prepared for the City by Parametrix, dated July 2007 and as may be subsequently amended. (Attached as Exhibit A and incorporated herein). This CLOMR application is based on the 1995 FEMA Flood Insurance Rate Maps currently in effect at the date of this 1st Amendment. The parties acknowledge that FEMA has not approved the CLOMR, and that FEMA's failure to do so may affect the ability of either party to use the flood storage capacity created by the Port's construction of wetlands.
2. The Port has the right to use 17% of the created flood storage capacity (11.2 acre feet based on the 2007 CLOMR application) to mitigate potential future floodplain filling on Port owned parcels 000420-0006, 936060-0258, and 936060-0260. In the event that the FEMA does not approve the CLOMR, or if Flood Insurance Rate Maps are revised in the future and prior to fully completing the process for use of the flood storage capacity, the Port has the right to use the same proportionate share (17%) of any available flood storage capacity. In the event that the Port or its successors in interest use this flood storage capacity, the City will expedite the processing of all required City permits at no cost for the expedited review to the Port or to its successors in interest. City standard application fees will apply. In addition, the City will cooperate in the processing of any required floodplain map revisions for the Property, but shall not, by this agreement, be responsible for any costs in excess of its usual costs.
3. The City has the right to control the use of any remaining flood storage capacity, in excess of the Port's, proportionate percentage of flood storage capacity existing on the Property, including but not limited to, the right to allow private parties to use part or all of the capacity. The Parties agree to cooperate to execute any documents necessary to effectuate the intent of the Agreement and this Amendment.
4. The Parties agree that, because they originally intended for the City to have control of

assigning use of the newly created flood storage capacity, the consideration exchanged for the original Agreement was sufficient for that purpose, therefore no additional consideration is due from the City to the Port for the execution of this 1st Amendment.

5. The City also agrees to use the flood storage capacity in its current constructed form for the purpose of mitigating future floodplain filling. No site alteration is proposed for the City's use unless such alteration is agreed to in writing by the Port. Neither party makes any representations or guarantees concerning the flood storage volumes that may be available on the Property, nor does either party bear any responsibility to alter the Property to create additional flood capacity.
6. The Port declares the excess created flood storage capacity in the Property described in this 1st Amendment to be surplus for Port purposes.

IN WITNESS WHEREOF the Parties hereto have executed this Amendment to the Agreement as of the day and year first above written.

PORT OF SEATTLE

CITY OF AUBURN

By: _____
Tay Yoshitani
Chief Executive Officer
Port of Seattle

Peter B. Lewis
Mayor
City of Auburn

Attest:

Danielle Daskam, City Clerk

Approved as to Form:

Daniel B. Heid, City Attorney