

**INTERLOCAL AGREEMENT BY AND BETWEEN
THE CITY OF BURIEN
and
THE PORT OF SEATTLE**

THIS INTERLOCAL AGREEMENT, hereinafter referred to as the “Agreement,” is entered into pursuant to Chapter 39.34 RCW by and between the **CITY OF BURIEN**, a Washington municipal corporation (hereinafter referred to as “Burien”) and the **PORT OF SEATTLE**, a Washington municipal corporation (hereinafter referred to as the “Port”) (collectively “Parties”).

RECITALS

A. Burien is a non-charter code city organized pursuant to Chapter 35A.13 RCW of the laws of the State of Washington having authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens, and thereby control the use and development of property within its jurisdiction.

B. The Port is a municipal corporation, with authority under Title 53 RCW, and Title 14 RCW of the laws of the State of Washington, and other federal, state and local laws, to enter into agreements concerning use and disposition of Port-owned real property.

C. The Port owns certain real property, as depicted in Exhibit A attached hereto, located within the City of Burien (the “Property”).

D. Des Moines Memorial Drive South generally traverses the Property, and the City of SeaTac is the owner and operator of a stormwater culvert underneath Des Moines Memorial Drive South (the “Upper Culvert”) that is currently in need of replacement. Work on the west side of Des Moines Memorial Drive South is located within the boundaries of City of Burien.

E. The Port owns and operates Sea-Tac International Airport (“Airport”). As a condition of building the Third Runway at the Airport, the Port was required by Clean Water Act (“CWA”) Section 404 Permit #1996-04-02325(Amended-2) issued by the U.S. Army Corps of Engineers (“Corps”) and associated CWA Section 401 certification issued by the Washington Department of Ecology (“Ecology”) to construct and maintain two wetland mitigation sites, one site (commonly known as the “Williams Property Mitigation Area”) which is upstream and generally located northwest of the Upper Culvert and a second site (commonly known as the “Des Moines Nursery Mitigation Area”) which is downstream and generally located to the southeast of the Upper Culvert (collectively, the “Mitigation Sites”).

F. The Upper Culvert is directly connected via a stormwater pipe that runs beneath the Des Moines Storage Facility property to a downstream culvert to the south of the Des Moines Mini-Storage Facility property (the “Lower Culvert”). The Lower Culvert is on private property and has discharged sediment and other material to the Des Moines Nursery Mitigation Area. Miller Creek also currently flows to Puget Sound via the Upper and Lower Culverts.

G. The Port is required by the Corps permit and Ecology certification to maintain and ensure performance of the Mitigation Sites. In connection with the Corps permit, the Port has executed and recorded two restrictive covenant instruments in favor of the Corps that encumber the Mitigation Sites: a Declaration of Restrictive Covenants (Des Moines Way Nursery Mitigation Area) (King County Recorder No. 20030312001776) and a Declaration of Restrictive Covenants (Williams Property Mitigation Area) (King County Recorder No. 20160630000538) (collectively, the “Restrictive Covenants”).

H. In order to address the drainage, water quality, and fish passage issues presented by the current infrastructure, Burien has proposed to remove the failing Upper Culvert and disconnect publicly conveyed stormwater from the Lower Culvert, daylight Miller Creek so that it no longer flows through the Upper and Lower Culverts, and construct a new fish-passable culvert in a different location (generally referred to herein as the “Project”). Burien has completed design work for the Project and will oversee construction work by its contractor. The Project will require construction work by Burien within the Mitigation Sites and on nearby Port-owned property.

I. The Port’s obligation under the Corps permit to conduct monitoring within the Mitigation Sites is currently due to be fulfilled in 2025. The work within the Mitigation Sites will extend the monitoring period required by the Corps permit after construction of the Project is complete.

J. To comply with requirements imposed by the Corp under permit (application # NWS-2018-1060) and Ecology authorization, Burien may need access to Port owned property.

K. Burien’s proposal will benefit the Port by eliminating the risk of future impacts to performance of its Mitigation Sites, so the Port has agreed to help fund Burien’s project and undertake the additional monitoring required within the Port’s Mitigation Sites, subject to the terms and conditions of this agreement.

L. Burien and the Port are entering into this Agreement pursuant to the authority granted in Chapter 39.34 Revised Code of Washington (Interlocal Cooperation Act).

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants of the Parties contained herein, and pursuant to Chapter 39.34 RCW, the Parties hereto agree as follows:

AGREEMENT

SECTION 1. DEFINED TERMS

Agreement. This Interlocal Agreement between Burien and the Port.

City. The City of Burien, a municipality of the State of Washington, which exercises governmental functions and powers pursuant to the laws of the State of Washington and the Burien Municipal Code. Burien’s principal office is located at 400 152nd Street, Suite 300, Burien, Washington 98166.

Port. The Port of Seattle, a municipal corporation, which exercises governmental functions and powers pursuant to the laws of the State of Washington. The principal office of the Port is located at 2711 Alaskan Way, Seattle, Washington 98121.

Project. The Miller Creek Stream Restoration Project as depicted in Exhibit A.

SECTION 2. PURPOSE

The purpose of this Agreement is to allocate responsibility between the Parties and memorialize each Party's obligations and the process necessary to successfully complete the Project.

SECTION 3. RESPONSIBILITIES

Burien and the Port agree to undertake and complete the following activities:

A. Port's Obligations

1. The Port will grant Burien temporary easements as more particularly described in Section 3.D below, as needed by Burien to construct and maintain the Project and to perform its monitoring responsibilities as described in this Agreement on Port-owned property outside the Mitigation Sites until all such restored stream channel monitoring requirements have been fully met.
2. The Port will conduct monitoring and reporting as required by the Corps permit for its Mitigation Sites, relating to the performance of wetland mitigation, for the period required by the Corps and Ecology following their review and approval of the Project and any approved revisions to the Port's Corps permit, Section 401 certification and/or Restrictive Covenants (the "Monitoring Period"), pursuant to the monitoring plan approved by the Corps and Ecology.

B. Burien's Obligations

1. Burien will construct the Project as depicted and described in Exhibit A within five years of execution of this ILA.
2. Burien is responsible for maintenance and corrective actions within the Mitigation Sites for the Monitoring Period, including, as necessary, all repairs and/or corrective work necessary to ensure performance of the Project, after which the Port shall assume all responsibility for routine property maintenance.
3. Burien is responsible for all monitoring, reporting, maintenance, and corrective actions required by its own Corps permit and Ecology authorization on Port-owned property outside the Mitigation Sites.
4. Without limiting the provisions of Section B.2 above, Burien shall be responsible, at its cost, for any corrective actions necessary during the Monitoring Period to address any damage to the wetland areas within the Mitigation Sites and/or nonconformity with or violation of the conditions or requirements of the Port's Corps Permit #1996-04-02325(Amended-2) and/or the Restrictive Covenants (as amended by the Corps and Ecology) to the extent resulting from performance of the Project and corrective actions relating thereto.

5. If Burien commences the Project and disturbs the Property but then abandons the Project, Burien shall be responsible, at its cost, for any corrective actions necessary during the Monitoring Period to address any damage to the wetland areas within the Mitigation Sites and/or nonconformity with or violation of the conditions or requirements of the Port's Corps Permit #1996-04-02325(Amended-2) and/or the Restrictive Covenants (as amended by the Corps and Ecology) to the extent resulting from Burien's partial performance of the Project.

C. Third-Party Easement Holders

1. Seattle Public Utilities Water Main. The Port and Burien acknowledge that the City of Seattle (Seattle Public Utilities) ("SPU") holds an easement (KC Rec. No. 7811080984) ("Water Main Easement") across the Property for a 30" water main (the "Water Main"). As a result of the Project, Miller Creek will be relocated so that a portion of the creek will cross over the Water Main within a portion of the Water Main Easement area. The Parties will cooperate to negotiate with SPU an agreement relating to the relocation of the creek in relation to Water Main (the "SPU Agreement"). The Parties further acknowledge that SPU has requested access on and over the Property for purposes of inspection, maintenance, and repair of the Water Main; Burien agrees that it will construct and pay for an access road as part of the Project, to be constructed in the location identified in Exhibit B and in accordance with designs approved by the Port (the "New Access Road"). Upon completion of the Project, the New Access Road will be the property of the Port, and the Port, will grant SPU an access easement, as more particularly described in Section 3.D below. Notwithstanding anything else herein to the contrary, in no event will the Port or Burien be responsible, under the SPU Agreement or under any negotiated easement or otherwise, for the maintenance and repair of the completed New Access Road, or any costs or expenses associated thereto.
2. King County Water District Water Line. Burien further acknowledges that title records indicate that King County Water District 125 (as successor to King County Water District 43) holds an easement (Cause No.: 536484) for a water main in the general vicinity of the Water Main, as depicted on Exhibit B. Burien will confirm the location of this easement and all improvements pertaining thereto, if any, and shall ensure that the Project is designed and constructed such that no damage or interference occurs with respect to such improvements or the easement holder's easement rights. Seattle City Light Electric Distribution. Burien further acknowledges that title records indicate that Seattle City Light holds an easement (KC Rec. No. 19991221000377) for an underground electrical distribution facility in an area between the current share use path and Des Moines Memorial Drive South, as depicted on Exhibit B.
3. Southwest Suburban Sewer District. Burien further acknowledges that title records indicate that the Southwest Suburban Sewer District holds an easement for sewer

main improvements in the north portion of the Des Moines Nursery Mitigation Area (KC Rec. No. 7206220479).

4. Burien further acknowledges that the Property is encumbered by various other utilities and access easements held by third-parties, as identified in Exhibit B (in addition to those described in Section 3.C.1 through 3.C.3 above).
5. The Port will provide detailed information concerning the aforementioned easements, encumbrances, and improvements, and Burien will confirm the location of the easements referenced in this Section C and all improvements pertaining thereto, if any, and shall ensure that the Project is designed and constructed such that no damage or interference occurs with respect to such improvements or the easement holder's easement rights. Notwithstanding execution of any such SPU Agreement as described above, as between the Port and Burien, Burien agrees to indemnify and hold harmless the Port from and against any costs, claims, damages and/or liabilities (including attorneys' fees and costs) arising from or relating to any damage to the improvements, including the Water Main, owned by the easement holders described in Sections 3.C.1 through 3.C.4 above or the rights of said easement holders, respectively, under said easements, to the extent resulting from performance of or a failure to complete the Project and/or Burien's corrective actions relating thereto as long as the Port has specifically and accurately identified where the easements, encumbrances, and improvements are located. This obligation shall survive the expiration or termination of this Agreement.

D. Property Interests and Access

1. Port Property -

- (a) Temporary Construction Easement. The Port will grant a temporary construction easement in favor of Burien for the area(s) depicted on Exhibit C-2 attached hereto. The temporary construction easement is necessary for Burien to conduct its work, staging, and storage in connection with the construction of the Project. The term of this easement will be consistent with the time frame necessary for Burien to complete the Project.
- (b) Temporary Access Easement. Upon completion of the Project, the Port will grant a temporary access easement to Burien for the area(s) depicted on Exhibit C-3 attached hereto. This temporary easement is necessary for Burien to access the Property to comply with the Corp's requirements under permit (application # NWS-2018-1060) and Ecology authorization related to the Project and to perform such other obligations of Burien as set forth in Section 3.B above. The term of this easement will be consistent with the duration required for Burien to fulfill its obligations under Section 3.B, including any monitoring period which may be required by Burien's Corps permit and Ecology authorization.

- (c) SPU Access Easement. The Port agrees to grant SPU an access easement to use the New Access Road to provide SPU access on and over the Property for purposes of inspection, maintenance, and repair of the Water Main.
- (d) Century Link Access Easement. The Port agrees to grant Century Link an access easement to use the New Access Road for purposes of inspection, maintenance, and repair of equipment and facilities for which Century Link has an easement on the Property.

2. Other Property Interests

- (a) Burien acknowledges that it is the owner of various of the easements burdening the Property, and waives any claims relating to any conflict between the rights granted under such easements and any modifications made to or use of the Property in connection with the Project.
- (b) Burien further acknowledges that the obligations of the Port hereunder are subject to the rights of the third parties holding easements as described in Section C above. Without limitation to Burien's obligations under Section C above, the Port and Burien will cooperate to address, at Burien's cost, any reasonable Project-specific concerns of such third-party easement holders, to the extent the rights of such third-parties are materially impacted by the Project.
- (c) To the extent that Burien determines that the Project requires the acquisition of new or additional property rights or interests from third-parties, as assented to by the Port to the extent such rights or interests in any way burden any Port property, Burien will further be responsible for and bear all necessary costs to acquire such rights or interests, including any easements, access agreements or other property interests, as necessary to complete the Project. Notwithstanding any other provision herein to the contrary, the Port's obligations under this Agreement and the conveyance of property interests described herein shall be subject and subordinate to the Restrictive Covenants, as may be amended, and all other matters of record with respect to the Property.

E. Permitting and Administration

- 1. Burien or its contractor(s) of any tier will be responsible for obtaining all permits and meeting all other federal, state, and local legal and regulatory requirements necessary (see Exhibit C) to construct and maintain the Project except where the Port has specifically committed to obtain a regulatory approval in this Agreement. Without limiting the foregoing, Burien or its contractors will have the responsibility to conform with all local and state requirements, including permitting, as applicable, relating to the Project under, within or effecting the Des Moines Memorial Drive right of way.

2. The Port will cooperate with Burien to obtain permit approvals related to construction and maintenance of the Project on the Port's property.
3. The Port shall cooperate with Burien to obtain final approvals from the Corps and Ecology to modify the Mitigation Sites and the Restrictive Covenant(s) in connection with the Project.
4. Burien is responsible for compliance with requirements of the Ecology grant such as documentation and reporting.

F. Environmental Compliance

1. Definitions.

- i. "Burien" as used in this section includes the City of Burien, and its agents, contractors (of any tier), counsel, directors, employees, invitees, officials, officers (appointed or elected), representatives and volunteers.
- ii. "Law or Regulation" as used herein shall mean any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect.
- iii. "Hazardous Substances" as used herein shall mean any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant by any Law or Regulation.

2. Hazardous Substances. In connection with Burien's activities pursuant to this ILA, Burien shall not knowingly, negligently, or intentionally deposit or leave on or in the Property any Hazardous Substance in any manner that could be materially detrimental to the Property or in violation of any Law or Regulation. In connection with its activities pursuant to this ILA, Burien shall not release any Hazardous Substances into adjacent surface waters, soils, underground waters or air. If there is a spill, and upon request, Burien shall provide the Port with Burien's USEPA Waste Generator Number, and with copies of all Safety Data Sheets (SDS), Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence Burien receives from, or provides to, any governmental unit or agency in connection with Burien's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Property.

3. Violation of Environmental Law. If Burien, or the Property, as a result of Burien's sole, specific, and distinct activities pursuant to this Agreement, is in violation of any Law or Regulation concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Burien shall take prompt action as is necessary to mitigate and correct the violation. If Burien does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation, to come onto the Property, and to take such action as the Port deems necessary to ensure compliance or to mitigate the violation. If the Port has a reasonable belief that Burien is in violation of any Law or Regulation, or that Burien's actions or inactions

present a threat of violation or a threat of damage to the Property, the Port reserves the right to enter onto the Port and take such corrective or mitigating action as the Port deems necessary. All reasonable and itemized costs and expenses incurred by the Port in connection with any such actions shall become immediately due and payable by Burien upon presentation of an invoice therefor.

4. Removal of Hazardous Substances. In addition to all other requirements under this Agreement, prior to expiration of this Agreement, Burien shall remove any Hazardous Substances that Burien or its contractor(s) of any tier placed on the Property during the term of Burien's construction work and shall demonstrate such removal to the parties mutual satisfaction.
5. Remedies Not Exclusive. No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the Port shall be entitled to full reimbursement from Burien whenever the Port incurs any cleanup or remedial activities costs, fines, or penalties resulting from Burien's use or management of Hazardous Substances on the Property.
6. Environmental Indemnity. Burien shall not be responsible for pre-existing contamination on the Property prior to the date of this Agreement. In addition to all other indemnities provided in this Agreement, Burien agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from Burien's placement of any Hazardous Substance on the Property, or the migration of such Hazardous Substance from the Property.
7. Stormwater Management. Burien acknowledges that the Property may be subject to the requirements of the federal, state, and local stormwater laws, regulations, and permits, including but not limited to the Construction General Permit, individual permits, the Phase I Municipal Permits, or any other applicable permit (collectively, the "Stormwater Regulations"). If required, Burien shall apply for and hold as permittee any required permits and, and if Burien has obtained a permit, it shall comply with all applicable requirements of all Stormwater Regulations, including implementing and performing best management practices ("BMPs"). Burien shall defend, indemnify, and hold harmless the Port against any and all costs, including but not limited to attorneys' fees, expenses, damages, fines, penalties, and liabilities of any kind incurred by the Port as a result of Burien's failure or alleged failure to comply with Stormwater Regulations, including but not limited to (a) Burien's failure to implement and/or perform BMPs; and/or (b) Burien's failure to comply with permit requirements. Burien shall keep onsite a spill kit capable of handling minor spills and/or leaks from parked vehicles. In the event of a spill or leak to a drainage structure, Burien shall notify the Port's 24-hour Incident Notification Line at (206) 295-7912.

SECTION 4. FINANCING

The estimated cost of the Project is \$3,500,000 as set out in Exhibit D.

- A. The Port will make a one-time payment of \$800,000 toward permitting and construction of the Project within 60 calendar days after Burien has notified the Port that construction of the Project is substantially complete and the Port receives an invoice from Burien.
- B. Burien is responsible for the remaining costs including all permitting, property acquisition, construction, and other costs necessary to implement the Project.
- C. The Port's total financial contribution to Project will be its lump-sum payment of \$800,000 and its monitoring costs described in Section 4.D below, and Burien will bear the risk of all other Project costs, including, without limitation, any cost overruns associated with the completion of the Project, including but not limited to the general tasks described in this Agreement.
- D. The Port will bear its costs for performing monitoring during the Monitoring Period, as required by the Corps, within the Mitigation Sites.
- E. Burien will bear its costs for performing monitoring on Port-owned property outside of the Mitigation Sites and on non-Port-owned property.
- F. Burien is responsible for the cost of any corrective action which the Corps or Ecology may require caused by or resulting from Burien's work on the Project within the Mitigation Sites, as described in Section 3.B above.

SECTION 5. INSURANCE.

- A. Burien and all contractors and subcontractors entering the Property for the purposes of the Project (collectively, "Contractors") shall each obtain and keep in force, at its sole cost and expense the following types of insurance, in the amounts specified and, in the form, hereinafter provided for the duration of the Agreement.

- (1) Commercial General Liability Insurance. Commercial general liability policy of insurance, written on ISO Form CG 00 01 10 01 (or equivalent), that protects the Port as additional insured for ongoing and completed operations using ISO Form 20 26 (either 11 85 or 07 04 revision) or equivalent, against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the entry, use, and occupancy of the Project and Property. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than five million dollars (\$5,000,000) per occurrence with an annual aggregate of no less than \$10,000,000.

The policy shall be endorsed to make Burien's and the Contractors' insurance primary and non-contributory to any insurance the Port may carry. The policy shall be endorsed with a waiver of subrogation or a waiver of the transfer of the rights of recovery in favor of the Port.

The Port shall be submitted upon execution of the Agreement a copy of the additional insured endorsement, waiver of subrogation endorsement, and the endorsement for primary and non-contributory coverage.

These documents shall be submitted annually throughout the term of the Agreement.

- (2) Automobile Liability Insurance. Commercial automobile liability policy of insurance, written on ISO Form CA 00 01 07 97 (or equivalent), that protects Burien, Contractors, and the Port against claims for bodily injury and property damage based upon, involving or arising out of motor vehicle operations on or about the Property and Project, and all areas appurtenant thereto. The insurance shall contain a Waiver of Subrogation on this policy in favor of the Port. Such insurance shall cover any "Auto" (i.e. owned, hired, and non-owned) and shall be on an occurrence basis providing single limit coverage in an amount not less than two million dollars (\$2,000,000) per occurrence.
- (3) Contractor's Pollution Liability. A pollution liability policy, with limits of not less than \$2 million per occurrence which shall extend to sudden and accidental incidents, claims, damages, and losses, including defense costs that arise from the operations of Burien and Contractor as it relates to the Project and Property. The policy shall cover all claims occurring during the Project, including claims from incidents occurring during the Project period but reported after project completion, for up to 60 days following the end of the Project. The policy shall cover clean-up and remediation as well as third party bodily injury, third party property damage, and clean-up/remediation, both on and off the project site. The Port shall be provided an endorsement that it is listed as an additional insured on this policy. The Parties specifically agree that Burien, its Contractors (of any tier), and its insurer(s) shall not be liable for preexisting pollution or conditions at the Project site.

B. Insurance Terms

- (1) Cancellation/Non-Renewal - Insurance is to remain current throughout the term of the Agreement.
- (2) Burien is responsible for complying with the Washington State laws that pertain to industrial insurance (Reference Revised Code of Washington, Title 51 Industrial Insurance) for its employees. The Port shall not be responsible for complying with Title 51 for City employees or for any Contractors and subconsultants.
- (3) If applicable, annually the Port may request a Certificate of Insurance or similar document, along with the endorsements which expand coverage to the Port as indicated above.
- (4) Burien has the option to self-insure under RCW 48.62; specifically, RCW 48.62.031 and RCW 48.62.071 provided it is solvent and fully funded to pay, adjust and respond to claims in an equivalent manner to commercial insurance. This option is void if there is any finding from the State Auditor in the past three years preceding this Agreement in which Burien was insufficiently funded to pay for claim obligations. The option to self-insure includes programs that combine self-insurance with commercial insurance.

If Burien chooses to self-insure the Port shall be provided documentation and a statement that Burien is funded to the level and dollar amount of claims anticipated for the Project in this Agreement and to the levels of commercial insurance specified above. The option to self-insure does not include Contractors.

- C. Waiver of Subrogation. Without affecting any other rights or remedies, Burien and Contractor (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waive any rights they may have against the Port, its officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to City or Contractor arising out of or incident to the perils required to be insured against under this Agreement. Accordingly, Burien and Contractor shall cause each commercial insurance policy required by this Agreement to further contain a waiver of subrogation clause. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.
- D. Participation in a self-insured, governmental risk pool shall satisfy the conditions set forth in this agreement for Burien; Burien's Contractor will need to provide evidence of commercial insurance as required herein.

SECTION 6. GENERAL PROVISIONS

Notification: Formal notices, demands and communications between Burien and the Port shall be sufficient if given and shall not be deemed given unless dispatched by certified mail, postage prepaid, returned receipt requested, or delivered personally, to the principal offices of Burien and the Port as follows:

For Burien: City Manager
City of Burien
400 152nd Street, Suite 300
Burien, WA 98166
E-mail:

For the Port: Executive Director
Port of Seattle
2711 Alaskan Way
Seattle, WA 98121
E-mail:

A copy of the notice, demand, or communication may be sent simultaneously to the email addresses provided above, but shall not be deemed sufficient for notice under this Agreement.

Liens and Encumbrances. Burien shall keep the Property free and clear of any liens and encumbrances arising or growing out of the use of the said Premises by Licensee. At the Port's request, Burien shall furnish the Port with written proof of payment of any item that would or

might constitute the basis for such a lien on the Property if not paid. The Port shall not claim or encumber any equipment utilized in the project even if it is on Port property.

Mutual Negotiation. The Parties agree that the terms and provisions of this Agreement have been negotiated, that the Agreement shall be deemed to be mutually negotiated and mutually drafted by both Parties, and the language in the Agreement and Exhibits shall, in all respects, be construed according to its fair meaning and not strictly for or against either Party.

Survival of Indemnities. All indemnities provided in this agreement shall survive the expiration or any earlier termination of this agreement.

Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Amendments. This Agreement may be amended or modified upon mutual consent of the Parties and in accordance with all applicable laws, rules or regulations. Such mutual consent of the Parties shall be evidenced by a written amendment signed by the Parties.

Title of Parts and Sections. Any titles of the parts, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provisions

Agreements with the United States; Other Government Approvals. The Port's obligations under this agreement are subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the Port and the United States (including, without limitation, grant assurances), the execution and/or imposition of which has been or may be required as a condition precedent to the transfer of federal rights or property to the Port for Airport purposes and the expenditure of federal funds for the extension, expansion or development of the Airport or airport system. If applicable, should the Port at any time require the approval of the Federal Aviation Administration to proceed with the transfers/conveyances in this Agreement, the Port shall bear the sole cost and responsibility for obtaining needed approvals. Burien, upon request by the Port, shall lend its full cooperation and affirmative support if it deems such would be in the interest of timely performance under this Agreement, and such cooperation and support would not compromise the responsibilities of Burien, including its responsibilities to the Port as set forth in this Agreement.

Conflict of Interests. No member, official, or employee of either Party shall make any decision relating to the Agreement, which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. The Port warrants that it has not paid or given, and shall not pay or give, any third person any money or other consideration for securing Burien's approval of this Agreement. The City warrants that it has not paid or given, and shall not pay or give, any third person any money or other consideration for securing the Port's approval of this Agreement.

Non-Liability of City, Officials, Employees, and Agents. No agent, contractor (of any tier), counsel, director, officer, employee, official (appointed or elected), or representative of Burien shall be personally liable to the Port, or any successor in interest, in the event of any default or breach by Burien or for any amount that may become due to the Port or successor or on any obligation under the terms of this Agreement.

Non-Liability of Port, Officials, Employees, and Agents. No member, director, officer, official (appointed or elected), employee, representative or agent of the Port shall be personally liable to Burien, or any successor in interest, in the event of any default or breach by the Port or for any amount that may become due to Burien or successor or on any obligation under the terms of this Agreement.

Indemnification. To the maximum extent allowed by law, the Parties shall protect, defend, indemnify, and save harmless each other, their agents, contractors (of any tier), counsel, directors, officers, officials (appointed or elected), and representatives, while acting within the scope of their employment, from any and all costs, claims, judgments, penalties, and/or awards of damages, arising out of or in any way resulting from the Party's own negligent acts or omissions in connection with performance of activities under the terms of this Agreement. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its agents, contractors (of any tier), counsel, directors, officers, officials (appointed or elected), and representatives. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 Revised Code of Washington (RCW). In the event that a Party incurs any judgment, award, and/or cost arising therefrom, including attorneys' fees, to enforce the provisions of this Article, all such fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's culpability.

Enforcement, Rights, and Remedies Cumulative. This Agreement shall be enforceable by either Party to the Agreement notwithstanding any change in any applicable general or specific requirement adopted by Burien that alters or amends the rules, regulations, or policies specified in this Agreement. Enforcement may be through any remedy or enforcement method or process, or combination thereof, allowed under law and/or equity. Except as otherwise stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise one or more of these rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

Dispute Resolution: Any disputes or questions of interpretation of this Agreement that may arise between the Port and Burien shall be governed under these Dispute Resolution provisions. The Port and Burien agree that cooperation and communication are essential to resolving issues efficiently. If disputes about the implementation of this Agreement arise, staff from each party shall endeavor to resolve the dispute at the staff level. If the dispute is still unresolved, then the Managing Director, Aviation Division for the Port of Seattle, and City Manager for Burien or his or her designee shall meet to discuss the issues and attempt to resolve the dispute in a timely manner. If the Managing Director, Aviation Division for the Port of Seattle, and City Manager for

Burien or his or her designee are unable to resolve the dispute, then the Parties may pursue any legal remedies or agree to pursue alternative dispute resolution options such as mediation or arbitration. At all times prior to the resolution of the dispute, the Parties shall continue to perform their responsibilities under the Agreement and make any required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of Washington. Venue for any legal action brought hereunder shall be in the King County Superior Court.

Legal Actions; Attorneys' Fees. If any legal action is commenced to interpret or to enforce the terms of this Agreement, or to collect damages as a result of any breach of the Agreement, the Parties shall be responsible for their own attorneys' fees and costs incurred in the action.

Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the successors in interest and assigns of each of the Parties. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

Parties Not Co-venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another, nor employees and/or employers of each other.

No Third-Party Beneficiary Rights. No provision in this agreement is intended or shall create any rights with respect to the subject matter of this agreement in any third-party.

Reasonable Approvals. The approval of a party of any documentation or submissions herein called for that do not require action by the legislative body of either Party, shall not be unreasonably withheld unless the text clearly indicates a different standard. All such approvals shall be given or denied in a timely and expeditious fashion.

Execution of Other Documentation. Burien and the Port agree to execute any further documentation that may be necessary to carry out the intent and obligations under this Agreement.

Counterparts. This Agreement may be executed in counterparts constituting two (2) duplicate originals, each of which is deemed to be an original and constitutes the entire understanding and agreement of the Parties.

Exhibits. This Agreement consists of following the following exhibits, each of which is incorporated herein:

Exhibit A – Depiction of Property and Project

Exhibit B – Map (showing certain easement locations)

Exhibit C – List of Federal, State, and Local Authorizations

Exhibit D – Project Budget

Term of Agreement: The term of this Agreement shall run for fifteen years or until completion of the obligations in Sections 3.A and 3.B, whichever is later

Termination of Agreement: Either Party may terminate this Agreement upon thirty (30) calendar days written notice to the other Party.

Entire Agreement. This Agreement and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire Agreement of Burien and the Port, and there are no other agreements or understandings, oral or written, between Burien and the Port concerning this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates indicated below.

CITY OF BURIEN

PORT OF SEATTLE

Brian Wilson
City Manager
By direction of the Burien City Council
in Open Public Meeting on _____, 2020

Stephen P. Metruck
Executive Director
By direction of the Port Commission
in Open Public Meeting on _____ 2020

Dated: _____

Dated: _____

Approved as to Form:

Approved as to Form:

City of Burien Attorney

Port of Seattle Attorney

EXHIBIT A
DEPICTION OF PROPERTY AND PROJECT

EXHIBIT B
MAP (SHOWING CERTAIN EASEMENT LOCATIONS)

EXHIBIT C

LIST OF PERMITS/AUTHORIZATIONS

1. City of Burien construction, ROW, and critical areas permits
2. City of SeaTac construction and ROW permits
3. Joint Aquatic Resources Permit
 - a. Clean Water Act Section 401 (Water Quality) Certification
 - b. Clean Water Act Section 404 (Dredge and Fill) Permit
 - c. Washington State Hydraulic Permit (In-water work)
 - d. National Historic Preservation Act Sect 106 (Cultural Resources)
 - e. Endangered Species Act Review (No Effects Letter)
4. State Environmental Policy Act Review
5. Amendment of existing Corps and Ecology certification related to Port's mitigation site

EXHIBIT D
ESTIMATED COSTS OF PROJECT