

## RESOLUTION NO. 3445

A RESOLUTION of the Port Commission of the Port of Seattle authorizing the Executive Director to sign an Interlocal Agreement with the City of SeaTac that settles litigation concerning surface water management fees, further amends Resolution No. 3251 as Amended and repeals Resolution No. 3119 which authorized Interlocal Agreements concerning Uniform Codes responsibility, adopts Uniform Codes as defined by Chap. 19.27 RCW and adopted by the City of SeaTac code, adopts electrical code as defined by Chap. 19.28 RCW and authorizes the Executive Director to implement the agreement and administer the Uniform Codes

WHEREAS, the Port of Seattle ("Port") owns and operates Seattle-Tacoma International Airport ("Sea-Tac Airport"), which is physically located primarily within City of SeaTac ("City") boundaries; and

WHEREAS, as municipal corporations, the City and the Port each have statutory authority to administer the Uniform Codes under Chap. 19.27 RCW and have previously entered into Interlocal Agreements in 1992 and 1997 addressing the administration of the Uniform Codes and the administration of the electrical code under Chap. 19.28 RCW; and

WHEREAS, the City and the Port are currently parties in litigation concerning the amount of surface water management fees charged by the City for Port property located within the boundaries of the City and desire to settle this litigation; and

NOW, THEREFORE, BE IT RESOLVED by the Port Commission of the Port of Seattle that:

Section 1. The Executive Director is hereby authorized to execute an Interlocal Agreement with the City that settles the surface water management fee litigation between the City and the Port, provides for the administration of the Uniform Codes by the Port, terminates the 1992 Interlocal Agreement with the City of SeaTac concerning administration of the Uniform Codes, amends the 1997 Interlocal Agreement and provides for the administration of the electrical code by the Department of Labor and Industries, in substantially the form attached to this resolution as Attachment A and is incorporated by this reference.

Section 2. The Uniform Codes, as defined by Chap. 19.27 RCW and adopted in Chap. 13.01, .06, .07, .08 and .09 of the City of SeaTac Code and the electrical code as defined by Chap. 19.28 RCW, are hereby adopted.

Section 3. The 1992 Interlocal Agreement between the City of SeaTac and the Port of Seattle, concerning enforcement of the State Building Code on Airport property and adopted pursuant to Resolution No. 3119, is hereby terminated.

Section 4. The following sections of the 1997 Interlocal Agreement between the City of SeaTac and the Port of Seattle and adopted pursuant to Resolution No. 3251 are hereby amended to be consistent with the terms of this agreement. Paragraphs 2.3.3, 2.3.4 of Exhibit A and paragraph 18.1 of Exhibit C.

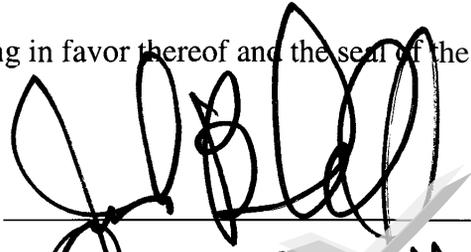
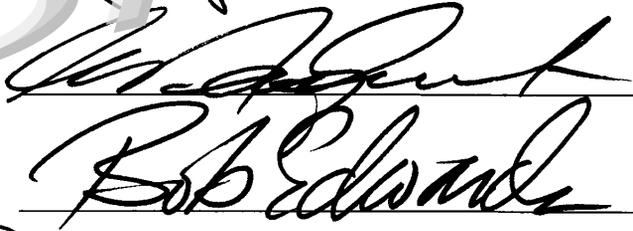
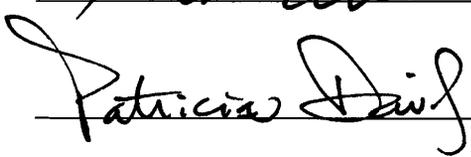
Section 5. A copy of the final executed Interlocal Agreement shall be attached to this Resolution as Attachment B.

Section 6. The Executive Director may execute such administrative amendments to the final executed Interlocal Agreement as may be agreed upon by the parties from time to time.

The Executive Director shall advise the Commission of all such amendments within thirty (30) days of the date of execution. The Executive Director is further authorized to take actions necessary to implement the terms of the Interlocal Agreement and to administer the Uniform Codes on Port property.

Section 7. The Executive Director is further authorized to take appropriate action to cause the dismissal of pending litigation and appeals cited in the Interlocal Agreement upon its final execution by both parties.

Held this 14th day of November, 2000, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.

  
  
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Port Commission

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF SEATAC AND THE  
PORT OF SEATTLE, AMENDMENT TO THE INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF SEATAC AND THE PORT OF SEATTLE OF  
SEPTEMBER 4, 1997 AND TERMINATION OF THE INTERLOCAL  
AGREEMENT BETWEEN THE CITY OF SEATAC AND PORT OF SEATTLE  
OF 1992**

This INTERLOCAL AGREEMENT (Agreement) is entered into effective the \_\_\_ day of \_\_\_, 2000, between the Port of Seattle (Port), a Washington municipal corporation, and the City of SeaTac (City), a Washington municipal corporation.

**RECITALS**

Whereas, the Port owns and operates Seattle- Tacoma International Airport (Airport) under the authority of the Revised Airports Act, Chap. 14.08 RCW, the Airport Zoning Act, Chap. 14.12 RCW and certain port district enabling statutes, Chap. 53.08 and .04 RCW;

Whereas, the Port has specialized expertise in developing, constructing and operating airport facilities;

Whereas, the Airport is located primarily within the boundaries of the City,

Whereas, the City has authority to administer a surface water management program that includes the authority to impose and collect surface water fees from property owners such as the Port of Seattle;

Whereas, the Port has filed an appeal challenging the legality of the amount of surface water fees imposed by the City for the 1995, 1996, and 1997 in Port of Seattle v. City of SeaTac, King County Superior Court #99-2-52918-9 KNT and in Port of Seattle v. City of SeaTac, King County Superior Court 00-2-11509-1 KNT (surface water management fee litigation);

Whereas, the Port administered, implemented and enforced the building, mechanical, electrical and plumbing approvals for development on Port property from about the late 1940s to 1992;

Whereas, in 1992 the Port and the City entered into an Interlocal Agreement (1992 ILA) that provided for the City to administer and implement the Uniform Codes under Chap. 19.27 RCW, the electrical code under Chap. 19.28 RCW on certain Port property located outside of the airfield;

Whereas, in 1997 the Port and the City entered into an Interlocal Agreement (1997 ILA) that settled litigation concerning their respective jurisdictional authorities over comprehensive planning, zoning, surface water management, critical areas, State

Environmental Policy Act (SEPA) lead agency responsibilities and police jurisdiction as well as settled the City's appeal of the adequacy of the Port's environmental review under SEPA for the 1994 - 1995 Master Plan Update;

Whereas, the Port and the City have adopted Policies and Procedures for implementation of the 1997 ILA;

Whereas, the 1992 Interlocal Agreement concerning the Uniform Codes was incorporated by reference into the 1997 Interlocal Agreement;

Whereas, the Port and the City desire to settle the surface water management fee litigation and address issues concerning the City's administration and implementation of the Uniform Codes under the Interlocal Agreements of 1992 and 1997;

Whereas, the City currently provides electrical permit inspections at the airport under the authority of Chap. 19.28 RCW and Chap. 13.10 SeaTac City Code;

Whereas, as part of the adoption of this Agreement, the City anticipates that it will amend Chap. 13.10 SeaTac City Code to provide for the Department of Labor and Industries to provide electrical permit inspections at the airport, but will continue to provide electrical inspection for developments on Port property that are not airport purposes such as the Bai Tong restaurant property and the SeaFirst Bank (now Bank of America) property.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged here, the Port and the City agree as follows:

1. **Good faith** - The parties solemnly affirm their commitment to use good faith when implementing this Agreement!!
2. **Term of the agreement** - This Agreement shall run concurrently with the remainder of the term of the Interlocal Agreement of 1997.
3. **Scope of the agreement** - This agreement will apply to all property within the City that the Port currently owns as well as all property that the Port acquires in the future.
4. **Effective date of the agreement** - This agreement will not become effective unless the City amends Chap. 13.10 SeaTac City Code to remove its jurisdiction over electrical inspections and permitting pursuant to Chap. 19.28 RCW over Port property used for airport purposes. The parties agree that the Department of Labor and Industries will perform electrical inspections and permitting on Port property for projects for airport purposes. The City anticipates that it will amend Chap. 13.10 SeaTac City Code to by no later than October 31, 2000 to remove its jurisdiction over electrical inspections and permitting on Port property used for airport purposes.

5. **Termination of 1992 ILA** – The 1992 ILA is terminated.
6. **Amendment of 1997 ILA** – To the extent that the 1997 ILA and any Policies and Procedures for adoption of the 1997 ILA are inconsistent with the terms of this Agreement, they are amended by the terms of this Agreement. The following provisions of the 1997 ILA are amended to be consistent with the intent and terms of this Agreement: paragraphs 2.3.3, 2.3.4 of exhibit A and paragraph 18.1 of exhibit C.

Surface water management (SWM) issues

7. **Dismissal of SWM fee litigation - In** consideration for the terms of this Agreement, the Port agrees to dismiss with(out) prejudice Port of Seattle v. City of SeaTac, King County Superior # 99-2-52918-9KNT and without prejudice Port of Seattle v. City of SeaTac, King County Superior # 00-2-11509-1KNT. The Port agrees to not refile these actions during the term of this Agreement.
8. **Port payment of current SWM fees** - During the term of this Agreement, the Port shall pay the City the annual sum of surface water management fees currently imposed by City ordinance # 93-1045 (current amount of annual SWM fees, approximately \$443,000).
9. **Potential SWM fee increases for all property owners** - The Port shall not pay surface water management fees greater than \$443,000 during the term of this Agreement unless the City adopts an ordinance increasing the amount of surface water management fees charged to all property owners within the City. When, the amount of surface water management fees paid by the Port shall increase proportionally to the amount of increased surface water management fees paid by other property owners within the City under the terms of the new ordinance, up to a maximum increase of 2% annually.
10. **Port acquisition of real property that contributes flows to the Port surface water management system** – The parties recognize that when the Port acquires real property within the City that contributes flows to the Port surface water management system, then the City will no longer receive the SWM fees that were paid by the private property owner and that as a consequence of that revenue loss, it may need to raise the amount of SWM fees paid by other property owners within the City. If the Port acquires real property within the City, and because of this acquisition, triggers the need for the City to raise its SWM fees to other property owners by a significant amount over the current fee amount, then the Port and the City will enter into party consultation under paragraph 11.1.1 of the 1997 ILA to determine how much the Port will pay to mitigate the financial impacts to the City SWM fee program.
11. **Port acquisition of real property that contributes flows to the City surface water management system** – If the Port acquires real property within the City that contributes flows to the constructed portion of the City surface water management system, the Port will assume the SWM fee payments from the private property owner.

If the Port redevelops the property, the parties will determine the appropriate rate classification for the new development under the provisions of the City SWM fee ordinance.

### **Uniform Codes implementation**

12. *Port administration of Uniform Codes* - For Port projects that are defined as "airport uses" under state law, **as defined by the 1997 ILA**, the terms of this Agreement shall apply. The Port shall administer and implement the Uniform Codes defined in Chap. 19.27 RCW (building, mechanical, and plumbing permits) as adopted by the City in Chap. 13.01, .06, .07, .08, and .09 City of SeaTac Code for developments on Port property;
13. *Amendments and Updates of Uniform Codes* – The Port will adopt the Uniform Codes defined in Chap. 19.27 RCW (building, mechanical, and plumbing permits) as adopted by the City in Chap. 13.01, .06, .07, .08, and .09 City of SeaTac Code for developments on Port property. The Port will adopt updates of the Uniform Codes when these codes are updated by the State Building Codes Council. **Prior to the City amending its codes, the parties shall mutually consult as to application of the amendment to Port projects pursuant to this Interlocal Agreement.**
14. *City oversight of Uniform Codes implementation* – The City will **may** review the professional qualifications of the Building Official, confer with the Port about enforcement and administration of the Uniform Codes and propose updates to the Uniform Codes as adopted by the Port.
15. *City administers and enforces Uniform Codes and the electrical code in Chap. 19.28 RCW for non-airport uses* – The provisions of this Agreement shall not apply to Port uses that are not "airport uses" under state law, **as defined by the 1997 ILA**. For developments on Port property that are not "airport uses" under state law, **including stand-alone projects**, such as the SeaFirst Bank (now Bank of America) and the Bai Tong restaurant, the City shall administer and implement the Uniform Codes and the electrical code under Chap. 19.28 RCW, Chap. 19.27 RCW and the SeaTac City Code.
16. *Transition of Uniform Codes administration from the City to the Port* – The City and the Port will identify the projects currently being reviewed by the City for compliance with the Uniform Codes and will determine which of those projects will continue to be reviewed by the City and which of those projects will be reviewed by the Port. The parties will make good faith efforts to complete the transition of the Uniform Codes administration from the City to the Port by January 1, 2001.
17. *Mitigation of staff reductions* – As a result of this Agreement the City anticipates the need to layoff an undetermined number of current City employees engaged in the review of the Port's building program. The Port has not yet determined how and to what level it will staff its oversight and administration of uniform building codes on Port projects as called for in the Agreement. The work may be performed by Port

employees, by consultants, or by a combination of the two. The Port will make a good faith effort to employ directly or by contract, the City employees affected by this agreement.

### **Other**

18. ***Hold harmless and indemnification*** - The Port will defend, indemnify and hold harmless the City from all liability, claims, damages, losses, and expenses, whether direct or indirect arising out of the performance of this Agreement which are caused, in whole or in part, by any act or omission of the Port in the administration and implementation of the Uniform Codes under Chap.19.27 RCW. In addition, the Port will indemnify and hold harmless the City from all liability, claims, damages, losses, and expenses, including costs and attorneys fees that may arise out of any challenges to the legality of this agreement. Provided, that this hold harmless and indemnity provision does not apply to any claim, grievance, or cause of action that relates to or arises from the employment relations of the City. This proviso includes but is not limited to any claim, grievance, or cause of action brought by or on behalf of, or relating to those employees subject to layoff as a result of the transfer to the Port of the authority to administer uniform building codes on Port projects. This proviso applies even if such claim, grievance, or cause of action includes or is based on a challenge to the validity of this Agreement. The obligations of this paragraph shall not be construed to negate, abridge, or otherwise reduce any other right or obligation which would otherwise exist as to any person or entity described in this paragraph.

For the purposes of this paragraph only, the term "Port" shall mean and include the Port and its commissioners, other officers, employees, and agents, and the term "City" shall mean and include its council members, other officers, employees, and agents.

19. ***Construction*** - Any inconsistencies between the terms of this Agreement, the 1992 and 1997 ILAs and any Policies and Procedures for implementation of the 1997 ILA shall be resolved in favor of this Agreement.
20. ***Termination for cause*** - Either the Port or the City may terminate this agreement for good cause. "Good cause", for the purposes of this clause, is defined as a material failure to comply with the terms of this agreement.
21. ***Development Review process*** - The Port will continue to submit information concerning projects to the City under the "Development Review Process" as set forth in the proposed "Development Review Procedures" with the exception that the Port, rather than the City, will provide the review and approval of the projects under the Uniform Codes. Once the "Development Review Process" is amended it will be attached as exhibit A to this Agreement.
22. ***Project notice*** - The Port will provide "project notice" to the City as provided for in paragraph 2.3.1.2 of exhibit A of the 1997 Interlocal Agreement for Port projects,

except that the Port, rather than the City, will provide the review and approval under the Uniform Codes.

23. **Coordination and communication** - The Port will provide quarterly updates to the City Council and will provide monthly updates to the City Public Works Director about the Port's capital program.
24. **Authority** - The terms and conditions of this Agreement are binding on both parties. Each party represents and warrants that it has the authority to undertake the obligations of this Agreement and has undertaken all actions necessary to authorize this Agreement as binding.
25. **Jurisdiction** – **By entering into this Agreement, the City recognizes the Port has concurrent authority to administer the Uniform Codes under Chap. 19.27 RCW pursuant to the Revised Airports Act, Chap. 14.08 RCW, the Airport Zoning Act, Chap. 14.12 RCW, certain port district enabling statues in Chap. 53.04 and .08 RCW and other applicable provisions of state law to administer and enforce the Uniform Codes on Port property used for airport purposes. The parties agree that the Port will exercise its jurisdiction over airport work and the City will defer to the Port's exercise of its jurisdiction for the term of this Agreement.**
26. **Written amendments** - Any amendment to this Agreement shall be in writing and shall be signed by both parties with the same formalities as the original Agreement.
27. **Governing law** - The Agreement shall be governed by the laws of the state of Washington.
28. **Severability** - The Agreement shall be interpreted to the full extent authorized by law as an exercise of each party's authority to enter into Agreements. If any provisions of this Agreement are declared unenforceable or invalid by a court of law, then the parties shall diligently seek to modify this Agreement (or seek the court's determination of whether and how the Agreement is to be modified if the parties cannot reach Agreement) consistent with the parties' intent to the maximum extent allowable under law and consistent with the court decision. If there are changes in the applicable law, court decisions, or federal regulation or interpretations that make either party's performance of their Agreement impossible or infeasible, then the parties shall diligently seek to modify this Agreement consistent with their intent. In the event that part of the Agreement is invalidated, and the parties are unable to modify the remainder of the Agreement to effectuate their intent, then the Agreement shall become null and void.
28. **Dispute resolution** – The City and the Port agree to apply the dispute resolution provisions of paragraphs 11.1.1, 11.1.2, and 11.3 in the 1997 ILA for any disputes that may arise under this agreement.

Dated: \_\_\_\_\_

PORT OF SEATTLE, a Washington  
municipal corporation

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

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

Dated: \_\_\_\_\_

CITY OF SEATAC, a Washington  
municipal corporation

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

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

Approved as to form:

\_\_\_\_\_  
SeaTac City Attorney

Approved as to form:

\_\_\_\_\_  
Port of Seattle Counsel

COPY

(a) is attributable to the impact of the **proposed action** as identified in **§ 2.3.2.1**; (b) will have a demonstrable benefit; (c) will not result in **unreasonable** costs to **implement**; (d) does not materially impair the **functioning** of the Airport or the integration of the proposed use into existing Airport facilities; and (e) is not a federal conflict ("federal conflict" means the mitigation requested is expressly precluded or preempted by federal or state regulation; precludes federal funding; or places the Port in noncompliance with federal directives for Airport operation). The City has the burden of showing the existence of the Prerequisites (**§ 2.3.2.1**) and **consultation** criteria (a) and (b). The Port has the burden of showing consultation criteria (c), (d), and (e).

**233.4** Dispute Resolution. If a dispute is not resolved at the Joint Consultation meeting, or within such additional time as the parties may approve, then the dispute **shall** be resolved **through** the Dispute Resolution **procedures** as set **forth** in **Section 11.1** of the **Interlocal Agreement**.

**2.3.3** Building Permit Review. To the extent provided in an **ILA** dated September 1992, the City shall continue to **process** building permit applications for Port projects **whether** or not such projects constitute Airport **Uses** (the 1992 **ILA** excludes airfield facilities). City building permit review shall take into account the pre-approved **development** standards in **Attachment A-4**.

**23.4** Review Time Period; Additional **Staff** or Consultant. The City shall review Port projects on an expedited basis in recognition of the **preapproved** development standards and the project notice provided by **the** Port. If **the** Port proposes a major project or City staff is unable to meet in expedited **timeframe**, then the City may retain, after consultation and approval by **the** Port, an additional staff person or outside consultant with experience in the **type** of project being reviewed (or experienced in the subject matter that will be the principal component of the project, such as drainage, critical **areas, etc.**). **The Port** shall pay the costs of such additional staff or consultant's review on a mutually approved basis.

24 Expansion of Port Uses and Property.

**2.4.1** New **Use** on Existing or Port Master Plan Property. If the Port proposes a **we** that is not as provided on **Attachment A-2** (*i.e.*, it is either not **shown as** Port property on the **Attachment A-2** map or it is not consistent with **the** permitted uses within the two Port zones), then the following shall apply:

**2.4.1.1** Shift Aviation Commercial to Aviation **Operation**. If the Port proposes to change the **use** of Port property from "Aviation Commercial" to "Aviation Operation," then (a) Joint Consultation shall apply under **§ 2.3.2**, (b) the map and agreed **uses** on **Attachment A-2** shall be deemed revised for that property, and (c) the property shall be developed in accordance with **§ 2.3**. The parties acknowledge certain changes **from** "Aviation Commercial" to "Aviation Operation" could be major improvements or capacity changes at the Airport. Consequently, the scope and extent of mitigation shall correspondingly reflect the scope and magnitude of the change in **use**. For example, if the change in **use** involves expansion of a **runway**, major addition of cargo facilities, a new terminal (**other** than the **north terminal as** provided in the Port's Master Plan), or other major changes, then the mitigation package done through Joint Consultation shall **reflect** the significance of the change in **use**. [Note: The community relief package in **Exhibit C** reflects the scope and magnitude of the third runway and related 1996 Master Plan Projects.] Further, the parties acknowledge major improvements

17. PHASE II TRI-PARTY AGREEMENT

17.1 Background. The Port, City and King County entered into a tri-party agreement in 1990, that relates to the development of North SeaTac Park. The provisions of that agreement have not been completed.

17.2 Completion of Property Exchange. The parties shall work to complete the nine- to ten-acre property exchange south of the Airport as called for in Section 3.b.1 and 2 of the tri-party agreement. The exchange property is generally located east of Des Moines Creek between South 200th and South 208th streets.

18. EXPEDITED PERMITTING

18.1 Background. The City shall review building and other permits for Port projects to the extent provided in the existing ILA adopted in September 1992, as well as the project review under Exhibit A. The Port and City acknowledge Port projects may present significant burdens for City staff review due to the timing or scope of the Port project.

18.2 Expedited Review. In recognition of this potential adverse impact on City staff, the Port shall fund resources for permit review. The parties shall seek to execute a separate agreement from this ILA to established expedited permit review timelines in the Port's funding commitment.

19. CITY SERVICES

19.1 General Services. The City requested the Port consider several items relating to City services, including contracting for police services with King County, developing a police mutual assistance, crime prevention and patrol coverage program and contracting for court services with SeaTac Municipal Court. The parties may mutually agree to these provisions, but they are not required community relief under this ILA.

20. ESCALATION OF FINANCIAL COMMITMENTS; NO REVENUE DIVERSION

20.1 Funds. The specific funding amounts stated in this community relief package are in 1997 dollars. The amounts shall be adjusted annually by the CPI Index for the Seattle Metropolitan Area (Urban Consumers). The Port's financial commitments herein are for community relief based upon federal and federal and Washington state laws. The Port reasonably anticipates that federal revenue diversion restrictions are not an issue when the funding level is directly and proportionately linked to Airport impacts, and this community relief package meets this standard. The Port's financial commitments to the City under this ILA are not contingent, and the Port's funding sources shall take into account federal revenue diversion provisions as well as other legal authority of the Port.

**ATTACHMENTS:**

Summary of Port of Seattle Funding Commitments for Community Relief and Litigation Settlement

Attachment C-1 • Lid of Street to be Vacated to Port of Seattle by City of SeaTac

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF SEATAC AND THE  
PORT OF SEATTLE, AMENDMENT TO THE INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF SEATAC AND THE PORT OF SEATTLE OF  
SEPTEMBER 4, 1997 AND TERMINATION OF THE INTERLOCAL  
AGREEMENT BETWEEN THE CITY OF SEATAC AND PORT OF SEATTLE  
OF 1992**

This INTERLOCAL AGREEMENT (Agreement) is entered into effective the 1<sup>st</sup> day of January 2000, between the Port of Seattle (Port), a Washington municipal corporation, and the City of SeaTac (City), a Washington municipal corporation.

**RECITALS**

Whereas, the Port owns and operates Seattle- Tacoma International Airport (Airport) under the authority of the Revised Airports Act, Chap. 14.08 RCW, the Airport Zoning Act, Chap. 14.12 RCW and certain port district enabling statutes, Chap. 53.08 and .04 RCW;

Whereas, the Port has specialized expertise in developing, constructing and operating airport facilities;

Whereas, the Airport is located primarily within the boundaries of the City;

Whereas, the City has authority to administer a surface water management program that includes the authority to impose and collect surface water fees from property owners such as the Port of Seattle;

Whereas, the Port has filed an appeal challenging the legality of the amount of surface water fees imposed by the City for the 1995, 1996, and 1997 in Port of Seattle v. City of SeaTac, King County Superior Court #99-2-52918-9 KNT and in Port of Seattle v. City of SeaTac, King County Superior Court 00-2-11509-1 KNT (surface water management fee litigation);

Whereas, the Port administered, implemented and enforced the building, mechanical, electrical and plumbing approvals for development on Port property from about the late 1940s to 1992;

Whereas, in 1992 the Port and the City entered into an Interlocal Agreement (1992 ILA) that provided for the City to administer and implement the Uniform Codes under Chap. 19.27 RCW, the electrical code under Chap. 19.28 RCW on certain Port property located outside of the airfield;

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Whereas, the Port and the City have adopted Policies and Procedures for implementation of the **1997 ILA**;

Whereas, the **1992** Interlocal Agreement concerning the **Uniform** Codes was incorporated by reference into the **1997** Interlocal Agreement;

Whereas, the Port and the City desire to settle the surface water management fee litigation and address issues concerning the City's administration and implementation of the Uniform Codes under the Interlocal Agreements of **1992** and **1997**;

Whereas, the City currently provides electrical permit inspections at the airport under the authority of Chap. **19.28** RCW and Chap. **13.10** SeaTac City Code;

Whereas, as part of the adoption of this Agreement, the City anticipates that it will amend Chap. **13.10** SeaTac City Code to provide for the Department of Labor and Industries to provide electrical permit inspections at the airport, but will continue to provide electrical inspection for developments on Port property that are not airport purposes such **as** the Bai Tong restaurant property and the **SeaFirst** Bank (now Bank of America) property.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged here, the Port and the City agree as follows:

1. **Good faith** - The parties strongly affirm their commitment to use good faith when implementing this Agreement!!
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3. **Scope of the agreement** - This agreement will apply to all property within the City that the Port currently owns as well as all property that the Port acquires in the future.
4. **Effective date of the agreement** - This agreement will not become effective unless the City amends Chap. **13.10** SeaTac City Code to remove its jurisdiction over electrical inspections and permitting pursuant to Chap. **19.28** RCW over Port property used for airport purposes. The parties agree that the Department of Labor and Industries will perform electrical inspections and permitting on Port property for projects for airport purposes. The City anticipates that it will amend Chap. **13.10** SeaTac City Code by no later than December **31, 2000** to remove its jurisdiction over electrical inspections and **permitting on** Port property used for airport purposes.

5. **Termination of 1992 ILA** – The 1992 ILA is terminated.
6. **Amendment of 1997 ILA** – To the extent that the 1997 ILA and any Policies and Procedures for adoption of the 1997 ILA are inconsistent with the terms of this Agreement, they are amended by the terms of this Agreement. The following provisions of the 1997 ILA are amended to be consistent with the intent and terms of this Agreement: paragraphs 2.3.3, 2.3.4 of exhibit A and paragraph 18.1 of exhibit C.

Surface water management (SWM) issues

7. **Dismissal of SWM fee litigation** - In consideration for the terms of this Agreement, the Port agrees to dismiss with prejudice Port of Seattle v. City of SeaTac, King County Superior # 99-2-52918-9KNT and without prejudice Port of Seattle v. City of SeaTac, King County Superior # 00-2-11509-1KNT. The Port agrees to not refile these actions during the term of this Agreement. —————
8. **Port payment of current SWM fees** - During the term of this Agreement, the Port shall pay the City the annual sum of surface water management fees currently imposed by City ordinance # 93-1045 (current amount of annual SWM fees, approximately \$443,000).
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10. **Port acquisition of real property that contributes flows to the Port surface water management system** – The parties recognize that when the Port acquires real property within the City that contributes flows to the Port surface water management system, then the City will no longer receive the SWM fees that were paid by the private property owner and that as a consequence of that revenue loss, it may need to raise the amount of SWM fees paid by other property owners within the City. If the Port acquires real property within the City, and because of this acquisition, triggers the need for the City to raise its SWM fees to other property owners by a significant amount over the current fee amount, then the Port and the City will enter into party consultation under paragraph 11.1.1 of the 1997 ILA to determine how much the Port will pay to mitigate the financial impacts to the City SWM fee program.
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If the Port redevelops the property, the parties will determine the appropriate rate classification for the new development under the provisions of the City SWM fee ordinance.

### **Uniform Codes implementation**

12. ***Port administration of Uniform Codes*** - For Port projects that are defined as "airport uses" *under state law*, as defined by the 1997 **ILA**, the terms of this Agreement shall apply. The Port shall administer and implement the Uniform Codes defined in Chap. 19.27 RCW (building, mechanical, and plumbing permits) as adopted by the City in Chap. 13.01, .06, .07, .08, and .09 City of SeaTac Code for developments on Port property;
13. ***Amendments and Updates of Uniform Codes*** - The Port will adopt the Uniform Codes defined in Chap. 19.27 RCW-(building, mechanical, and plumbing permits) as adopted by the City in Chap. 13.01, .06, .07, .08, and .09 City of SeaTac Code for developments on Port property. The Port will adopt updates of the Uniform Codes when these codes are updated by the State Building Codes Council. Prior to the City amending its codes, the parties shall mutually consult as to application of the amendment to Port projects pursuant to this Interlocal Agreement.
14. ***City oversight of Uniform Codes implementation*** - The City may review the professional qualifications of the Building Official, confer with the Port about enforcement and administration of the Uniform Codes and provide updates to the Uniform Codes as adopted by the Port.
15. ***City administers and enforces Uniform Code and the electrical code in Chap. 19.28 RCW for non-airport uses*** - The provisions of this Agreement shall not apply to Port uses that are not "airport uses" under state law, as defined by the 1997 **ILA**. For developments on Port property that are not "airport uses" under state law, including stand-alone projects, such as the **SeaFirst** Bank (now Bank of America) and the Bai Tong restaurant, the City shall administer and implement the Uniform Codes and the electrical code under Chap. 19.28 RCW, Chap. 19.27 RCW and the SeaTac City Code.
16. ***Transition of Uniform Codes administration from the City to the Port*** - The City and the Port will identify the projects currently being reviewed by the City for compliance with the Uniform Codes and will determine which of those projects will continue to be reviewed by the City and which of those projects will be reviewed by the Port. The parties will make good faith efforts to complete the transition of the Uniform Codes administration from the City to the Port by January 1, 2001.
17. ***Mitigation of staff reductions*** - As a result of this Agreement the City anticipates the need to layoff an undetermined number of current City employees engaged in the review of the Port's building program. The Port has not yet determined how and to what level it will staff its oversight and administration of uniform building codes on Port projects as called for in the Agreement. The work may be performed by Port

employees, by consultants, or by a combination of the two. The Port will make a good faith effort to employ directly or by contract, the City employees affected by this agreement.

### Other

- 18. *Hold harmless and indemnification*** - The Port will defend, indemnify and hold harmless the City from all liability, claims, damages, losses, and expenses, whether direct or indirect arising out of the performance of this Agreement which are caused, in whole or in part, by any act or omission of the Port in the administration and implementation of the Uniform Codes under Chap. 19.27 RCW. In addition, the Port will indemnify and hold harmless the City from all liability, claims, damages, losses, and expenses, including costs and attorneys fees that may arise out of any challenges to the legality of this agreement, provided, that this hold harmless and indemnity provision does not apply to any claim, grievance, or cause of action that relates to or arises from the employment relations of the City. This proviso includes but is not limited to any claim, grievance, or cause of action brought by or on behalf of, or relating to those employees subject to layoff as a result of the transfer to the Port of the authority to administer uniform building codes on Port projects. This proviso applies even if such claim, grievance, or cause of action includes or is based on a challenge to the validity of this Agreement. The obligations of this paragraph shall not be construed to negate, abridge, or otherwise reduce any other right or obligation which would otherwise exist as to any person or entity described in this paragraph.

For the purposes of this paragraph only, the term "Port" shall mean and include the Port and its commissioners, other officers, employees, and agents, and the term "City" shall mean and include its council members, other officers, employees, and agents.

- 19. *Construction*** - Any inconsistencies between the terms of this Agreement, the 1992 and 1997 ILAs and any Policies and Procedures for implementation of the 1997 ILA shall be resolved in favor of this Agreement.
- 20. *Termination for cause*** - Either the Port or the City may terminate this agreement for good cause. "Good cause", for the purposes of this clause, is defined as a material failure to comply with the terms of this agreement.
- 21. *Development Review process*** - The Port will continue to submit information concerning projects to the City under the "Development Review Process" as set forth in the proposed "Development Review Procedures" with the exception that the Port, rather than the City, will provide the review and approval of the projects under the Uniform Codes. Once the "Development Review Process" is amended it will be attached as exhibit A to this Agreement.
- 22. *Project notice*** - The Port will provide "project notice" to the City as provided for in paragraph 2.3.1.2 of exhibit A of the 1997 Interlocal Agreement for Port projects,

except that the Port, rather than the City, will provide the review and approval under the Uniform Codes.

23. **Coordination and communication** - The Port will provide quarterly updates to the City Council and will provide monthly updates to the City Public Works Director about the Port's capital program.
24. **Authority** - The terms and conditions of this Agreement are binding on both parties. Each party represents and warrants that it has the authority to undertake the obligations of this Agreement and has undertaken all actions necessary to authorize this Agreement as binding.
25. **Jurisdiction** - By entering into this Agreement, the City recognizes the Port has concurrent authority to administer the Uniform Codes under Chap. 19.27 RCW pursuant to the Revised Airports Act, Chap. 14.08 RCW, the Airport Zoning Act, Chap. 14.12 RCW, certain port district enabling statutes in Chap. 53.04 and .08 RCW and other applicable provisions of state law to administer and enforce the Uniform Codes on Port property used for airport purposes. The parties agree that the Port will exercise its jurisdiction over airport work and the City will defer to the Port's exercise of its jurisdiction for the term of this Agreement.
26. **Written amendments** - Any amendment to this Agreement shall be in writing and shall be signed by both parties with the same formalities as the original Agreement.
27. **Governing law** - The Agreement shall be governed by the laws of the state of Washington.
28. **Severability** - The Agreement shall be interpreted to the full extent authorized by law as an exercise of each party's authority to enter into Agreements. If any provisions of this Agreement are declared unenforceable or invalid by a court of law, then the parties shall diligently seek to modify this Agreement (or seek the court's determination of whether and how the Agreement is to be modified if the parties cannot reach Agreement) consistent with the parties' intent to the maximum extent allowable under law and consistent with the court decision. If there are changes in the applicable law, court decisions, or federal regulation or interpretations that make either party's performance of their Agreement impossible or infeasible, then the parties shall diligently seek to modify this Agreement consistent with their intent. In the event that part of the Agreement is invalidated, and the parties are unable to modify the remainder of the Agreement to effectuate their intent, then the Agreement shall become null and void.
29. **Dispute resolution** - The City and the Port agree to apply the dispute resolution provisions of paragraphs 11.1.1, 11.1.2, and 11.3 in the 1997 ILA for any disputes that may arise under this agreement.

Dated: \_\_\_\_\_

PORT OF SEATTLE, a Washington  
municipal corporation

By: *[Signature]*  
Its: Executive Director

Dated: \_\_\_\_\_

CITY OF SEATAC, a Washington  
municipal corporation

By: *[Signature]*  
Its: C. City Manager

Approved as to form:  
*[Signature]*  
SeaTac City Attorney

Approved as to form:  
*[Signature]*  
Port of Seattle Counsel

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