

RESOLUTION NO. 3664

A RESOLUTION of the Port Commission of the Port of Seattle approving the First Amendment of the Interlocal Agreement between the City of Auburn and the Port of Seattle to transfer approximately 55 acre feet of surplus floodplain storage credit to the City of Auburn and authorizing conveyance of a permanent easement to the City of Auburn.

WHEREAS, on March 18, 1998, the Port of Seattle (“Port”) and the City of Auburn (“City”) entered into an Interlocal Agreement (“ILA”) regarding wetland construction, infrastructure improvements and property transfer on the real property (“Property”) located in the City and purchased by the Port to provide off-site mitigation of wetland impacts for the construction of the third runway at Seattle-Tacoma International Airport; and

WHEREAS, the Property is owned by the Port and described on the attached exhibit “A”; and

WHEREAS, the First Amendment to the ILA is attached as exhibit “B”; and

WHEREAS, the Port and the City anticipated that once the permitting process for the third runway was completed, Port would convey to the City excess flood storage capacity located on the Property that was not needed to mitigate adverse impacts from the construction of the third runway for mitigation of floodplain development and adverse floodplain impacts from other private development located in the City; and

WHEREAS, Chap. 39.33 RCW provides that the Port may “sell, transfer, exchange, lease or otherwise dispose of any property ... to the state or any municipality or any political subdivision thereof ... on such terms and conditions as may be mutually agreed upon....”; and

WHEREAS, RCW 39.33.020 allows the Port to declare real property surplus and no longer needed for port district purposes and to transfer a portion of the floodplain storage capacity credit to the City: and

WHEREAS, on December 28, 2011, a qualified appraiser estimated the value of the excess floodplain credit on the Property that would be conveyed to the City pursuant to the First Amendment to the ILA to be \$1,493,680; and

WHEREAS, the First Amendment to the ILA will transfer approximately 55 acre feet of floodplain storage credit to the City and retain approximately 11.2 acre feet of floodplain storage credit to accommodate future development on the Property; and

WHEREAS, the Port will convey a permanent easement to the City of Auburn on the Property for utilization of the floodplain storage credit; and


WHEREAS, the Port of Seattle Commission have discussed and considered the proposed property transfer in light of all comments by members of the public at the public hearing;

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


Section 1. The 55 acre feet of floodplain storage capacity located on the Property described in exhibit A is no longer needed for Port purposes and is declared surplus to Port needs.

Section 2. The Chief Executive Officer is authorized to take all steps and execute all documents necessary to execute the First Amendment to the ILA, in substantially the same form as shown in exhibit B, to transfer excess flood storage capacity located on the Property to the City and to convey a permanent easement to the City to allow the Property to be utilized for flood storage capacity.


ADOPTED by the Port Commission of the Port of Seattle at a regular meeting thereof, held this 10th day of JULY, 2012, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.




GAEL TARLETON



ROB HOLLAND

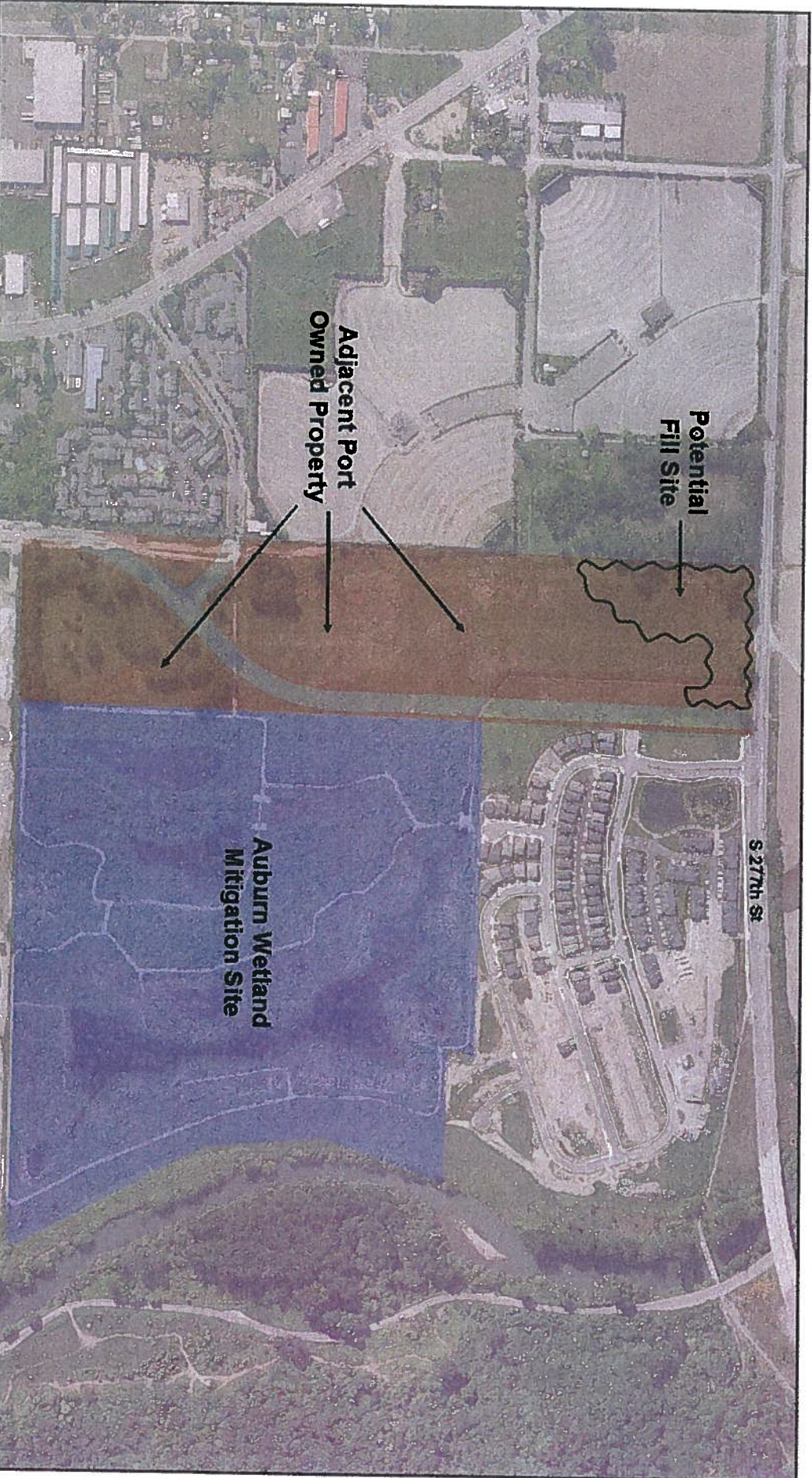


TOM ALBRO



BILL BRYANT

Port Commission



Auburn Wetland Mitigation Site and Adjacent Property

Exhibit A

**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

