

MEMORANDUM

To: Councilmember Herbold, Chair; Civil Rights, Utilities, Economic Development and Arts Committee
Councilmember Sawant; Vice-Chair
Councilmember O'Brien; Member

From: Peter Lindsay, Council Central Staff

Date: September 12, 2016

Subject: CB 118774 – Port of Seattle Interlocal Agreement

CB 118774 authorizes the Director of Seattle Public Utilities (SPU) to enter into an Interlocal Agreement (ILA) with the Port of Seattle (the port) to establish operational coordination and expectations regarding stormwater or drainage utility operations. In January 2015, the port established a stormwater utility pursuant to [RCW 53.08.040](#) and [RCW 53.08.043](#) to serve port-owned land within City limits. Prior to establishing its own utility, the port was SPU's second largest stormwater customer representing about \$4 million or 4.2 percent of total stormwater utility revenue. Rates for 2015 were already set assuming the port would continue to be an SPU customer. During the discussions with the City about the timing of the Port's departure as a customer, the City and port agreed on a settlement payment of \$3.9 million paid by the port to the City, reflecting anticipated port drainage fee revenue for 2015. The port's \$100,000 annual credit from SPU for in-kind services—documented in the 1997 City Port ILA—is terminated as part of the new ILA. Drainage rates for 2016-18 were set excluding the port from future revenue projections.

Background

Outside of City departments, SPU's next largest drainage utility customer was the Port of Seattle. Under Washington State law, port districts may form their own utilities for the purpose of supporting port-owned properties and functions. The Port of Seattle Commission authorized the port to create its own drainage utility effective January 1, 2015. The City and Port agreed that the Port would pay about a year's worth of drainage fees to minimize the impact of reduced revenue to rate payers. In addition, the City and port drafted an ILA to address the following issues:

- operating the interconnected stormwater systems;
- managing shared policy and technical issues of concern; and
- resolving and documenting property rights issues.

The City and the port shall revisit and update the ILA on a 5-year schedule to reflect changes to the National Pollution Discharge System permit system, other regulatory changes, and practical operations.

Facility Ownership

The City and port developed shared documents, attached to the legislation, identifying the physical location and ownership of all known connection points, as well as property rights. The “Seaport Stormwater and City of Seattle Connections Map Books” and Exhibit B “City-Port of Seattle Drainage System Connection Table” contain the comprehensive list of known stormwater connections between the port and the City including connection points and the status and next steps of any infrastructure or property issues requiring resolution. The few unresolved property issues are a consequence of aged infrastructure constructed prior to current land ownership, stormwater regulation, code requirements and permitting regimes. Exhibit B describes the agency responsible for taking the lead to clarify each unresolved property issue, activities to clarify physical location of infrastructure and the timing of future investigations and easement acquisition.

The Port will also need to obtain a term permit for operating a utility in City right of way.

Coordination and Dispute Resolution

The City and port will designate a representative as a point of contact and open communication between the parties. In the event that a disagreement arises, the designated representatives will meet to resolve the issue(s) amicably. If no resolution is reached, the issue will be elevated to the SPU Director and the port’s Stormwater Utility Director. If resolution still cannot be reached after a good faith negotiation, either party may request a neutral mediator from a professional mediation service to resolve the dispute. The mediator is selected upon common agreement and the parties shall share financial responsibilities for paying mediator fees.

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Passing the ordinance would authorize the SPU Director to sign the proposed ILA and formalize the exhibits attached to the legislation. Council would effectively agree with the legal premise that the port is within its rights, under state law, to create its own stormwater utility and the City will release all claims against the port based on any alleged invalidity of the creation or existence of the Port’s stormwater utility. In return, the port agrees to indemnify the City against any claims related to the establishment of the port’s new stormwater system.

Risks to the City of Seattle

As discussed earlier in the memo, the ILA includes data regarding points of connection between the City and port systems. In some cases there is (1) a need to confirm the physical location of the stormwater system, (2) a desire to transfer infrastructure ownership, and (3) a need to acquire easements. Exhibit C – “Stormwater Infrastructure Ownership Resolution and Seattle Public Utilities Easements Needed from the Port of Seattle” identifies and tracks the known property issues. Resolving the property issues will primarily require updating the map of connections, formally transferring assets, and executing easements. In addition to the property rights, there are differing conditions between municipal stormwater permits and certain industrial stormwater permits. The City is agreeing to work with the Port in cases where the differing permit conditions may require actions from the City. Furthermore, if the City needs to establish new connections to Port infrastructure, the City is agreeing to enter into a Connection Agreement with the Port at that time.

Conclusions

Central Staff have reviewed the legislation and found that both the Council Bill and supporting documents are consistent. The proposed ILA attempts to address a number of known risks to both the port and City stormwater utilities, clarify leadership roles and formalize next steps. To the extent that SPU and the port have thoroughly identified the risks, the ILA is a useful measure. Risks to the City principally involve entering into new connection agreements in the future, agreeing to work with the Port to resolve any mutual drainage concerns that are unknown at this time, and resolution of the ownership issues described earlier in the memo. Passing the ordinance will result in a \$3.9 million payment to the City of Seattle.

cc: Kirstan Arestad, Central Staff Executive Director