

1 **CITY OF SEATTLE**
2 **ORDINANCE 127057**
3 **COUNCIL BILL 120807**

4
5 AN ORDINANCE relating to Seattle Public Utilities; authorizing the General Manager and
6 Chief Executive Officer of Seattle Public Utilities, or designee, to execute an agreement
7 between Seattle Public Utilities and the King County Flood Control Zone District for the
8 South Park Interim Flood Preparedness and Response Program; amending Ordinance
9 126955, which adopted the 2024 Budget; changing appropriations to Seattle Public
10 Utilities; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City
11 Council.
12

13 WHEREAS, the Duwamish River flooded the South Park neighborhood in December 2022 due
14 to a combination of factors including higher-than-average tides, rain runoff, and melting
15 snow, damaging local homes and businesses; and

16 WHEREAS, the South Park neighborhood, which is home to low-income, immigrant, refugee,
17 and unsheltered people and is 74 percent people of color, has experienced previous
18 flooding, as well as environmental and health damages due to historical inequities and
19 industrial contamination; and

20 WHEREAS, the South Park neighborhood provides the bulk of the 6,900 jobs that are part of
21 Seattle’s Duwamish manufacturing/industrial center; and

22 WHEREAS, the King County Flood Control Zone District is a quasi-municipal corporation of
23 the State of Washington, authorized to provide funding and support for flood risk
24 reduction projects within King County; NOW, THEREFORE,

25 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

26 Section 1. The General Manager and Chief Executive Officer of Seattle Public Utilities,
27 or designee, is authorized to execute, for and on behalf of The City of Seattle, the agreement
28 between Seattle Public Utilities and King County Flood Control Zone District entitled Interlocal

1 Agreement for the South Park Interim Flood Preparedness and Response Program, attached to
2 this ordinance as Attachment 1.

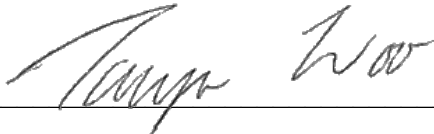
3 Section 2. To pay for necessary costs and expenses in 2024, but for which insufficient
4 appropriations were made due to causes that could not reasonably have been foreseen at the time
5 of the making of the 2024 Budget, appropriations for the following items in the 2024 Budget are
6 increased from the funds shown, as follows:

Item	Fund	Department	Budget Summary Level	Amount
2.1	Drainage & Wastewater Fund (44010)	Seattle Public Utilities	Utility Service and Operations (BO-SU-N200B)	\$1,473,000
Total				\$1,473,000

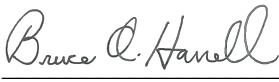
7
8 Section 3. Any act consistent with the authority of this ordinance taken after its passage
9 and prior to its effective date is ratified and confirmed.

1 Section 4. This ordinance shall take effect as provided by Seattle Municipal Code
2 Sections 1.04.020 and 1.04.070.


3 Passed by a 3/4 vote of all the members of the City Council the 16th day of
4 July, 2024, and signed by me in open session in authentication of its
5 passage this 16th day of July, 2024.

6 
7 President Pro Tem of the City Council

Approved / returned unsigned / vetoed this 22nd day of July, 2024.

8 
9 Bruce A. Harrell, Mayor

10 Filed by me this 22nd day of July, 2024.

11 
12 Scheereen Dedman, City Clerk

13 (Seal)

14 Attachments:
15 Attachment 1 – Interlocal Agreement for the South Park Interim Flooding Preparedness
16 Response Program

**INTERLOCAL AGREEMENT
FOR THE SOUTH PARK INTERIM FLOODING PREPAREDNESS AND RESPONSE
PROGRAM BETWEEN THE KING COUNTY FLOOD CONTROL ZONE DISTRICT
AND THE CITY OF SEATTLE**

THIS AGREEMENT FOR THE SOUTH PARK INTERIM FLOODING PREPAREDNESS AND RESPONSE PROGRAM located in the South Park neighborhood of the City of Seattle is entered into on the last date signed below (“Effective Date”), by and between the CITY OF SEATTLE, a Washington municipal corporation (“City”), and KING COUNTY FLOOD CONTROL ZONE DISTRICT, a quasi-municipal corporation of the State of Washington (“District”) (collectively, the “Parties”).

RECITALS

A. WHEREAS, the King County Flood Control Zone District is a quasi-municipal corporation of the State of Washington, authorized to provide funding and support for flood risk reduction projects within King County.

B. WHEREAS, the Duwamish River flooded the South Park neighborhood in December 2022, damaging local homes and businesses.

C. WHEREAS, the flooding was caused by a combination of factors including higher-than-average tides, rain runoff, and melting snow.

D. WHEREAS, before December 2022, the South Park neighborhood experienced previous flooding, as well as environmental and health damages due to historical inequities and industrial contamination.

E. WHEREAS, the South Park neighborhood is home to low-income, immigrant, refugee, and unsheltered people and is 74 percent people of color.

F. WHEREAS, a significant portion of the 6,900 jobs in the South Park neighborhood are in the industrial area (in the Greater Duwamish MIC).

G. WHEREAS, the District desires to partner with the City of Seattle to create a South Park Interim Flooding Preparedness and Response Program (“Project”).

H. WHEREAS, the Parties agree that time is of the essence in the implementation of this Agreement in order to enable the City to start developing and implementing the Project.

I. WHEREAS, King County is a service provider to the District under the terms of an Interlocal Agreement between the District and King County, and pursuant to that Agreement, King County provides contract management and technical expertise for the District for District-funded projects and will serve in this capacity for the Project.

AGREEMENT

Based upon the foregoing, the Parties agree as follows:

1. Incorporation of Recitals. All recitals above are hereby incorporated and ratified as part of this Agreement. The purpose of this Agreement is to memorialize the terms for funding the Project to mitigate the risk of flooding in the South Park neighborhood.

2. District Funding for Project. In exchange for the City’s execution of the Project, the District agrees to provide funding for the Project not to exceed the total amount of Two million and forty-one thousand dollars and no cents (\$2,041,000) (“Funds”), subject to the terms and conditions in this Agreement. Following the District’s approval of a Charter for the Project (as set out in Section 2.4), the Funds are to be available on a reimbursement basis (as set out in Section 9) for the Program as follows, subject to the terms and conditions in this Agreement:

2.1. \$1,786,000 of the Funds are allocated for the installation and maintenance of a temporary flood barrier in the South Park neighborhood, provided this amount shall be utilized as follows:

2.1.1. \$546,000 is available for the acquisition of six pumps;

2.1.2. \$110,000 is available for the acquisition of an operations staging trailer; and

2.1.3. \$1,130,000 is available to oversee and implement the interim flood preparedness and response program. Work includes purchase flood barrier materials, equipment and supplies; project management and oversight; store, stage, mobilize, demobilize and maintain the temporary equipment and supplies for the temporary and semi-permanent flood barriers; deploy, operate and maintain the pumps; deploy community sandbags; and obtain required permits and approvals.

2.2 \$255,000 of the Funds are allocated to support community preparedness, including the development of South Park-specific communication materials to increase an understanding of the flood risks in the South Park neighborhood, development of culturally appropriate public education and outreach of the flood risk in the South Park neighborhood, and engaging residents to provide input into near- and long-term flood risk reduction strategies.

2.3 Submission of a Charter. Before Funds are available to the City for the Project, the City shall prepare and submit for District approval a Project Charter in conformance with WLRD’s Project Management Manual. Work performed to prepare the Project Charter shall be eligible for District Funds, pursuant to the terms of this Agreement.

2.4 Charter’s Incorporation as Project Scope of Work. Upon the District’s approval of the Project Charter, the Charter shall be automatically incorporated into this Agreement as Exhibit B hereto, without further action by either party. The Funds shall only be used by the City for the performance of the Project as authorized by this Agreement including but not limited to Section 2.1 hereof, and specifically for those tasks identified in the Project’s Charter, attached hereto as Exhibit B, and incorporated herein by this reference. Modifications to and deviations from the Charter by the City shall require advance written approval from the District.

3. Term. This Agreement shall be effective upon mutual execution of this Agreement (“Effective Date”). The Agreement shall terminate upon completion of the tasks identified in the Project’s Charter or five (5) years from the Effective Date, whichever occurs first, unless earlier terminated in accordance with the terms of this Agreement; provided, if the District does not approve a Project Charter within two (2) years of the Effective Date, the Agreement shall automatically terminate.

3.1. The District may terminate this Agreement at any time by written notice to the City, provided that, unless termination is for cause, the City may continue to submit reasonable requests for reimbursement up to the amount of funds appropriated in an approved District budget for work that was performed prior to the date of termination, provided the City’s consultant contract(s) for this Project shall reflect and be consistent with the parties’ right to terminate this Agreement.

3.2. The City may terminate this Agreement at any time by written notice to the District, provided that the District shall have no obligation to provide Funds for work occurring after the date of termination.

3.3. The Funds were appropriated in the District’s 2023 Budget for a total of \$1,551,000.00. Additional Funds of \$490,000.00 were appropriated in the District’s 2024 Budget, bringing the total up to \$2,041,000.00. To the extent that the Project requires future appropriations or carryover to a future budget year by the District, the District’s obligations are contingent upon the appropriation of sufficient funds. If no such appropriation is made, this Agreement will terminate at the close of the appropriation year for which the last appropriation that allocated Funds under this Agreement was made.

4. Permitting and Compliance. At all times relevant to the City’s performance under the terms of the Agreement, the City shall comply with all applicable federal, state, and local laws and regulations. The City shall obtain and be responsible for all necessary local, state, and federal permits and approvals for the Project, and shall fully comply with all applicable requirements and conditions thereof.

4.1. Property Rights. The City shall obtain and be responsible for all necessary property rights, special use permits, easements, or property acquisitions. Access to private

properties for the Project is the sole responsibility of the City, and the District shall notify the City when District access to property is necessary to effectuate the District’s performance under this Agreement.

4.2. Project Administration. The City shall be solely responsible for compliance with all applicable laws and regulations pertaining to the Project, including but not limited to the consultant selection process and management of any contract advertisement, bidding, and award process.

4.3. Inspections. The District, including its service provider King County, may provide technical assistance to the City and coordinate with the City as required on work needed within King County jurisdiction. The District, including its service provider King County, shall have the right to inspect the City’s Project at the District’s request.

4.4. Discriminatory Practices Prohibited. Throughout the term of this Agreement, the City shall fully comply with all equal employment and nondiscrimination provisions of applicable local, state and federal laws.

5. Document Sharing. Upon completion of work, the City shall share with King County all studies, design materials, and supporting documentation concurrent with final billing. These materials may be used and/or referenced by King County to further improvements needed to address flooding in this location.

6. Impact on Other Reaches or Segments. The District and the City agree that the Project under this Agreement shall not have a detrimental effect on other reaches of the Duwamish River.

7. District Review. The City shall review and adhere to the requirements for service providers as set forth in District Resolution FCD 2021-16 and outlined in this Section 7. In addition, the City shall use the WLRD’s Project Management Manual (the “Manual”) as a guide for project management and documentation of the Project. The City shall provide such documentation to King County upon request. The City shall submit a Project Charter for review and approval by the District’s Executive Committee (which shall become Exhibit B hereto when approved) and shall request prior approval from the District’s Executive Committee for initiation of the Project. The City shall include in the Project Charter a schedule of the material and significant events and actions for the Project.

8. Retention and Review of Documents. The City agrees to maintain documentation of all planning, modeling, analysis, and design of the Project sufficient to meet District and state audit standards for a capital project, recognizing that the costs of the Project are paid for in whole or in part by the City and the District. The City agrees to maintain any additional documentation that is requested by the District. City contracts and internal documents shall be made available to

the District for review and/or independent audit upon request. The Parties shall retain all records in accordance with the Washington State Retention Schedules and shall comply with the Washington State Public Records Act, Ch 42.56.RCW. The City shall submit to the District the final report of this Project, in a form and with detail required by the District.

9. Payment of Funds. Subject to the following, the City may submit for reimbursement from District Funds of City's actual and reasonable costs and expenses as set out in Section 2 of this Agreement for work performed for the Project on or after July 11, 2023. Requests for reimbursement shall be submitted and reviewed consistent with the procedures, requirements and restrictions set out in this Agreement and the Manual.

9.1. No more than once per quarter, the City may submit requests for reimbursement of City actual and reasonable costs and expenses incurred on or after July 11, 2023, for the Project. The requests shall be in a form and shall contain information and data as required by the District. In connection with submittal of requests for reimbursement, the District may require the City to provide a status or progress report concerning submittal, preparation or completion of any document or work required by this Agreement.

9.2. The District shall review the requests to confirm that they are reimbursable and payable under this Agreement. The District shall endeavor to complete such review within thirty (30) days of receipt of a request in order to determine whether they are reimbursable and payable under this Agreement. The District shall forward a response to the requested reimbursement to the City within forty-five (45) days of the City's request.

9.3. The District may postpone review of a City request for reimbursement where all or any part of the request is unreasonable, inaccurate, or incomplete. The District shall notify the City of any unreasonableness, inaccuracies or incompleteness within thirty (30) days of receipt of the request. The City shall provide all additional information or data within thirty (30) days of the District's request for such additional information or data. If the request is still unreasonable, inaccurate, or incomplete in the opinion of the District, the dispute shall be resolved in accordance with the terms herein.

9.4. The District may postpone payment of any request for reimbursement, up to a maximum of five percent (5%) of the request, where the City is delinquent in submittal, preparation or completion of any document or work required by this Agreement.

10. General Provisions.

10.1. Third Parties. This Agreement and any activities authorized hereunder shall not be construed as granting any rights or privileges to any third person or entity, or as a guarantee or warranty of protection from flooding or flood damage to any person, entity or property, and nothing contained herein shall be construed as waiving any immunity to liability of the City, the

District or King County, granted under state statute, including Chapters 86.12 and 86.15 RCW, or as otherwise granted or provided for by law.

10.2. Liens and Encumbrances. The City acknowledges and agrees that it will not cause or allow any lien or encumbrance arising from or related to the Project authorized by this Agreement to be placed upon the real property interests of King County and the District. If such lien or encumbrance is so placed, King County and the District shall have the right to remove such lien and charge back the costs of such removal to the City.

10.3. Indemnification. To the extent allowed by law, including RCW 35.32A.090, the City shall defend, indemnify and hold harmless the District and King County, and all of their officials, employees, principals, agents and insurers, from any and all claims, demands, suits, actions, losses, costs, attorney fees and expenses, fines, penalties and liability of any kind, including but not limited to injuries to persons or damages to property, relating to, in connection with, or arising out of, whether directly or indirectly, or as a consequence of the City's performance under the Project and this Agreement, except to the extent of the District's own negligence.

The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under industrial insurance, Title 51 RCW, as respects the other Party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated.

The City's obligations under this Section shall survive any termination of this Agreement.

10.4. Insurance. The City shall require its contractors, subcontractors and agents to maintain insurance as required by the City in its standard contracts, and to name the District as an additional insured on their required insurance. The City shall also either require any professional services consultants, subconsultants, contractors or subcontractors to carry appropriate levels of Professional Liability insurance coverage during the course of design, engineering, and construction as the City may itself require or self-insure the work. Upon request, the City shall provide a letter evidencing its self-insured status. The City's obligations under this Section shall survive any termination of this Agreement.

10.4.1. The City's insurance coverage shall be primary insurance with respect to the District. Any insurance, self-insurance, or insurance pool coverage maintained by the District shall be in excess of the District's insurance and shall not contribute to it.

10.4.2. The City shall waive its rights of subrogation against the District for all claims and suits.

10.4.3. The coverage shall apply separately to each insurance against whom a claim is made or a suit is brought, except with respect to the limits of the insurer's liability.

10.4.4. Upon receipt of notice from its insurer(s), the City shall provide the District with notice of cancellation within three (3) days. It is hereby understood and agreed that the policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the District, by registered mail, of a written notice addressed to the Chair of such intent to cancel or not to renew. If the insurance is canceled or reduced in coverage, the City shall provide a replacement policy or this Agreement is immediately terminated.

10.4.5. The City's maintenance of insurance policies required by this Agreement shall not be construed to limit the liability of the City to the coverage provided in the insurance policies, or otherwise limit the District's recourse to any other remedy available at law or in equity.

10.4.6. The District reserves the right, during the term of the Agreement, to require any other insurance coverage or adjust the policy limits as it deems reasonably necessary utilizing sound risk management practices and principals based upon the loss exposures. Prior to imposing such additional coverage or adjusting existing required coverages or limits, the District shall provide reasonable notice to the City and an opportunity to provide comments, and the District shall review and consider such comments that are timely made.

10.5. Dispute Resolution. The Parties will seek to resolve any disputes under this Agreement as follows:

10.5.1. For disputes involving cost reimbursements or payments, submittal of all relevant information and data to an independent Certified Public Accountant or a Construction Claims Consultant, if agreed upon by the Parties, for a non-binding opinion as to the responsibility. The Parties shall mutually agree on the selection of such independent Certified Public Accountant or a Construction Claims Consultant.

10.5.2. If the foregoing does not result in resolution and for all other disputes, the Parties may mutually select any informal means of resolution and resort will otherwise be had to the Superior Court for King County, Washington. Each Party will be responsible for its own costs and attorney's fees in connection with the dispute resolution provisions of this paragraph.

10.6. Entire Agreement; Amendment. This Agreement, together with Exhibit A hereto, represents a full recitation of the rights and responsibilities of the Parties and may be modified only in writing and upon the consent of both Parties. Should any conflict exist between the terms of this Agreement and the terms of the Exhibits, this Agreement shall control.

10.7. Notices, Communications and Documents. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by either Party (collectively, "notices") shall be in writing and shall be validly given or made to the other Party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States Mail, certified, registered, or express mail with postage prepaid, or if sent by electronic mail. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given one business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given three business days after the deposit thereof in the United States Mail. If such notice is sent by electronic mail, it shall be deemed given at the time of the sender's transmission of the electronic mail communication, unless the sender receives a response that the electronic mail message was undeliverable. Each such notice shall be deemed given only if properly addressed to the Party to whom such notice is to be given as follows:

To City: Chris Hilton, Seattle Public Utilities
City of Seattle
700 Fifth Avenue, Floor 49
Seattle, WA 98104
Email: chris.hilton@seattle.gov

To District: Michelle Clark, Executive Director
King County Flood Control District
516 Third Avenue, Room 1200, W-1201
Seattle, WA 98104
Phone: (206) 477-2985
Email: Michelle.Clark@kingcounty.gov

10.8 Authority. The undersigned warrant that they have the authority duly granted by their respective legislative bodies to make and execute this Agreement. This Agreement will be approved and filed in accordance with Chapter 39.34 RCW.

10.9 Severability. If any word, article, section, subsection, paragraph, provision, condition, clause, sentence, or its application to any person or circumstance (collectively referred to as "Term"), shall be held to be illegal, invalid, or unconstitutional for any reason by any court or agency of competent jurisdiction, such term declared illegal, invalid or unconstitutional shall be severable and the remaining terms of the Agreement shall remain in full force and effect unless to do so would be inequitable or would result in a material change in the rights and obligations of the Parties hereunder.

10.10 No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between the City and the District. Neither Party is authorized to, nor shall either Party act toward Third Parties or the public in any manner which would indicate any such relationship with the other.

10.11 Force Majeure. In the event either party is prevented or delayed in the performance of any of its obligations herein due to circumstances beyond its control or by reason of a force majeure occurrence, such as, but not limited to, acts of God, acts of terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes, earthquakes, unusually severe weather conditions, employee strikes and unforeseen labor or availability of materials conditions not attributable to the City’s employees or agents, neither party shall be deemed in breach of provisions of this Agreement.

10.12 Venue/Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington. Any action brought relative to enforcement of this Agreement, or seeking a declaration of rights, duties or obligations herein, shall be initiated in King County Superior Court.

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall become effective on the last date signed below.

CITY OF SEATTLE

**KING COUNTY FLOOD CONTROL
DISTRICT**

By: _____
Bruce Harrell
Its: Mayor

By: _____
Reagan Dunn
Its: Board Chair

DATE: _____

DATE: _____

DISTRICT APPROVED AS TO FORM:

By: _____
Legal Counsel

Attest

NAME
City Clerk

EXHIBIT A – PROJECT VICINITY MAP SOUTH PARK NEIGHBORHOOD

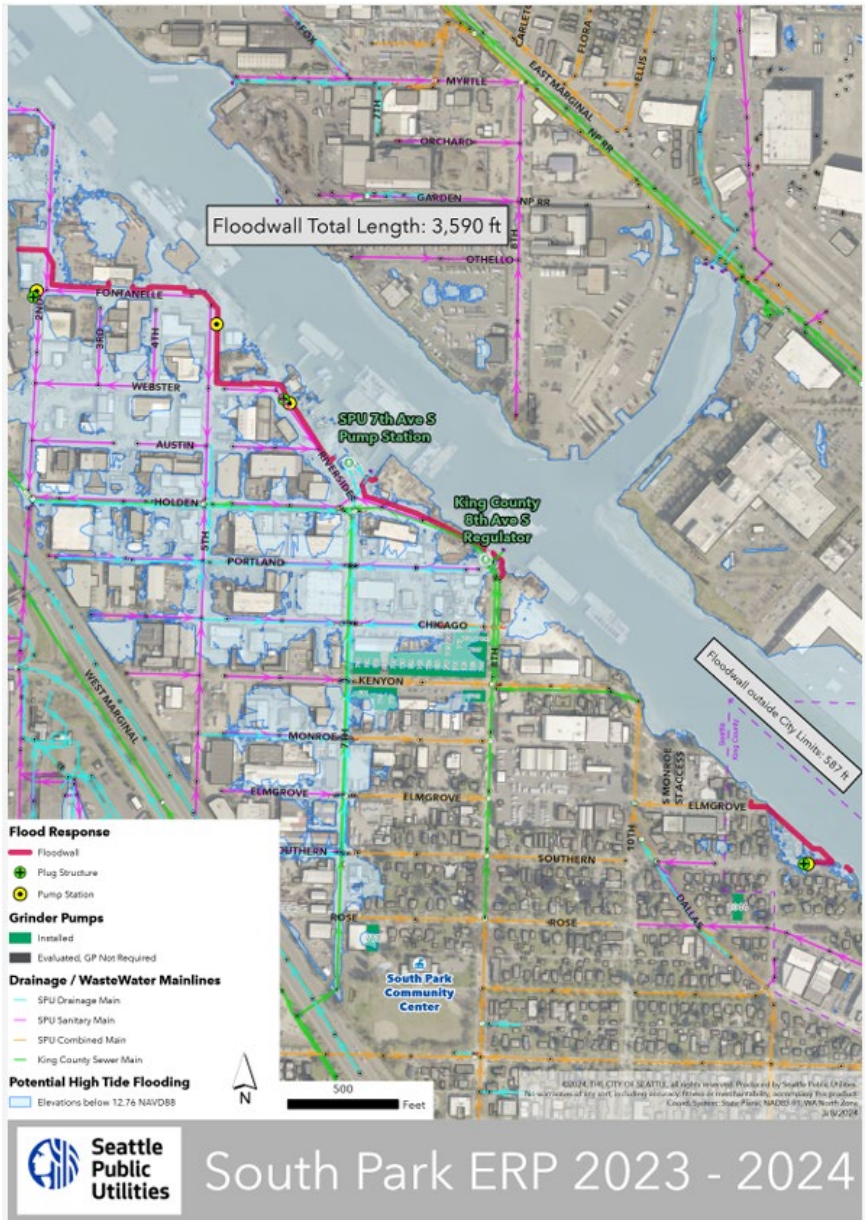


EXHIBIT B – PROJECT CHARTER

TO BE DEVELOPED PURSUANT TO ILA