

**CITY OF BURIEN
AGENDA BILL**

Agenda Subject: Discussion on Inter-Local Agreement (ILA) for Storage of Large Rocks on Port of Seattle Property		Meeting Date: March 14, 2011
Department: Public Works and Parks and Recreation & Cultural Svcs.	Attachments: 1. ILA with Port of Seattle 2. Map of location of Rock Storage Area	Fund Source: Parks & General Gov't CIP – Seahurst Park - North Shoreline Activity Cost: \$10,000 Amount Budgeted: \$2,762,500 (this amount includes funds for removal of rock wall to the POS property) Unencumbered Budget Authority: N/A
Contact: Larry Blanchard- Public Works Director		
Telephone: (206) 248-5514		
Adopted Initiative: Yes X No	Initiative Description: Seahurst Park North Seawall Removal / Beach Restoration	
<p>PURPOSE/REQUIRED ACTION: The purpose of this agenda item is to discuss the Inter-local Agreement between the City of Burien and the Port of Seattle (POS) to store rock from the removal of the seawall in Seahurst Park on POS property.</p> <p>BACKGROUND (Include prior Council action & discussion): This agreement is entered into pursuant to Chapter 39.33 RCW as of April 30, 2011, between the City of Burien (“City”) and Port of Seattle (“Port”), for the purpose of setting forth the terms and conditions under which the Port shall grant to the City use of Port property in the Northeast Redevelopment Area (NERA) for rock storage.</p> <ul style="list-style-type: none"> • The City and the Port entered into a Memorandum of Agreement in May, 2008 regarding joint planning work in the NERA in which the Port and the City agreed to work cooperatively to prepare a redevelopment plan for the airport-impacted property within the NERA. • This joint planning work resulted in NERA Redevelopment Plan and Implementation Strategy completed in April, 2010 (the “NERA Plan”). • The NERA Plan recommends that the City and Port cooperate in constructing a comprehensive stormwater management system to facilitate redevelopment of the entire NERA. • To that end, the City has identified materials from another City project that could be used in the construction of the NERA Stormwater Management System. • The City has requested the Port allow storage of approximately 8,900 tons of “2-3 man rock” on Port property in the NERA. • Storage of the 8,900 tons of rock would constitute a stockpile approximately 4’ high by 100’ wide and 100’ long. • Relocating the rock to another, non-Port-owned site would cost approximately \$250,000. • Purchasing this material for the NERA would likely cost \$250K including a hauling cost of \$250K the removal of the Seawall would total \$500K if the City and Port did not store the rock at this time. • Removal of the seawall in Seahurst Park is a joint City and the US Army Corps of Engineers (Corps) project. The cost to remove the wall includes the cost of preparing the POS site for storage. • Permits are ready to proceed with the project this fall, internal approval is necessary to proceed. <p>OPTIONS (Including fiscal impacts):</p> <ol style="list-style-type: none"> 1) Place the ILA on the next City Council Meeting for consideration. 2) Do not place the ILA on the next City Council Meeting for consideration. 		
Administrative Recommendation: Authorize the placement of the ILA on the March 28, 2011, City Council agenda for consideration.		
Committee Recommendation: N/A		
Advisory Board Recommendation: N/A		
Suggested Motion: None required.		
Submitted by: Larry Blanchard Administration	Mike Martin City Manager	
Today’s Date: March 10 th , 2011	File Code: R:/CC/AgendaBill2011/031411pw-1 ILA POS	

**INTERLOCAL AGREEMENT BETWEEN CITY OF BURIEN AND
PORT OF SEATTLE FOR USE OF PORT PROPERTY IN NORTHEAST
REDEVELOPMENT AREA FOR ROCK STORAGE**

THIS AGREEMENT is entered into pursuant to Chapter 39.33 RCW as of _____, 2011, between the City of Burien (“City”) and Port of Seattle (“Port”), for the purpose of setting forth the terms and conditions under which the Port shall grant to the City use of Port property in the Northeast Redevelopment Area (“NERA”) for rock storage.

RECITALS

A. The City and the Port entered into a Memorandum of Agreement in May, 2008 regarding joint planning work in the NERA in which the Port and the City agreed to work cooperatively to prepare a redevelopment plan for the airport-impacted property within the the NERA. This joint planning work resulted in NERA Redevelopment Plan and Implementation Strategy completed in April, 2010 (the “NERA Plan”).

B. The NERA Plan recommends that the City and Port cooperate in constructing a comprehensive stormwater management system to facilitate redevelopment of the entire NERA. To that end, the City has identified materials from another City project that could be used in the construction of the NERA stormwater management system.

C. The City has requested the Port allow storage of approximately 8,900 tons of “2-3 man rock” on Port property in the NERA. Storage of the 8,900 tons of rock would constitute a stockpile approximately 4’ high by 100’ wide and 100’ long.

D. The 8,900 tons of rock is from the seawall at Seahurst Park, which will be removed as part of a shoreline improvement project by the City and the Army Corps of Engineers. Relocating the rock to another, non-Port-owned site would cost approximately \$250,000.

E. It is anticipated that the 2-3 man rock will be used to construct the NERA stormwater management system, including re-aligning and re-lining the Miller Creek channel to restore the wetlands, enhance the water quality, and improve the habitat of Miller Creek. Purchasing this material for the NERA stormwater management system project would likely cost approximately \$250,000 in addition to the \$250,000 hauling costs identified above, for a total estimated cost of \$500,000 that would be required if the City and Port did not take advantage of obtaining and storing the rock at this time.

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

AGREEMENT

1. Authorization for Use of the Property. In consideration of and subject to the terms and conditions set forth herein, the Port grants to the City the right to store approximately 8,900 tons of 2-3 man rock from the Seahurst Park improvement project on approximately ten thousand (10,000) square feet (the "Leased Premises") of Port property located at 14239 Des Moines Memorial Drive South, King County Tax Lot Number 1723049198. The Leased Premises are shown on Exhibit "A" attached hereto and incorporated herein and the property (the "Property") of which the Leased Premises is a part is legally described as follows:

S 1/2 OF SE 1/4 OF SE 1/4 LY W OF DES MOINES WAY S LESS N 173 FT LESS BEG NW COR THOF TH E 415 FT TO TPOB TH CONTG E TO C/L OF DES MOINES WAY S TH S ALG SD C/L TAP 30 FT N OF S MGN SD SUBD TH W 225 FT TH N 298.77 FT M/L TO S MGN OF N 322.30 FT OF S 1/2 OF SE 1/4 OF SE 1/4 TH W TAP S OF TPOB TH N TO TPOB LESS LESS SLY 30 FT.

The Port disclaims any and all warranties, express or implied, of any kind whatsoever (except as otherwise provided herein), including, but not limited to, warranty of fitness for a particular purpose, in connection with the Property or this Agreement.

2. Term;Extension Options. The term of this Agreement shall be for two (2) years from the date of this Agreement (the "Term"), unless extended as provided below.

The City shall have two (2) successive options to extend the Term of this Agreement (herein referred to individually as an "Extension Option") for an additional period of six (6) months for each option (herein referred to individually as "Extension Term") on the same terms, covenants, and conditions, except that no additional options to extend shall apply following the extension of the second Extension Term. Written notice of the City's exercise of the Extension Option for each Extension Term must be given to the Port no less than three (3) months prior to the expiration of the then-current Term.

If upon the expiration of this Agreement, the City elects to retain some or all of the materials, the City shall remove, at its sole cost and expense, such materials within a reasonable time, but in no event later than ninety (90) days thereafter and shall return the Property to its prior condition.

3. Termination. Either party may terminate this Agreement by giving one hundred eighty (180) days prior written notice to the other. Upon any such termination, the City shall be required to remove, at its sole cost and expense, all the stored materials and return the Property to its prior condition by the effective date of the termination.

Notwithstanding anything herein to the contrary, if either party breaches the terms and conditions of this Agreement and such violation continues for thirty (30) days after written notice of such violation, the nonbreaching party may terminate this Agreement at any time thereafter, and the parties shall have no further obligation to each other.

4. Consideration. The consideration to the Port for the City's use of the Property for rock storage shall be the Port's benefit from and cost savings associated with reuse of the rock to construct the NERA stormwater management system project, including re-aligning and re-lining the channel of Miller Creek for wetland restoration, enhancement of water quality, and

improvement of the habitat. The parties acknowledge that the value of the rock is approximately \$250,000, and removing the rock to another location outside Burien could cost an additional \$250,000, for an approximate total of \$500,000.

5. **Condition of the Property.** The City agrees that the Property is in acceptable condition for the storage of rock as set forth in this Agreement, and the City further agrees that neither the City nor its contractors shall commit damage or waste, or permit damage or waste to be committed, on or to the Property.

6. **Safety, Security, and Responsibility for Damage.** The City agrees that it shall be responsible for safety and security of the City's use of the Property and that the City's use of the Property shall be at the City's sole risk. The City further agrees that it shall be responsible for all damage or waste to the Property that may result from the City's use of the Property in connection with this Agreement.

7. **Applicable Land Use Approvals and Permits.** The City shall be responsible for obtaining all required land use approvals and permits for the storage of the 8,900 tons of 2-3 man rock on the Property. Any conditions or required work as a result of the land use approval or the issuance of the permits for the rock storage shall be the responsibility of the City. Any monitoring or testing shall be the responsibility of the City. All test results required as a condition of the permitting shall be submitted to the Port upon the Port's request.

8. **Compliance with Laws, Rules and Regulations.** The City agrees to comply with all applicable laws, rules and regulations of local, state and federal government agencies with jurisdiction over the City's use of the Property.

9. **Indemnification.**

A. The City agrees to indemnify the Port from any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage and bodily injury, including death, caused solely by the negligence or willful misconduct of the City and its contractors or agents in connection with this Agreement.

B. The Port agrees to indemnify the City from any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage and bodily injury, including death, caused solely by the negligence or willful misconduct of the Port and its contractors or agents in connection with this Agreement.

C. If negligence or willful misconduct of both the Port and the City (or a person identified above for whom each is liable) is a cause of such damage or injury, the loss, cost or expense shall be shared between the Port and the City in proportion to their relative degrees of negligence or willful misconduct and the right of indemnity shall apply for such proportion.

D. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of any liability caused by or resulting from the concurrent

negligence of the City and the Port, each party's liability shall be only to the extent of its negligence.

10. Insurance. The City shall procure and maintain in full force throughout the duration of the Agreement comprehensive general liability insurance with a minimum coverage of \$1,000,000 per occurrence/aggregate for personal injury and property damage. In the event that a party is a member of a pool of self-insured governmental entities, the party shall provide proof of such membership in lieu of the insurance requirement above upon request for such proof from the other party. Such self-insurance shall provide coverage equal to or greater than that required of non-self insurance pool parties to this Agreement.

11. Notice. Any notice given by either party to the other under the provisions of, or with respect to, this Agreement, shall be in writing, delivered in person or by certified or registered mail to the following addresses:

City: City of Burien
400 S.W. 152nd Street
Burien, WA 98166
ATTN: City Manager

Port: Port of Seattle
Post Office Box 68727
Seattle, WA 98168
ATTN: Managing Director of the Airport

Or to such other address(es) as each party hereto may notify the other in writing.

12. Entire Agreement. The parties agree that this Agreement sets forth completely the terms of the parties' agreement and understanding, that this Agreement supersedes any and all prior agreements or understanding, both oral and written, and that this Agreement cannot be modified without the express written consent of all parties hereto.

13. Counterparts. This Agreement may be signed in counterpart originals.

14. Filing. A copy of this Agreement shall be filed with the King County Auditor.

15. Dispute Resolution. If a dispute arises from or relates to this Agreement or the breach thereof, the Managing Director of the Airport and the City of Burien City Manager shall attempt to resolve the dispute through direct discussions. If the dispute cannot be resolved through discussions, the parties agree to endeavor first to attempt to settle the dispute in an amicable manner by mediation administered by a mediator under the American Arbitration Association Rules. The mediator shall be selected by agreement of the parties. All fees and expenses for mediation shall be borne by the parties equally. Each party shall, however, bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. If the dispute cannot be resolved through mediation, the parties agree to attempt to settle the dispute by arbitration administered by the American Arbitration Association Rules, and in accordance with the applicable provisions of

RCW Title 7. The arbitrator may be selected by agreement of the parties. All fees and expenses for arbitration shall be borne by the parties equally. Each party, however shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

16. Applicable Law; Venue; Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington.

PORT OF SEATTLE

By _____
Tay Yoshitani, Chief Executive Officer

Dated this _____ day of _____, 2011.

CITY OF BURIEN,

By _____
Mike Martin, City Manager

Dated this _____ day of _____, 2011.

APPROVED AS TO FORM

By _____
Name: _____
Title: City Attorney, City of Burien

ATTEST:

By _____
Name: _____
Title: City Clerk, City of Burien

Attachment 2

**Map of location of Rock
Storage Area**

Pages 19 – 20

**Will be provided at the
meeting**

