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Aaron Blumenthal
CBO Bell Harbor Marina ORD
October 29, 2014
Version #1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 118281

AN ORDINANCE relating to the Bell Harbor Marina; authorizing the Mayor to execute a Termination of Agreement and Release of the Memorandum of Understanding between the City and the Port of Seattle for the operation and maintenance of the marina; and ratifying and confirming prior acts.

WHEREAS, since 1994, the Port of Seattle ("Port") has operated the Bell Harbor Marina ("Marina") pursuant to a Memorandum of Understanding ("Agreement") with the City that was part of a plan extending back to the 1980s to stimulate economic development in the area near Piers 63 and 66 on the Seattle Central Waterfront; and

WHEREAS, the Agreement provides that the Port will operate and maintain the Marina and that the City and Port will share in the costs of major maintenance for the facility, the City's share being 30%; and

WHEREAS, the Agreement contains no termination date but does provide for re-evaluation of the parties' financial contribution prior to the 25th anniversary of the commencement of Marina operations; and

WHEREAS, since 2010, the City and Port have engaged in discussions concerning the Marina's operations and current and future capital maintenance needs and have determined that it is in their mutual best interests to terminate the Agreement and for the Port to assume responsibility for future operations and maintenance; and.

WHEREAS, the City and the Port wish to memorialize their agreement, including the City's commitment to satisfy and terminate its current and future major maintenance obligations by paying the Port that sum of money described in Attachment 1 to this ordinance; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Mayor or his designee is designee is hereby authorized to execute, deliver, and perform, for and on behalf of The City of Seattle, an agreement ("Agreement") substantially in the form of the agreement attached hereto as Attachment 1 and identified as

"Termination of Agreement and Release," that will terminate the November 21, 1994, Memorandum of Understanding between the City and the Port of Seattle for the operation of the Bell Harbor Marina for the consideration stated in the Agreement, subject to the parties' compliance with the conditions of the Agreement.

Section 2. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2014, and signed by me in open session in authentication of its passage this _____ day of _____, 2014.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2014.

_____

Edward B. Murray, Mayor

Filed by me this ____ day of _____, 2014.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachments

Attachment 1: TERMINATION OF AGREEMENT AND RELEASE

TERMINATION OF AGREEMENT AND RELEASE

THIS TERMINATION OF AGREEMENT AND RELEASE is executed this ____ day of _____, 2014, by the PORT OF SEATTLE ("Port") acting through its Executive Director, and the CITY OF SEATTLE ("City") acting through the Mayor of Seattle.

RECITALS

On November 21, 1994, the City and the Port executed that certain Memorandum of Understanding ("Agreement"), a copy of which is attached hereto, concerning the development and operation of a public moorage facility commonly known as the Bell Harbor Marina ("Marina") between Piers 63 and 66 on the Seattle Central Waterfront.

The Agreement provides that the Port will operate and maintain the Marina and that the City and Port will share in the costs of major maintenance for the facility.

The Agreement contains no termination date but does provide for re-evaluation of the parties' financial contribution prior to the 25th anniversary of the commencement of Marina operations.

Since 2010, the City and Port have engaged in discussions concerning the Marina's operations and current and future capital maintenance needs and have determined that it is in their mutual best interests to terminate the Agreement and for the Port to assume responsibility for future operations and maintenance.

The City and the Port wish to memorialize their agreement, including the City's commitment to satisfy its outstanding and future major maintenance obligations by paying the Port the amount of $2 million, as set forth below.

AGREEMENT

NOW, THEREFORE, the City and Port agree as follows:

1. **Termination**. The City agrees to pay the Port the sum of $2 million in two equal installments, payable January 1, 2015, and January 1, 2016. Upon payment of the second installment (the "Termination Date") the Agreement, including all of the rights, privileges and burdens thereunder, shall terminate and shall thereafter be of no further force and effect.

2. **Release.** On the Termination Date, the City and the Port shall be released from all remaining obligations under the Agreement.

3. **Indemnification.** From and after the Termination Date, the Port agrees to indemnify, release and hold the City harmless from any claims or liabilities of any nature whatsoever arising out of changes to the Marina's moorage design included in the building permit application for the Marina filed October 12, 1993.

4. **Authority.** Each signatory of this Termination of Agreement and Release represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting.

5. **Counterparts.** This Termination of Agreement and Release may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument.

6. **Governing Law; Interpretation.** This Termination of Agreement and Release shall be construed in accordance with the laws of the State of Washington and shall be construed by a fair and reasonable interpretation of the words used in it without regard to which party drafted or caused to be drafted the provision or provisions.

PORT OF SEATTLE

By _____
Ted Fick
Chief Executive Officer

CITY OF SEATTLE

By _____
Edward B. Murray
Mayor

Aaron Blumenthal
CBO Bell Harbor FISC
October 29, 2014
Version #1

Form revised: February 26, 2014

FISCAL NOTE FOR CAPITAL PROJECTS ONLY

Department:	Contact Person/Phone:	CBO Analyst/Phone:
City Budget Office	Aaron Blumenthal 3-2656	3-2656

Legislation Title: AN ORDINANCE relating to the Bell Harbor Marina; authorizing the Mayor to execute a Termination of Agreement and Release of the Memorandum of Understanding between the City and the Port of Seattle for the operation and maintenance of the marina; and ratifying and confirming prior acts.

Summary and background of the Legislation:
In 1994, Mayor Norm Rice signed an MOU with the Port of Seattle obligating the City to fund construction of Bell Harbor Marina and share a portion of major maintenance costs into the future. The City contributed $1.7 million from the Cumulative Reserve Subfund in 1995 toward construction costs. Under the MOU, the Port was obligated to cover major maintenance from operating revenue, and where costs could not be recovered, the City and Port would enter into a cost share for maintenance, where the City pays 30% of total maintenance costs. The City's share was also not to exceed predetermined caps set over two ten-year periods and one five-year period starting in 1996. Total cap over the 25 year period was $3.8M in 2014 dollars. The Port was obligated but failed to provide the City with proper documentation prior to requests for funding, at least through 2012.

Since 2012, the Port provided financial detail showing no contributions to the major maintenance fund for the marina, and requested the City contribute its 30% cost share for past and future maintenance needs, totaling between $3 million and $4 million dollars, depending on inflation factors and year of expenditure. In meeting the interests of both parties to preserve the marina and honor the spirit of the original agreement, the City and the Port agreed to exit the current MOU, with the City additionally contributing $2 million for maintenance over two years.

Project Name:	Project I.D.:	Project Location:	Start Date:	End Date:
Bell Harbor Marina	K732491	2203 Alaskan Way S	Q1 2015	Q4 2016

Please check any of the following that apply:

____ **This legislation creates, funds, or anticipates a new CIP Project.**

____ **This legislation does not have any financial implications.**

_X_ **This legislation has financial implications.**

Appropriations:

Fund Name and Number	Department	Budget Control Level*	Proposed 2015 Appropriation	New 2015 Appropriation (if any)	2016 Anticipated Appropriation
	Parks and Recreation	K72447 – Docks/Piers/ Floats/Seawa lls/Shorelines	1,000,000		1,000,000
TOTAL			**1,000,000**		**1,000,000**

**See budget book to obtain the appropriate Budget Control Level for your department.*

Appropriations Notes:
This project is included in the 2015-19 Proposed CIP budget, and will not need additional appropriations if adopted.

Spending Plan and Future Appropriations for Capital Projects (000s):

Spending Plan and Budget	2014	2015	2016	2017	2018	2019	Total
Spending Plan		1,000	1,000				**1,000**
Current Year Appropriation							
Future Appropriations							

Spending Plan and Budget Notes:

Funding Source: *REET I*

Funding Source (Fund Name and Number, if applicable)	2014	2015	2016	2017	2018	2019	Total
REET I		1,000	1,000				
TOTAL		**1,000**	**1,000**				

Funding Source Notes:

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
No.

b) **What is the financial cost of not implementing the legislation?**
If this legislation is not implemented, the City and the Port may need to resolve this dispute through litigation, possibly resulting in a judgment that may be more than $2 million.

c) **Does this legislation affect any departments besides the originating department?**
No.

d) **What are the possible alternatives to the legislation that could achieve the same or**

similar objectives?
None.

e) **Is a public hearing required for this legislation?**
No.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.

g) **Does this legislation affect a piece of property?**
No.

h) **Other Issues:**

List attachments to the fiscal note below:

City of Seattle
Edward B. Murray
Mayor

November 4, 2014

Honorable Tim Burgess
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill that commits $2 million in capital funding to support one-time facility maintenance on the Bell Harbor Marina. These funds are included in my 2015-2016 Proposed Budget. This Bill also introduces an agreement between the Port of Seattle and the City of Seattle for both parties to exit the ongoing Memorandum of Understanding obligating additional maintenance funding from the City to the Port.

The City and the Port entered into a cost-sharing agreement to fund ongoing capital and maintenance of the Bell Harbor Marina in 1996, requiring the City to pay 30% of all costs not recovered through the operations of the marina. The agreement required the Port to provide financial and design information to the City in advance of any proposed maintenance, as well as contribute all available revenues from marina fees to maintenance needs, after operating costs were recovered.

In 2012, the Port contacted the City and requested funding to support past and planned maintenance projects. As of June 2014, these projects were estimated to cost at least $2.5 million, and if paid in 2014, would be capped at $3.8 million under the limits set forth in the MOU. The City and the Port agreed that a one-time contribution of $2 million from the City to the Port, as well as termination of the agreement and all future City obligations to support the marina represented a mutually agreeable outcome.

The funding and termination agreement made available by this Council Bill supports both parties' interests in the ongoing operation of the Bell Harbor Marina, as well as clarifying the future obligations of the City to support Port activity at this site.

Thank you for your consideration of this legislation. Should you have questions, please contact Aaron Blumenthal at 233-2656.

Sincerely,

Edward B. Murray
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

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