

RECORDING REQUESTED BY AND WHEN
RECORDED RETURN TO:

KING COUNTY
WASTEWATER TREATMENT DIVISION
MAILSTOP: KSC-NR-0512
20I SOUTH JACKSON STREET
SEATTLE, WA 98104-3855

Document Title:	Utility Easement
Grantor(s):	City of Seattle
Grantee:	King County
Abbreviated Legal Description:	NE 1/4 OF NE 1/4 LESS POR FOR CAPEHART HOUSING SITE AS DESC IN SURVEY REC # 20050124900001 & AFF OF CORRECTION REC #20060403002230
Additional Legal Description is on Page:	EXHIBIT “A”
Assessor’s Tax Parcel Number(s):	1625039001

UTILITY EASEMENT

WHEREAS, **King County** (“Grantee”) is a political subdivision of the State of Washington and is authorized by Chapter 8.12 RCW, RCW 35.58.320, 35.58.200 and 36.56.010, K.C.C. 28.01.030 and 28.81.010 to acquire and condemn real property for public use for sewage treatment and water pollution abatement facilities; and

WHEREAS, the **City of Seattle** (“Grantor”) is the owner of certain real property, known as Discovery Park more particularly described in **EXHIBIT A** and depicted in **EXHIBIT D** which is attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, the Grantee owns and maintains an underground reservoir water supply facility, located within Discovery Park which provides water to the King County West Point waste water treatment plant, as well as potable water to the park’s lighthouse facility, beach drinking fountain; and

WHEREAS, the underground reservoir facility’s installation, building, easement, and operation pre-dates ownership by the City of Seattle or use of Fort Lawton’s as Discovery Park; and

WHEREAS, Initiative 42, as adopted by Ordinance 118477, allows a “sub-surface or utility easement compatible with park use” and this easement is for an emergency underground overflow pipeline in the rare event of reservoir mechanical failure; and

WHEREAS, Grantee must update its reservoir building with the required separation of incoming water from the supply line and an emergency overflow channel, to be in compliance with updated State Regulations (the “Project”); and

WHEREAS, it is necessary for Grantee to acquire limited permanent subsurface and surface easements granting King County and its successors and assigns the right to install, construct, own, operate, maintain, use, upgrade, repair certain underground utilities and surface overflow diversion structure, including, without limitation, pipelines, ducts, vaults, manholes, vents, monitoring equipment, and other necessary and convenient equipment and appurtenances, including, but not limited to, all utility lines or equipment servicing said pipelines and related equipment and appurtenances (hereinafter sometimes referred to collectively, as “Easement Improvements”) together with the right of ingress using publicly accessible rights of way to and egress from the Property for the foregoing purposes of the easement. Motorized transfer of equipment, materials and or vehicles to the Easement Area across park property other than park roads and drivable trails will require permission in the form of a Revocable Use Permit.

NOW, THEREFORE, in consideration of the mutual covenants and agreement hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Permanent Utility Easement. The City of Seattle (“Grantor”), for and in consideration of One Hundred Fifty-Six Thousand Dollars and no cents (\$156,000.00) and other valuable consideration in hand paid and under threat of condemnation, grants and conveys to King County its successors and assigns (“Grantee”), an exclusive permanent subsurface easement (the “Subsurface Easement”) with limited surface rights in, under and through that portion of the real property more particularly described in **EXHIBIT A** and as depicted in **EXHIBIT B** and within a portion of Discovery Park **EXHIBIT D** attached hereto and by this reference incorporated herein together with a right of ingress to and egress from the Easement Areas. The Surface and the Subsurface portions of the Easement shall be referred to as the “Easement Area.” The consideration for this Utility Easement has been paid by Grantee from the King County Water Quality Fund. Limited surface rights are:

- a) The Grantee may, at Grantee’s discretion, walk over and on the Easement Area, conduct observation and conduct non-invasive testing, inspection, landscaping maintenance, or small sample collection using hand held tools. Such casual observation or use will not require a Revocable Use Permit or other park permission.
- b) The Grantee may establish and maintain at a minimum of one-(1) foot below grade, maintenance holes at three locations to accommodate inspection access, together with landscaped ballast rock over outlet diffuser.

2. Benefit of Easement. This Utility Easement is for the benefit of all property interests now owned or hereafter acquired by Grantee which constitutes a portion of or is served by the Project or by existing or future Easement Improvements and for all purposes necessary or incidental to the installation, construction, ownership, use, operation, maintenance, inspection, repair, renovation, improvement, removal and enhancement of the Easement Improvements, and the right of ingress to and egress from, on, to, under, across,

and upon the Property as may be necessary to install, construct, use, operate, maintain, inspect, repair, renovate, improve, remove or enhance the Easement Improvements. Vehicular access to the Easement Area or staging outside the Easement Area will require an approved Revocable Use Permit from the Department of Parks and Recreation (DPR).

3. Purpose of Easement. The use of this easement is for an emergency overflow system appurtenant a public utility facility. The overflow pipeline will be underground and will not obstruct usage of the park or present a visual barrier after installation. This installation will be consistent with park use and adhere to the best practices to ensure public safety to the maximum extent possible. Grantee shall have the right to use the Easement Areas for all purposes necessary or incidental to Grantee's installation, construction, ownership, use, operation, maintenance, inspection, repair, renovation, improvement, removal and enhancement of all or any Easement Improvements as described herein as Grantee may now or hereafter deem appropriate. All Easement Improvements, of any kind that are now or hereafter acquired, constructed or installed within the Easement Areas shall be and shall at all times remain the property and responsibility of the Grantee. The Easement Area is to remain suitable and open for public use and free of both visual and physical barriers once installed.

4. Grantee's Restoration of Property. Grantee shall, upon completion of construction of any Easement Improvements described herein, remove any debris and restore the surface of any portion of the Property disturbed by Grantee's construction as nearly as possible to the condition existing immediately prior to such access, maintenance and repair to the Grantor's standards using Best Management Practices.

In addition, Grantee will, if the Grantor's property is disturbed as a result of Grantee's access, maintenance, removal or repair of the Easement Improvements, or impacted by an act of nature including seismic events, fire, acts of vandalism or civil unrest, obsolescence or change in code specified herein, restore the surface of the Property to the reasonably approximate condition in which it existed at the commencement of said maintenance, removal, repair and per DPR restoration standards. If the pipeline channel is removed, Grantor's property will be filled in with the appropriate soil, compacted to a density consistent with the surrounding area and replanted per instructions from the Grantor. Trees lost or removed due to Grantee's use of the property will be replaced by a ratio of 2:1 replacement with tree species selected by DPR's Natural Resources Unit, 2" or greater in caliper or paid for based on an appraisal by a Certified Parks Arborist.

5. Grantor's Use of Property. Grantor reserves the right to use the Property and/or to grant other easement, license or use rights to the Property for any purpose consistent with the rights herein granted to Grantee so long as such use or use rights do not interfere with, obstruct or endanger the use, function, efficiency, maintenance, repair of any Easement Improvements now or hereafter constructed, installed, used, operated or maintained by Grantee in the Easement Areas pursuant to this Utility Easement. Except as otherwise provided herein, and after the date of this Utility Easement, the construction, installation, or maintenance of any structures, whether temporary or permanent, shall be absolutely prohibited within the Easement Areas, as described and depicted in **Exhibits A and B** and shall be deemed an unreasonable interference with the easement rights permitted to Grantee herein unless specifically approved in writing by the Grantee. Prior to any activity by Grantor in the Easement Area that requires use of the subsurface of the Property and/or extends to

within ten feet of any Easement Improvements contained therein or which changes the compression loads on or to the lateral support for any Easement Improvements, Grantor shall notify Grantee in writing and shall provide Grantee with a copy of all plans and specifications for such proposed activity for review at least forty-five (45) days prior to the commencement of such activity. Grantor shall not commence such activity unless and until it has received Grantee's prior written consent that the Grantor's proposed construction, work or activity will not interfere with the Grantee's rights under this Utility Easement, which consent will not be unreasonably denied, conditioned or withheld. Grantee's review and approval of Grantor's plans and specifications shall be strictly limited to the facilities and/or excavation shown on the plans and specifications submitted to Grantee and shall in no event constitute or be construed as a certification of the adequacy or sufficiency of Grantor's plans and specifications nor whether Grantor's construction, work or activity complies with other applicable laws, building codes and other governmental rules and regulations.

6. Indemnity. Grantee agrees to defend, indemnify and hold harmless Grantor, its successors and assigns, from all claims, actions, costs, damages or expense of any nature whatsoever (including reasonable attorneys' fees and costs) for injuries, sickness or death of persons, or any damage to property, caused by the acts or omissions of Grantee, its assigns, agents, contractors or employees, in its use of or occupancy under this Utility Easement. Provided, however, that this defense and indemnification obligation does not include such claims, actions, costs, damages or expenses which may be caused by the sole negligence or willful misconduct of the Grantor, its successors, assigns, agents or employees and provided further that if the claims, actions, costs, damages or expenses are caused by or result from the concurrent negligence of (a) the Grantor, its successors or assigns and/or their agents or employees and (b) the Grantee, its agents or employees, or involves those actions covered by RCW 4.24.115, then this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Grantee, its agents or employees. For purposes of this indemnity only, Grantee specifically and expressly waives any immunity that it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW.

7. Notices. Any notices required or permitted under this Utility Easement shall be deemed to have been duly given if personally delivered, sent by nationally-recognized overnight delivery service, or if mailed or deposited in the United States mail and sent registered or certified mail, postage prepaid to the address listed below or to such other address as either party may from time to time designate in writing and deliver in a like manner. Notices may also be given by facsimile transmission (provided the fax machine has printed a confirmation of receipt). All notices that are mailed shall be deemed received three business days after mailing. All other notices shall be deemed complete upon receipt or refusal to accept delivery. Notices shall be sent to the following addresses:

To Grantor:

City of Seattle
Department of Parks and Recreation
Property Acquisition Services, 4th
Floor
800 Maynard Avenue South
Seattle, WA 98134

To Grantee:

King County Wastewater Treatment Division
Property Acquisition Supervisor
Mailstop: KSC-NR-0503
201 South Jackson Street, Suite 512
Seattle, WA 98134

8. Miscellaneous Provisions.

- (a) **Representations.** Grantor represents that it is the lawful owner of the Property and has the legal authority to grant and convey this Utility Easement to Grantee.
- (b) **Binding Effect.** This Utility Easement is appurtenant to and shall run with all real property and real property interests and easements now owned or hereafter acquired by Grantee or served by the Easement Improvements and shall inure to the benefit of Grantee, its successors and assigns and shall be binding upon the Property and Grantor, and its successors and assigns. Grantee shall have the right to assign its rights under this Utility Easement, in whole or in part, without any additional fee and without the approval or consent of Grantor.
- (c) **Construction.** All the recitals set forth above are incorporated into this Utility Easement as though fully set forth herein. The headings contained in this Utility Easement are for convenience of reference purposes only and shall not in any way affect the meaning or interpretation hereof, nor serve as evidence of the intention of the parties hereto. Whenever the context hereof shall so require the singular shall include the plural.
- (d) **Entire Agreement.** This Utility Easement sets forth the entire agreement of the parties as to the subject matter hereof and supersedes all prior discussions and understandings between them. This Utility Easement may not be modified, except by an instrument in writing signed by a duly authorized officer or representative of each party hereto.
- (e) **Waiver.** No waiver of any right under this Utility Easement shall be effective unless contained in writing signed by a duly authorized officer or representative of the party sought to be charged with the waiver and no waiver of any right arising from any breach or failure to perform shall be deemed to be a waiver of any future right or any other right arising under this Utility Easement.
- (f) **Governing Law.** This Utility Easement shall be governed by and construed and enforced in accordance with the laws of the State of Washington.

9. Termination. This Utility Easement will be terminated, and the overflow channel removed, and site fully restored to pre-channel conditions if one or more of the following occurs:

- (a) The reservoir that the overflow channel serves is removed or becomes permanently inoperative.
- (b) The need for an overflow channel becomes obsolete through a change of building code, facility design or operation.

- (c) If the overflow channel causes damage to the park beyond the utility Easement Area or becomes a danger to the public.

EXHIBIT A

Legal Description of Entire Property

NE 1/4 OF NE 1/4 OF SEC 16, TWN 25, RANGE 03, LESS POR FOR CAPEHART
HOUSING SITE AS DESC IN SURVEY REC # 2005012490001 & AFF OF CORRECTION
REC #20060403002230

Parcel 162503-9001

EXHIBIT B

Legal Description for Permanent Easement Area

EASEMENT DESCRIPTION DISCOVERY PARK PIPELINE EASEMENT

That portion of Fort Lawton Military Reservation, Washington, lying within the Northeast Quarter of the Northeast Quarter of Section 16, Township 25 North, Range 3 East, W.M., described as follows:

Commencing at a point on the southerly boundary of said reservation, which boundary is also the centerline of West Emerson Street in the City of Seattle, said point being 303.76 feet westerly from the intersection of the centerlines of West Emerson Street and Perkins Lane West;

thence along the following courses described in Parcel 4 of a document recorded under Recording Number 6165044, records of King County, Washington:

North 39°23'39" West 892.22 feet;

thence North 32°01'23" West 399.39 feet;

thence North 51°34'30" West 1022.10 feet;

thence North 60°31'02" West 59.51 feet;

thence North 03°09'41" East 137.95 feet;

thence South 86°50'19" East 72.00 feet;

thence along the easterly line of said Parcel 4, South 03°09'41" West 85.63 feet to the

True Point of Beginning;

thence leaving said courses described in Parcel 4, South 86°50'19" East 28.64 feet;

thence South 58°34'12" East 187.96 feet;

thence South 44°34'12" East 201.23 feet;

thence South 58°32'38" East 61.96 feet;

thence South 45°25'48" West 55.23 feet;

thence North 25°56'43" West 63.45 feet;

thence North 44°34'12" West 198.77 feet;

thence North 58°34'12" West 184.45 feet;

thence North 86°50'19" West 20.10 feet to said easterly line of Parcel 4;

thence along said easterly line, North 03°09'41" East 18.11 feet to the **True Point of Beginning.**

Containing: 10,427 Square Feet, more or less.

EXHIBIT C

Depiction of Permanent Easement Area

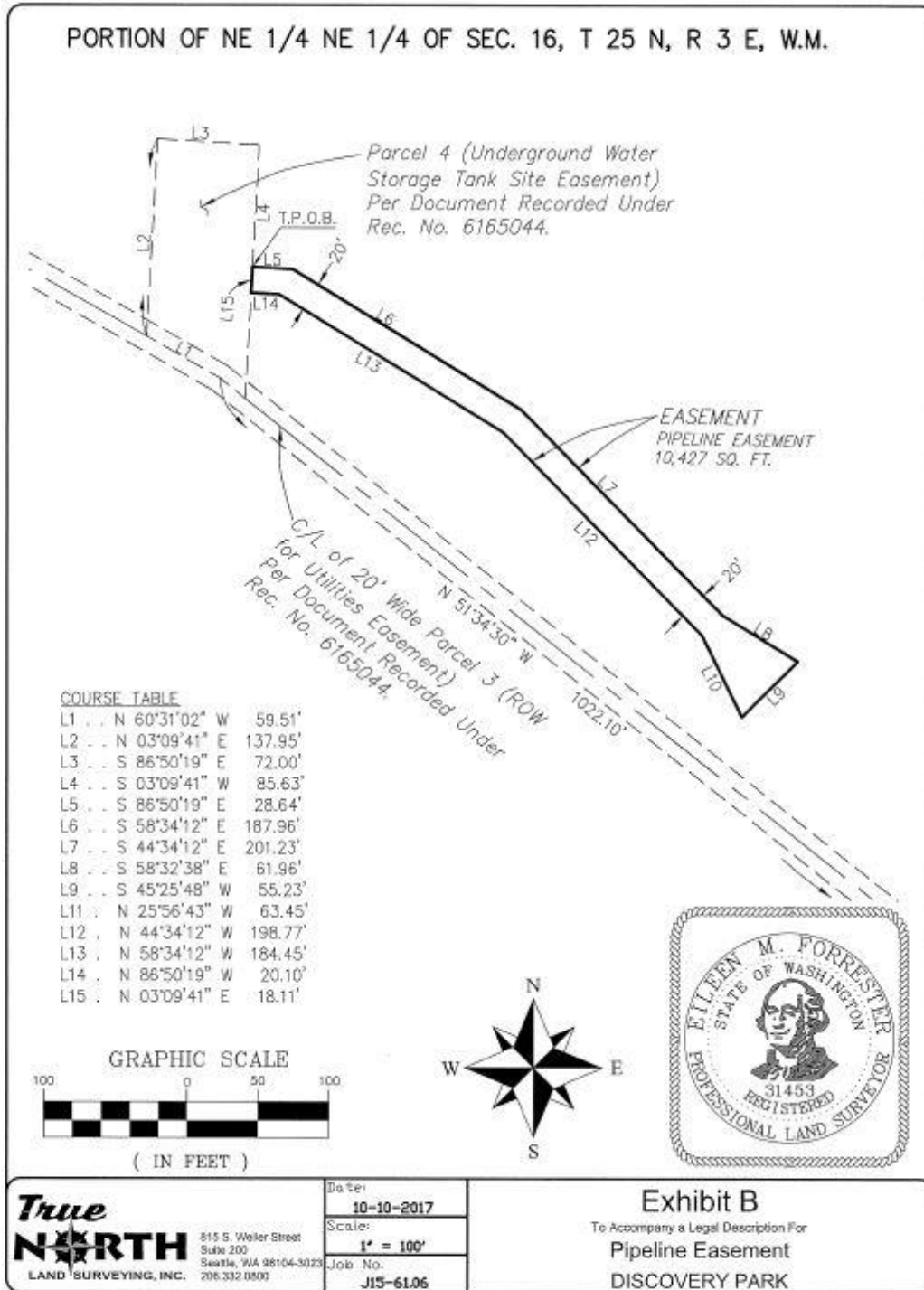


EXHIBIT D

Location of Permanent Easement Area within Discovery Park

