

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
KING COUNTY
WASTEWATER TREATMENT DIVISION
201 SOUTH JACKSON STREET, SUITE 505
SEATTLE, WA 98104-3855

UTILITY EASEMENT AGREEMENT
South Magnolia CSO at Smith Cove Park (5,780 sf)

Grantor(s): City of Seattle, a municipal corporation

Grantee: King County, political subdivision of the State of Washington

Abbreviated Legal Description: SE 1/4 and SW 1/4, Sec 23, T25N, R3E, WM and NE 1/4 and NW 1/4, Sec 26, T25N, R3E, WM.

Assessor's Tax Parcel No.(s): 232503-9015, 766620-1145

1. Grant of Utility Easement. THE CITY OF SEATTLE, a Washington municipal corporation (“Grantor” or “CITY”), for and in consideration of TEN DOLLARS (\$10.00) and other valuable consideration in hand paid, hereby grants and conveys to KING COUNTY (“Grantee” or “COUNTY”), a political subdivision of the State of Washington, through its Wastewater Treatment Division, for the purposes described below, a permanent subsurface easement (the “Utility Easement”) under the surface of and through a portion of Grantor’s property legally described in **Exhibit A** as “Tract X”. The South Magnolia CSO tunnel alignment under the subsurface of and through a portion of the Grantor’s property is described in **Exhibit B** (pages 1 and 2). The subsurface portion of Grantor’s Property that is subject to the Utility Easement (the “Utility Easement Area”) is legally described in **Exhibit “A, parcel 4”**, and illustrated in **Exhibit “D”**, attached hereto and incorporated herein by this reference.

The Utility Easement Area contains an area of 5,780 square feet, more or less.

2. Purpose of Utility Easement. This Utility Easement is granted for the purposes of installation, construction, ownership, use, operation, maintenance, repair, replacement and improvement of a subterranean pipeline, connections, manholes, valves, metering equipment, electric and communication cables, cathodic devices, monitoring equipment and any other necessary and convenient appurtenances in and through the Grantor’s Property for the South Magnolia CSO Project (collectively the “Pipeline Easement Improvements”). All Pipeline Easement Improvements of any kind that are acquired, constructed or installed within the Utility Easement Area shall be and shall at all times remain the property of the COUNTY.

3. Grantor’s Use of Utility Easement Area. The CITY shall have the continuing right to use the Utility Easement Area with the following limitations: (a) The CITY shall not grant easement rights to third parties in the Utility Easement Area without the prior written consent of the COUNTY, which shall not be unreasonably withheld; and (b) The City shall not construct any temporary or permanent structure above or within the Utility Easement Area without the County’s prior written approval, which approval shall not be unreasonably withheld. The City may continue to use the property in any way and for any purpose not inconsistent with the rights granted to Grantee for its stated purpose.

4. Grantee’s Use of Utility Easement Area. Grantee may use the Utility Easement Area for the purposes and in the manner described herein. The COUNTY shall keep the Pipeline Easement and improvements, in safe condition and good repair at all times at the COUNTY’s sole cost. The Grantee shall obtain a Seattle Parks and Recreation Revocable Use Permit for repair and maintenance within the easement area before undertaking any such work in the Utility Easement Area involving digging, trenching, or removal of CITY property (including paving), or pruning or removal of

vegetation. Said written notification to the CITY, in the form of a Revocable Use Permit application will be submitted before any such work in the Utility Easement Area and shall include sufficient details about the proposed work to allow the CITY to approve of said work prior to commencement of said work. If the emergency is required to be reported to the Washington State Department of Ecology, then the emergency should be immediately addressed with follow up to the Grantor within a reasonable amount of time.

All activities of the COUNTY in the Utility Easement Area shall be completed by COUNTY employees or by qualified, licensed and bonded contractor(s), at the sole expense of the COUNTY and, upon completion of such activity, the COUNTY shall immediately, at its sole expense, remove all equipment, materials, and debris and restore all disturbed topography, vegetation, landscape features and property, to their condition immediately prior to the initiation of such activity, unless otherwise mutually agreed in writing.

If Grantee ceases to use the Utility Easement Area after the completion of the construction of the Pipeline Easement Improvements, then Grantee shall decommission the tunnel(s) at its sole cost and expense and will design appropriate method to decommission and stabilize the tunnel(s) within the Utility Easement Area. Said design plans shall be submitted to the City with opportunity to review and approve.

5. Grantee is responsible for Hazardous Substances as follows:

5A. Grantee’s operations or activities on or occupancy of the Easement Area, including without limitation any use or occupancy of the Easement Area by any employee, agent, representative, consultant, contractor or licensee of Grantee, shall comply with all Environmental Laws (as defined in section 5.B), including those governing, or in any way relating to, any Hazardous Substance (as defined in section 5.C). If the City’s property becomes contaminated because of actions hereunder by Grantee or Grantee’s employees, agents, consultants, contractors, representatives or licensees, Grantee shall clean up and remediate such contamination as necessary to bring the property in compliance with Environmental Laws. If Grantee does not so act in a prudent and prompt manner, the City reserves the right, but not the obligation, to act in place of Grantee and to take such action as the City deems necessary to ensure compliance or to mitigate the violation. All reasonable costs and expenses incurred by the City in connection with any such actions shall become immediately due and payable by Grantee upon the City’s presentation of an invoice therefore.

5B. For the purposes of this Utility Easement, the term “Environmental Law(s)” means any local, state or federal law, regulation, ordinance, order or other source of law, now or hereafter in effect relating to the protection of human health or the environment including, but not limited to: the Federal Clean Air Act; the Federal Water Pollution Control Act; the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of 1980; the Federal Water Act of 1977; the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Waste Management Recovery and Recycling Act; the Washington Hazardous Waste Management Act; the Washington Hazardous Waste Fees Act; Washington Model Toxics Control Act; the Washington Nuclear Energy and Radiation Act; the Washington Radioactive Waste Storage and Transportation Act; the Washington Underground Petroleum Storage Tanks Act; and any regulations promulgated thereunder from time to time.

5C. For purposes of this Utility Easement, the term “Hazardous Substance(s)” means any and all dangerous, hazardous or toxic substances, materials, wastes, pollutants or contaminants regulated under or subject to any Environmental Laws, including but not limited to those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. §172.101) or by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. pt. 302 and amendments thereto) or in the Washington Hazardous Waste Management Act (Ch. 70.105D RCW) or the Washington Model Toxics Control Act (Chs. 70.105D RCW 82.21 RCW), petroleum products and their derivatives, and such other substances, materials and wastes as become regulated or subject to cleanup authority under any Environmental Law.

5D. Grantee shall release, indemnify, defend and hold harmless the City and its officials, employees, agents, licensees, contractors, consultants and representatives (collectively, the “Indemnitees”) from and against all claims, actions, regulatory demands, judgments, liens, damages,

harm, penalties, fines, costs, expenses, liabilities or losses (including, without limitation, clean up or remedial costs, injuries to third persons, sums paid in settlement of claims, reasonable attorneys' fees, consultant fees, and expert fees) which are imposed on, paid by, or asserted against the Indemnitees in connection with any violation of Environmental Law by Grantee or Grantee's assigns, agents, licensees, invitees, contractors, consultants, representatives or employees. Grantee agrees that its obligations under this Section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, Grantee hereby waives with respect to the Indemnitees, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of the laws of the State of Washington. Grantee acknowledges that this Section 5.D was specifically entered into after mutual negotiation. This indemnification provision shall survive the expiration or earlier termination of this Utility Easement.

Notwithstanding anything in this Utility Easement Agreement to the contrary, Grantee shall not be responsible to release, indemnify, defend or hold harmless the City or the Indemnitees for existing Hazardous Substances on Grantor's Property except and only to the extent that Grantee or Grantee's assigns, agents, licensees, invitees, contractors, consultants, representatives or employees cause such Hazardous Substances to be released from or onto the Grantor's Property.

6. Applicable Law and Indemnification. The COUNTY shall at all times exercise its rights under this Utility Easement in accordance with the requirements of all applicable statutes, orders, rules and regulations of any public authority having jurisdiction. The COUNTY agrees to defend, save and hold harmless the CITY and its officers, officials, employees, agents, 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 the COUNTY, its assigns, agents, contractors or employees, in its use of or occupancy of the Utility Easement Area. This obligation does not include such claims, actions, costs, damages or expenses which may be caused by the sole negligence of the CITY, its successors or assigns, and provided further that if the claims, actions, costs, damages or expenses are caused by or result from the concurrent negligence of (a) the CITY, its successors or assigns and/or their agents or employees and (b) the COUNTY, its agents or employees, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the COUNTY, its agents or employees. Solely to give full force and effect to the COUNTY's indemnity obligation contained herein and not for the benefit of any person, the COUNTY specifically and expressly waives any immunity it may have under the Washington State Industrial Insurance Act, Title 51 RCW, or any other industrial insurance, workers' compensation or similar laws and acknowledges that this waiver was mutually negotiated by the parties. This provision shall not be interpreted or construed as a waiver of the COUNTY's right to assert such immunity, defense or protection directly against any of its own employees.

7. Binding Effect. The Utility Easement is appurtenant to and shall run with land and shall be binding upon the Grantor's Property and Grantor, and their respective heirs, successors and assigns.

The COUNTY shall have the right to assign its rights under this Utility Easement, in whole or in part, only to a governmental agency that is a functional successor and only upon such successor's express assumption of obligations and liabilities under this Utility Easement.

8. Notices. Any notices required or permitted under this Utility Easement Agreement shall be given in writing and either personally delivered or sent by U.S. Mail, postage prepaid, to the addresses as indicated below:

To Grantee: King County- Wastewater Treatment Division
Managing Supervisor, Regulatory Compliance and Land Acquisitions
Mailstop: KSC-NR-0505
201 South Jackson Street
Seattle, WA 98104-3855

To Grantor: City of Seattle
Seattle Parks and Recreation
Elliott Bay Office Park
300 Elliott Avenue West, Suite 100

Seattle, WA 98119
Attn: Property Management

9. Exhibits Incorporated. All exhibits attached hereto, as listed below, are expressly incorporated into and form a part of this Agreement.

- Exhibit A. Legal Description of Grantor’s property (Tract X),
- Exhibit B. Legal Description of Permanent Subterranean Sewer Easement
- Exhibit C. Pipeline Illustration
- Exhibit D. Smith Cove Park Utility Easement Illustration
- Exhibit E. Subsurface Easement Elevation Profile

Dated as of the date fully executed by Grantor and Grantee.

GRANTOR:
CITY OF SEATTLE

BY: _____ Date _____
ITS: Superintendent of Parks and Recreation

GRANTEE:
KING COUNTY

BY: _____ Date _____
ITS: _____

STATE OF WASHINGTON }
 } SS.
COUNTY OF KING }

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she is authorized to execute the instrument and acknowledged it as the _____ of Seattle Parks and Recreation of the City of Seattle, a municipal corporation of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: _____
Signature: _____
Notary Public in and for the State of Washington
Notary (print name): _____
Residing at: _____
My appointment expires: _____

STATE OF WASHINGTON }
 } SS.
COUNTY OF KING }

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he is/she is authorized to execute the instrument and acknowledged it as the _____ of the KING COUNTY, a political subdivision of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: _____

Signature: _____

Notary Public in and for the State of Washington

Notary (print name): _____

Residing at: _____

My appointment expires: _____

Exhibit A - Legal Description of Grantor's property (Tract X)

TRACT X:

PARCEL 1:

PARCEL "E" SHOWN ON THAT SURVEY RECORDED UNDER RECORDING NUMBER 20040220900002, RECORDS OF SAID COUNTY, SITUATE WITHIN THE SOUTHWEST QUARTER OF SECTION 23 AND THE NORTHWEST QUARTER OF SECTION 26, ALL IN TOWNSHIP 25 NORTH, RANGE 3 EAST, WM., CITY OF SEATTLE, KING COUNTY, WASHINGTON.

SAID DESCRIBED PARCELS 1 AND 2 ARE COLLECTIVELY KNOWN AS A PORTION OF MAGNOLIA PARK AND IS ADMINISTERED BY THE CITY OF SEATTLE PARKS AND RECREATION DEPARTMENT AND BEING A PORTION OF KING COUNTY ASSESSOR'S PARCEL NUMBER 202120-0005.

SAID DESCRIBED PARCEL 4 BEING KNOWN AS A PORTION OF URSULA JUDKINS VIEWPOINT, AND ADMINISTERED BY THE CITY OF SEATTLE PARKS AND RECREATION DEPARTMENT AND BEING A PORTION OF KING COUNTY ASSESSOR'S PARCEL NUMBER 262503-9001.

PARCEL 2:

THOSE PORTIONS OF THE SOUTHWEST QUARTER OF SECTION 23, AND THE NORTHWEST QUARTER OF SECTION 26, BOTH IN TOWNSHIP 25 NORTH, RANGE 3 EAST, WM., IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON; AND BEING A PORTION OF WEST GALER STREET, FROM THE EAST MARGIN OF 26TH AVENUE WEST (FROM THE SOUTH) TO THE WEST MARGIN OF 30TH AVENUE WEST, AS DESCRIBED IN SECTION 2 OF CITY OF SEATTLE ORDINANCE NUMBER 24332; AND ALSO LYING NORTHERLY OF THE SOUTHERLY MARGIN OF WEST GARFIELD STREET (PRODUCED SOUTHWESTERLY) AS DESCRIBED IN CITY OF SEATTLE ORDINANCE NUMBER 53518 AND SHOWN ON THAT SURVEY RECORDED UNDER RECORDING NUMBER 20040220900002, RECORDS OF SAID COUNTY.

BEING KNOWN AS A PORTION OF MAGNOLIA BOULEVARD (FOR PARK, DRIVE AND BOULEVARD PURPOSES, PER CITY OF SEATTLE ORDINANCE NUMBER 24332), AND IS ADMINISTERED BY THE CITY OF SEATTLE PARKS AND RECREATION DEPARTMENT.

PARCEL 3:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 25 NORTH, RANGE 3 EAST, WM., IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

ALL OF BLOCKS 1, 8, 9, 16, 17 AND 18 IN THE PLAT OF DEWEY'S ADDITION TO THE CITY OF SEATTLE, RECORDED IN VOLUME 2 OF PLATS AT PAGE 65, UNDER AUDITOR'S FILE NUMBER 1887021912529, RECORDS OF KING COUNTY, PER SECTION 1 OF CITY OF SEATTLE ORDINANCE NUMBER 24332.

TOGETHER WITH THE SOUTH 12 FEET OF LOT 7, BLOCK 19, IN SAID DEWEY'S ADDITION TO THE CITY OF SEATTLE, PER SECTION 1 OF CITY OF SEATTLE ORDINANCE NUMBER 24332.

TOGETHER WITH THAT PORTION OF LOTS 1 AND 8 THROUGH 12 INCLUSIVE, BLOCK 19, IN SAID DEWEY'S ADDITION TO THE CITY OF SEATTLE, LYING SOUTHWESTERLY OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1, THENCE SOUTHEASTERLY TO A POINT ON THE EAST LINE OF SAID LOT 8, SAID POINT BEING DISTANT 12 FEET NORTH FROM THE SOUTHEAST CORNER OF SAID LOT, PER SECTION 1 OF CITY OF SEATTLE ORDINANCE NUMBER 24332.

TOGETHER WITH VACATED WEST BLAINE STREET, WEST HAYES STREET, WEST GARFIELD STREET, WEST EATON STREET, AND 31ST AVENUE WEST, PER CITY OF SEATTLE ORDINANCE NUMBER 61129.

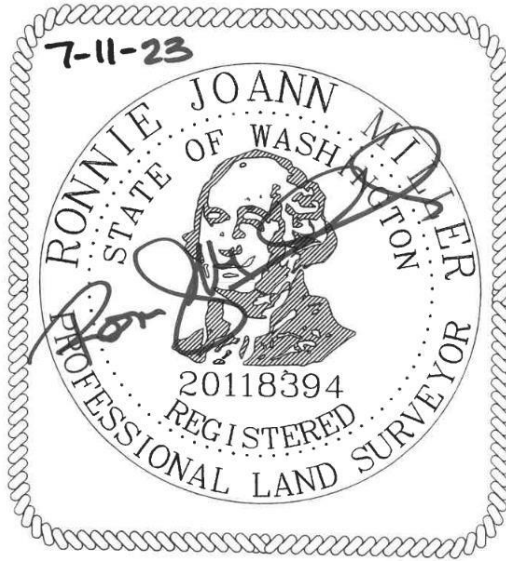
TOGETHER WITH A PORTION OF VACATED 30TH AVENUE WEST, PER CITY OF SEATTLE ORDINANCE NUMBER 41769, AS WOULD PASS BY OPERATION OF LAW.

PARCEL 4:

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 25 NORTH, RANGE 3 EAST, WM., IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: LOTS 4

THROUGH 16 INCLUSIVE, BLOCK 4, MAGNOLIA VIEW ADDITION DIVISION NO. 2 TO SEATTLE, RECORDED IN VOLUME 31 OF PLATS AT PAGE 41, UNDER AUDITOR'S FILE NUMBER 192803202450143, RECORDS OF KING COUNTY.

CONTAINING: 57,970 SQUARE FEET, MORE OR LESS. 52,190 SQUARE FEET, MORE OR LESS FOR



WEST OF PARCEL 2325039106 AND 5,780 SQUARE FEET MORE OR LESS EAST OF PARCEL 2325039106

EXHIBIT B

SOUTH MAGNOLIA CSO PROJECT – TAX PARCEL NOS. 202120-0005 & 262503-9001 AND W GALER STREET

PERMANENT SUBTERRANEAN SEWER EASEMENT, AS DEPICTED ON THE ATTACHED EXHIBIT D

A 20.00 FOOT WIDE PERMANENT SUBTERRANEAN SEWER EASEMENT, THROUGH TRACT "X" (DESCRIBED ON ATTACHED EXHIBIT A), THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 5, BLOCK 4, MAGNOLIA VIEW ADDITION, DIVISION NO. 2, TO THE CITY OF SEATTLE, RECORDED IN VOLUME 31 OF PLATS, PAGE 41, RECORDS OF KING COUNTY, WASHINGTON (ALSO BEING A POINT ON THE EAST MARGIN OF 32ND AVENUE WEST); THENCE ALONG SAID EAST MARGIN, SOUTH 01°36'02" WEST 100.81 FEET TO THE **TRUE POINT OF BEGINNING** STA 2+63.82; THENCE SOUTH 19°18'15" EAST 31.75 FEET STA 3+54.94 TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1150.00 FEET; THENCE ALONG SAID CURVE SOUTHEASTERLY 1116.34 FEET THROUGH A CENTRAL ANGLE OF 55°37'07" STA 14+11.91; THENCE TANGENT FROM SAID CURVE, SOUTH 74°28'30" EAST 181.86 FEET STA 15+93.77 TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1500.00 FEET; THENCE ALONG SAID CURVE SOUTHEASTERLY 394.02 FEET STA 19+87.79 THROUGH A CENTRAL ANGLE OF 15°03'01"; THENCE TANGENT FROM SAID CURVE, SOUTH 89°31'32" EAST 767.87 FEET STA 27+55.66 TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1500.00 FEET; THENCE ALONG SAID CURVE EASTERLY 158.14 FEET STA 29+13.80 THROUGH A CENTRAL ANGLE OF 06°02'26" TO THE WESTERLY LINE OF PARCEL G AS SHOWN ON A RECORD OF SURVEY RECORDED UNDER RECORDING NO. 20040220900002 IN SAID COUNTY; THENCE NORTH 82°41'23" EAST 256.07 FEET STA 32+15.53 TO THE WESTERLY PROPERTY LINE OF SMITH COVE PARK PARCEL NO. 2325039015 IN SAID COUNTY"; THENCE CONTINUING NORTH 82°41'23" EAST 98.55 FEET TO THE WESTERLY LINE OF SMITH COVE PARCEL 7666201145; THENCE NORTH 68°33'46" EAST 190.52 FEET STA 35+04.60 AND THE TERMINUS OF SAID EASEMENT;

SAID EASEMENT SHALL BE LENGTHENED OR SHORTENED NORTHWESTERLY SO AS TO TERMINATE IN SAID EAST MARGIN OF 32ND AVENUE W AND EASTERLY SO AS TO TERMINATE IN SAID WESTERLY LINE OF PARCEL 7666201145;

EXCEPT THAT PORTION LYING IN THE RIGHT OF WAY FOR LOWELL STREET PER PLAT OF DEWEYS ADDITION (UNOPENED);

SAID SUBSURFACE UTILITY EASEMENT BEING ALSO BOUNDED VERTICALLY BY THE FOLLOWING ELEVATION GRADIENTS:

LYING ABOVE A GRADIENT THAT BEGINS AT THE SOUTH MAGNOLIA CSO LINE STATION 3+54.94 WITH AN ELEVATION OF 40.27 FEET AND SLOPES DOWNWARD AT A CONSTANT RATE TO END SOUTH MAGNOLIA CSO LINE STATION 31+07.11 WITH AN ELEVATION OF -7.46 FEET (BELOW ZERO); AND ALSO LYING BELOW A GRADIENT THAT BEGINS AT THE SOUTH MAGNOLIA CSO LINE

Exhibit D - Smith Cove Park Utility Easement Illustration

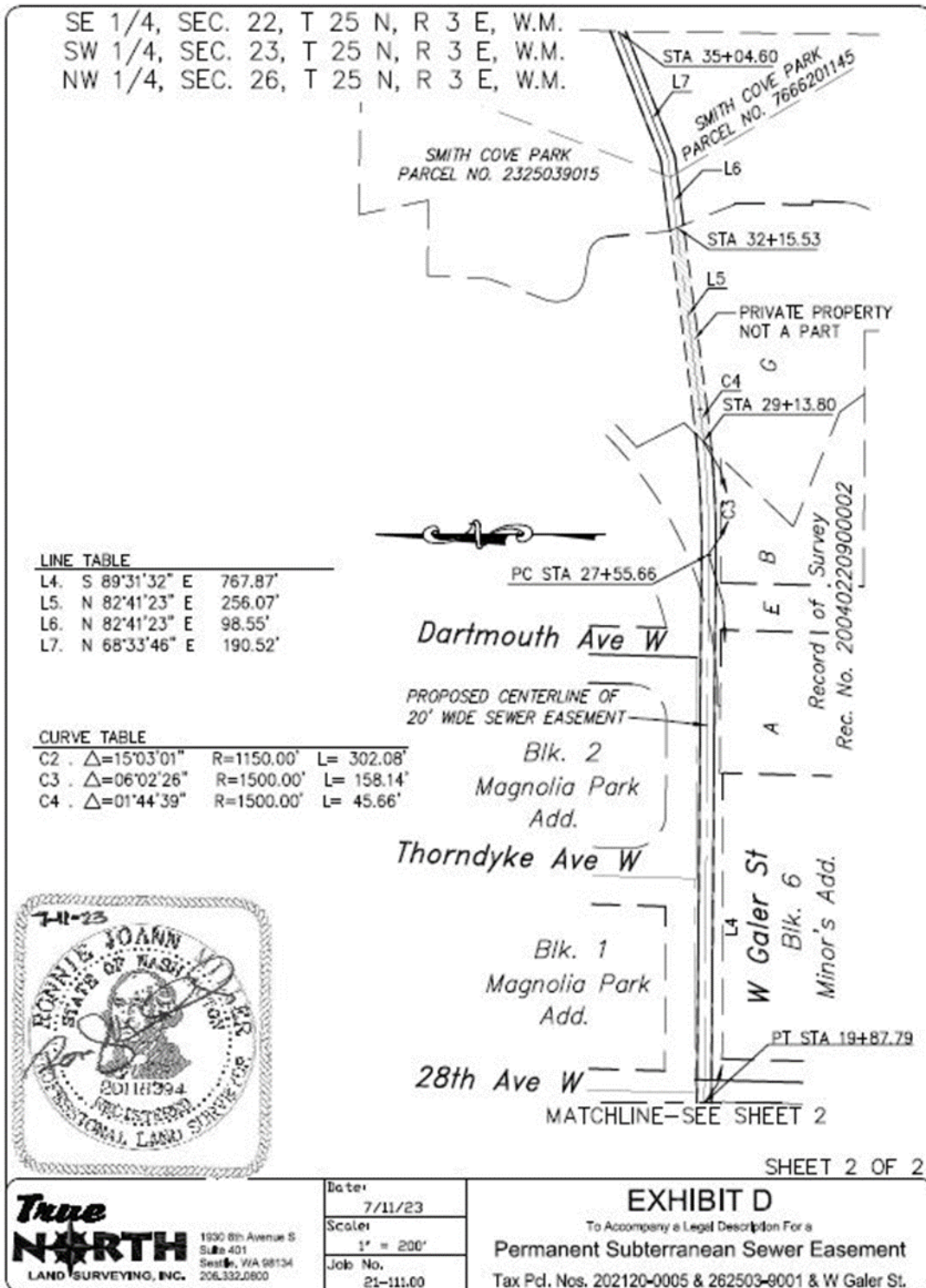
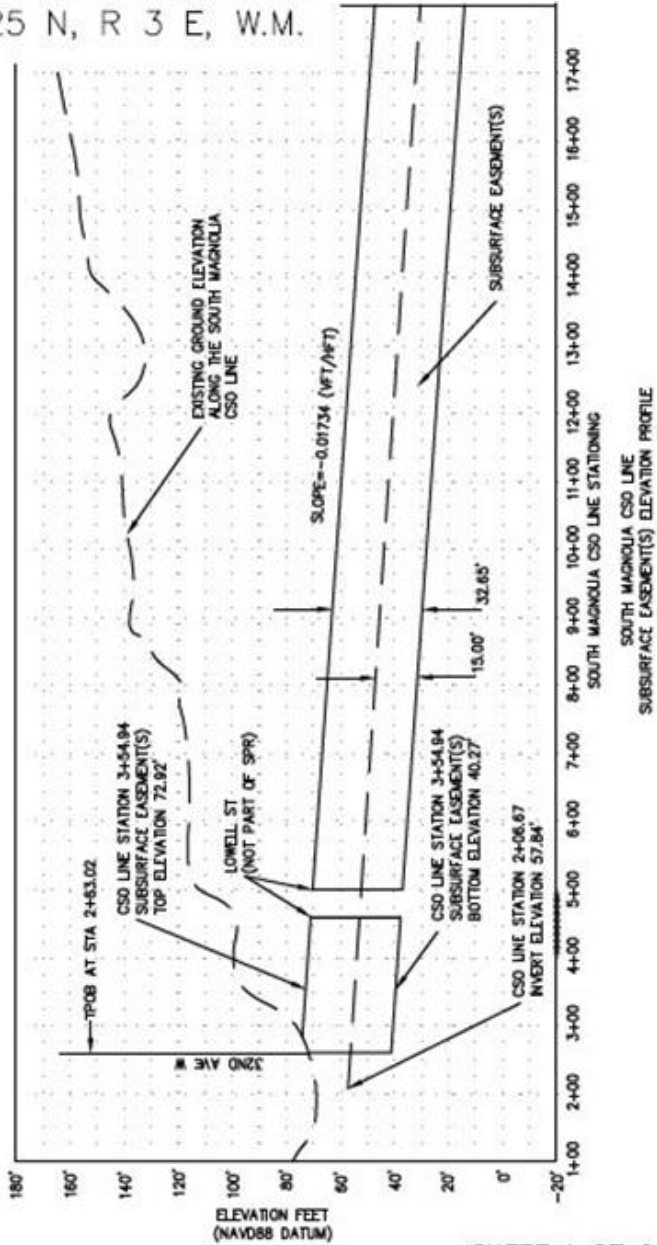


Exhibit E - Subsurface Easement Elevation Profile

SE 1/4, SEC. 22, T 25 N, R 3 E, W.M.
 SW 1/4, SEC. 23, T 25 N, R 3 E, W.M.
 NW 1/4, SEC. 26, T 25 N, R 3 E, W.M.



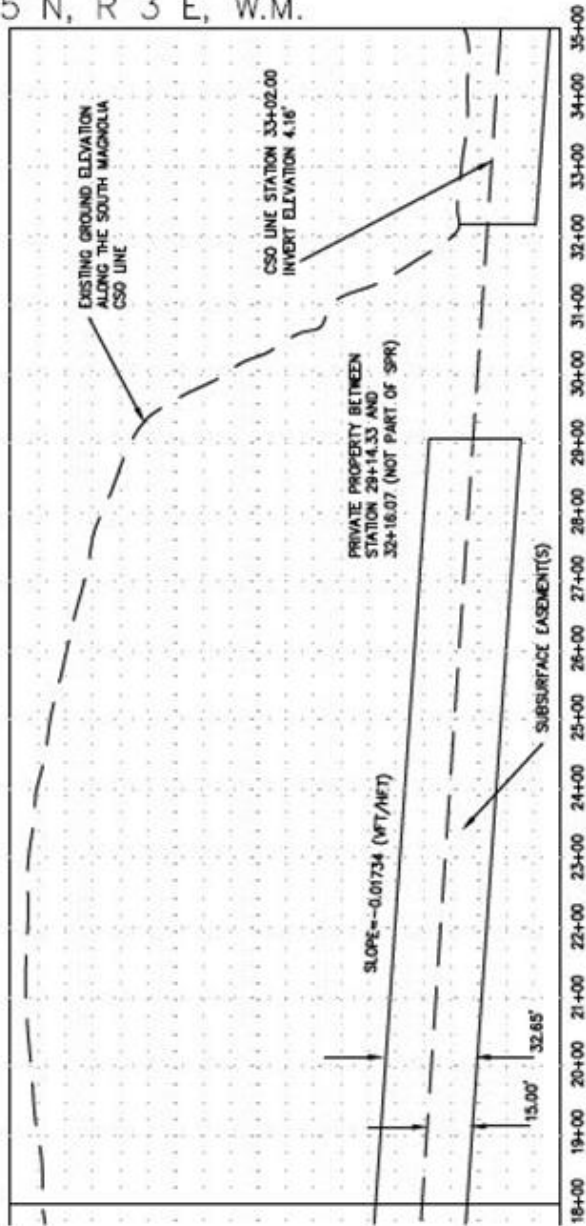
SHEET 1 OF 2

True NORTH
 LAND SURVEYING, INC.
 1930 8th Avenue S
 Suite 401
 Seattle, WA 98134
 206.332.0800

Date: 7/11/23
 Scale: AS SHOWN
 Job No. 21-111.00

EXHIBIT E
 To Accompany a Legal Description For a
Permanent Subterranean Sewer Easement
 Tax Pcd. Nos. 202120-0005 & 262503-8001 & W Galer St.

SE 1/4, SEC. 22, T 25 N, R 3 E, W.M.
 SW 1/4, SEC. 23, T 25 N, R 3 E, W.M.
 NW 1/4, SEC. 26, T 25 N, R 3 E, W.M.



SHEET 2 OF 2

True NORTH
 LAND SURVEYING, INC.
 1500 8th Avenue S
 Suite 401
 Seattle, WA 98134
 206.332.0800

Date: 7/11/23
 Scale: AS SHOWN
 Job No. 21-111.00

EXHIBIT E
 To Accompany a Legal Description For a
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