

WHEN RECORDED RETURN TO:

City of Seattle
Department of Transportation
700 5th Avenue – Suite 3800
P.O. Box 34996
Seattle, WA 98124-4996
Attn: Michelle Talbot

ASSIGNMENT AND ASSUMPTION OF EASEMENT AGREEMENT
FOR EAST MARGINAL WAY OVERPASS - 096448L
(Overpass Agreement)

GRANTOR/Assignor: PORT OF SEATTLE

GRANTEE/Assignee: CITY OF SEATTLE

Legal Description (Full): See Attached Exhibit A

Tax Parcel Nos: 766670-0755

THIS ASSIGNMENT AND ASSUMPTION OF EASEMENT AGREEMENT (“Assignment”) is made and entered into as of the date last signed below, by and between PORT OF SEATTLE, a municipal corporation of the State of Washington, as Assignor, (“Port”), and CITY OF SEATTLE, a municipal corporation of the State of Washington, as Assignee, (“City”). The Port and the City may be referred to herein as “Party” or collectively as “Parties.”

RECITALS

A. The Port, the City and BNSF Railway Company, a Delaware corporation (“BNSF” or “Grantor”), entered into that certain Overpass Agreement dated effective as of June 25, 2009 for the purpose of allowing improvement of the existing East Marginal Way, U.S.D.O.T. No. 096445R, and Duwamish Avenue at-grade crossings, U.S. D.O.T. No. 096448L pursuant to which the Port constructed the East Marginal Way Grade Separation Improvements. The Overpass Agreement and its Exhibits 1 and 2 are located in Seattle City Clerk File Number 321563 and are incorporated here by this reference.

B. Pursuant to the Overpass Agreement, BNSF granted the Port, its successors and assigns, an easement to enter upon and use that portion of BNSF’s right-of-way as necessary to construct, use and maintain the Improvements, which easement is located in Seattle City Clerk File Number 321563

and incorporated here by this reference (the "Easement"). The Easement incorporates by reference the Overpass Agreement and as such shall be referred to collectively herein as the "Easement Agreement."

C. The Port has completed construction of the Improvements and now seeks to convey, transfer and assign the Easement Agreement to the City. The City is willing to accept such conveyance, transfer and assignment of the Easement Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the Port, as Assignor, and the City, as Assignee, hereby agree as follows:

1. **Transfer and Assignment.** Assignor hereby sells, transfers, assigns, delivers and conveys to Assignee, its successors and assigns, effective as of the date this Assignment, all right, title and interest of Assignor in, to and under the Easement Agreement.

2. **Assumption of Obligations.** Assignee hereby assumes and agrees to observe, perform, carry out and discharge all of the obligations and duties of Assignor under the Easement Agreement.

3. **Indemnification.** Assignor agrees to indemnify, defend and hold Assignee harmless with respect to all claims, losses, liabilities, expenses, demands and causes of action arising under the Easement Agreement prior to the Acceptance Date. Assignee agrees to indemnify, defend and hold Assignor harmless with respect to all claims, losses, liabilities, expenses, demands and causes of action arising under the Easement Agreement on or after the Acceptance Date. To the extent of any ambiguity between this indemnification and the indemnification by and between the Port and the City in the Memorandum of Agreement Between the City of Seattle and the Port of Seattle regarding the East Marginal Way Grade Separation, Section 5, the indemnification in the Memorandum shall control. Section 5 to the Memorandum signed by the Port on June 17, 2014 and signed by the City on July 23, 2014 is located in Seattle City Clerk File Number 321563 and is incorporated here by this reference.

4. **Attorneys' and Other Fees and Costs.** If any action at law or in equity is necessary to enforce or interpret the terms of this Assignment, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

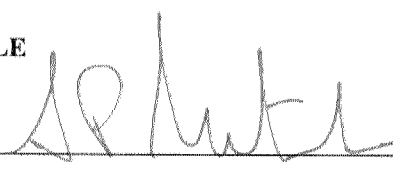
5. **Definitions.** Unless modified herein, all defined terms used herein shall have the same meaning as provided in the Easement Agreement.

6. **Governing Law.** This Assignment shall be construed and enforced in accordance with and governed by the laws of the State of Washington.

7. **Binding Effect.** This Assignment shall be binding upon the Parties hereto and their respective successors and assigns and shall run with the land.

Dated and signed on this 10th day of June, 2020.

ASSIGNOR:
PORT OF SEATTLE

By: 

Printed Name: Stephen P. Metruck

Its: Executive Director

Dated and signed on this 30^A day of June, 2020.

ASSIGNEE:
CITY OF SEATTLE

Accepted and Approved:

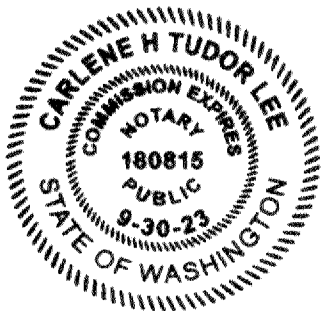
By: 

Printed Name: SAMUEL ZIMBABWE

Its: DIRECTOR, SEATTLE DEPARTMENT OF TRANSPORTATION

STATE OF WASHINGTON }
 } SS.
COUNTY OF KING }

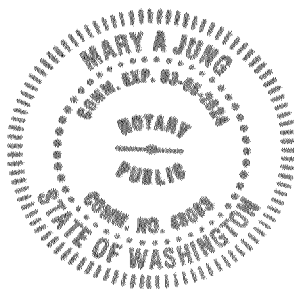
I certify that I know or have satisfactory evidence that Stephen Metrick
is the person who appeared before me, and said person
acknowledged that (he/she) signed this instrument, on oath stated that (he is/she is) authorized to execute the instrument and acknowledged it as the Executive Director
of **PORT OF SEATTLE** to be the free and voluntary act of
such party for the uses and purposes mentioned in this instrument.



Dated: 6/10/2020
Signature: [Signature]
Notary Public in and for the State of Washington
Notary (print name): Carlene Tudor Lee
Residing at: Seattle, WA

STATE OF WASHINGTON }
 } SS.
COUNTY OF KING }

I certify that I know or have satisfactory evidence that Samuel
Zimbabwe 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 Director Seattle
Department of Transportation of **CITY OF SEATTLE** to be the free and voluntary act of
such party for the uses and purposes mentioned in this instrument.



Dated: June 30, 2020
Signature: [Signature]
Notary Public in and for the State of Washington
Notary (print name): MARY A. Jung
Residing at: Seattle, WA
My appointment expires: March 5, 2024

EXHIBIT A

LAND DESCRIPTION - EXISTING

KING COUNTY PARCEL NO. 766670-0755

(PER TITLE REPORT BY LAND AMERICA COMMERCIAL SERVICES, ORDER NO. 20126795, DATED MARCH 29, 2005)

A STRIP, PIECE OR PARCEL OF LAND, 30 FEET IN WIDTH, EXTENDING IN AN EASTERLY AND WESTERLY DIRECTION OVER AND ACROSS LOT 4 IN BLOCK 387, LOTS 3 AND 44 IN BLOCK 385, LOTS 4 AND 10 IN BLOCK 377 OF SEATTLE TIDE LANDS; AND ACROSS GOVERNMENT LOT 1 IN SECTION 18, TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., WHICH IS A PART OF ISLAND NO. 1, THE CENTER LINE OF SAID STRIP. BEING A LINE WHICH IS PARALLEL WITH AND 270 FEET DISTANT SOUTH OF THE CENTERLINE OF SPOKANE STREET, WHEN MEASURED AT RIGHT ANGLES THERETO, SAID STRIP RUNS FROM AN INTERSECTION WITH THE EAST LINE OF THE EAST WATERWAY TO A POINT 558.7 FEET WEST FROM THE WEST LINE OF COLORADO STREET WHEN MEASURED AT RIGHT ANGLES THERETO;
EXCEPT THAT PORTION THEREOF, LYING WESTERLY OF SAID BLOCK 377 AND EASTERLY OF THE WESTERLY MARGIN OF EAST MARGINAL WAY SOUTH;
TOGETHER WITH THAT PORTION OF LOT 10 BLOCK 377 SEATTLE TIDE LANDS, AND THAT PORTION OF GOVERNMENT LOT 1, SECTION 18, TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., LYING WEST OF EAST MARGINAL WAY AS LAID OUT UNDER ORDINANCE NO. 32881, CITY OF SEATTLE, WASHINGTON, DESCRIBED AS FOLLOWS:
BEGINNING AT THE INTERSECTION POINT OF THE SOUTH MARGIN OF SPOKANE AVENUE AND THE WEST MARGIN OF EAST MARGINAL WAY;
THENCE SOUTH ALONG THE WEST MARGIN OF EAST MARGINAL WAY 126.06 FEET TO THE TRUE POINT OF BEGINNING;
THENCE IN A SOUTHWESTERLY DIRECTION ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 226.39 FEET, A DISTANCE OF 113.47 FEET TO A POINT OF COMPOUND CURVE THAT IS ALSO THE INTERSECTION OF THE GOVERNMENT MEANDER LINE AND THE NORTHEASTERLY LINE OF BLOCK 377 SEATTLE TIDE LANDS, THE TANGENT AT THE BEGINNING OF THE LAST DESCRIBED CURVE BEARING NORTH 52a06'17" EAST;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 556.90 FEET, A DISTANCE OF 89.52 FEET, WHERE IT BECOMES TANGENT WITH THE NORTH LINE OF THE EXISTING NORTHERN PACIFIC RIGHT OF WAY;
THENCE EAST ALONG THE NORTH LINE OF SAID EXISTING NORTHERN PACIFIC RIGHT OF WAY, A DISTANCE OF 92.78 FEET TO AN INTERSECTION WITH THE GOVERNMENT MEANDER LINE, WHICH IS ALSO THE NORTHEASTERLY LINE OF BLOCK 377 SEATTLE TIDE LANDS;
THENCE CONTINUING IN THE SAME DIRECTION ALONG SAID RIGHT OF WAY LINE 99.34 FEET TO A POINT ON THE WEST MARGIN OF EAST MARGINAL WAY;
THENCE NORTH ALONG THE WEST MARGIN OF EAST MARGINAL WAY 53.94 FEET TO THE TRUE POINT OF BEGINNING;
SITUATED IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON.

PROPOSED EASEMENT

COMMENCING AT THE INTERSECTION POINT OF THE SOUTH MARGIN OF SOUTH SPOKANE STREET AND THE WEST MARGIN OF EAST MARGINAL WAY SOUTH;
THENCE SOUTH 01 07'49" WEST ALONG SAID WEST MARGIN, 127.96 FEET TO A POINT ON THE NORTH LINE OF THAT PORTION OF LAND DEEDED TO NORTHERN PACIFIC RAILWAY COMPANY BY G. KINNEAR CO. IN OCTOBER 1916, SAID POINT BEING THE TRUE POINT OF BEGINNING. SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE

NORTHWEST, SAID CURVE HAVING A RADIUS OF 226.39 FEET. TO WHICH A RADIAL LINE BEARS SOUTH 36°45'55" EAST; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 111°53'13", A DISTANCE OF 43.02 FEET TO THE BEGINNING OF A NON TANGENT CURVE, CONCAVE TO THE SOUTHWEST. SAID CURVE HAVING A RADIUS OF 41.50 FEET, TO WHICH A RADIAL LINE BEARS NORTH 07°43'44" EAST. THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 74°37'29", A DISTANCE OF 54.05 FEET TO A POINT ON THE WEST MARGIN OF EAST MARGINAL WAY SOUTH; THENCE NORTH 01°07'49" EAST, ALONG SAID WEST MARGIN, 57.94 FEET TO THE POINT OF BEGINNING.
SAID DESCRIPTION CONTAINING APPROXIMATELY 730 SQ. FT. (.02 ACRES)