

Attachment A

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Seattle Public Utilities Real Property Services
Post Office Box 34018
Seattle, WA 98124-4018

**EASEMENT AGREEMENT 15-084-A
FOR UTILITY EASEMENTS AT TERMINAL 18 AND
RELEASE OF PRE-EXISTING EASEMENT INTERESTS AND RIGHTS**

Reference Nos. of Document Released: 5674818, 5674820, remaining portion of 5674821, a portion of 5674822, a portion of 7708250859, 7708250860, and 7708250861

Grantor: Port of Seattle

Grantee: City of Seattle

Legal Description (abbreviated): Portions of Blocks 393, 394, 395, 396, 398, 399, 400, 401 and 402, Seattle Tide Lands; and Portions of Block “A”, Frink’s Waterfront Addition, Volume 12 of Plats, Page 89; and Portion of Vacated Streets and Alleys Adjoining, Located in Section 07-24-04 and Section 18-24-04

Assessor’s Tax Parcel ID#s. 766670-1356; -1682; -1690; -1710; -1880; -1940; -2058; -2059; -2085; -2110; -2140; -2294; -2295; -2315; -2365; -2370; -2375; -2380; -2385; -2430; -2435; -2495; -2525; -2550; -2560; -2565; -2570; -2575; -2585; -2590; -2600

This Easement Agreement is made as of this ____ day of _____, 20__ by and between the Port of Seattle, a municipal corporation of the State of Washington (“Grantor”) and The City of Seattle, a municipal corporation of the State of Washington, acting by and through Seattle Public Utilities (“Grantee”), hereafter, when applicable, referred to together as “Parties”.

RECITALS

WHEREAS, Grantor petitioned the City of Seattle to vacate various rights of way, including portions of 11th Avenue Southwest, 13th Avenue Southwest, Southwest Florida Street, and Southwest Hanford Street (“Streets”) on Harbor Island as part of its Terminal 18 Redevelopment Project (“Project”), as more particularly described in the vacation petition to the City of Seattle Clerk File No. 301929 (“Petition”) and City of Seattle Master Use Permit No. 9700752 (“Permit”), both of which are incorporated herein by these references; and

WHEREAS, as part of the Project, the City of Seattle (through its Seattle Public Utilities) and the Port of Seattle entered into a series of agreements regarding reimbursement of costs incurred in relocating water mains and other tasks, which included certain environmental costs as detailed in an Environment and Safety Agreement, entered into on April 1, 1999 (the “1999 Environment Agreement”); and

WHEREAS, Grantor currently owns certain real property for the operation of Terminal 18, a shipping container handling and storage facility on Harbor Island (“Grantor’s Property”), portions of which abut the Streets that will be vacated; and

WHEREAS, Grantee owns and operates various municipal water, sewer and drainage facilities (“Facilities”) on Harbor Island, which are an integral part of the Grantee’s municipal utility systems, portions of which are located within the Streets to be vacated or on Grantor’s Property; and

WHEREAS, Grantor wishes to grant utility easements to the Grantee for its municipal utility systems and Facilities existing within the Streets to be vacated to resolve the utility issues to the satisfaction of the affected utility, consistent with conditions outlined in the City’s July 20, 1998 letter, to obtain approval of a final street vacation ordinance; and

WHEREAS, Grantee has existing easements for an underground storm drain line across the southeasterly five feet of the northwesterly one-half of Lot 6, Block 395, Seattle Tidelands, encumbering Grantor’s property, the terms of which easements are set forth in King County Recording Nos. 5674818 and 5674820; and

WHEREAS, Grantee has existing easements for an underground sewer line along formerly vacated Southwest Lander Street between 11th Ave Southwest and 13th Ave Southwest, the terms of which easements are set forth in King County Recording Nos. a portion of 7708250859, 7708250860, and 7708250861; and

WHEREAS, Grantee wishes to amend the terms of the existing sewer and storm easements by replacing them with the terms in this master easement agreement, making the existing sewer easement area (now Easement Area B-10) and the existing storm easement area (now Easement Area B-15) subject to this master easement agreement; and

WHEREAS, Grantor wishes to agree to the above-referenced items to move forward with obtaining approval of a final street vacation ordinance; and

NOW, THEREFORE, the parties agree as follows:

EASEMENT AGREEMENT 15-084-A

Grantor, for and in consideration of Grantee's vacation of the Streets and other good and valuable consideration, of which Grantor acknowledges receipt, conveys and grants to Grantee, nonexclusive permanent easements for access to and from and the construction, operation and maintenance of its municipal utility systems and Facilities, over, under, through, across and upon those portions of Grantor's Property, or those portions of the Streets that Grantor hereafter acquires rights, title or interest to, as generally shown on Exhibit A ("T-18 Overall Easement Map") and as legally described in Exhibits B-1, B-3 through B-6, B-8, B-10, B-11, and B-13 through B-16 (each "Easement Area" as appropriate and collectively "Easement Areas"), copies of which are attached and incorporated herein, together with the reasonable right of entry across Grantor's Property for ingress to and egress from the Easement Areas if necessary and consistent with this Easement Agreement. Each Easement Area impacts those portions of Grantor's Property, i.e. the Assessor's Tax Parcel(s) as identified in Exhibit C, a copy of which is attached and incorporated herein.

This Easement Agreement shall include only such rights in the Easement Areas as shall be necessary for access to and from and the inspection, construction, reconstruction, alteration, operation, improvement, maintenance, repair and replacement of, and additions to Grantee's municipal utility systems and the Facilities ("Purposes"). Grantor, its tenants, successors and assigns, shall have the right to use the Easement Areas in any way and for all purposes which do not unreasonably interfere with the easement rights for the Purposes herein, subject to and consistent with the terms and conditions of this Easement Agreement.

A. General Conditions

1. Grantee's Uses of the Easement Areas

As used in this section A.1, "Grantee" shall include Grantee's employees, contractors, agents, invitees, and consultants.

- a. Grantee will have the right to enter upon and use the Easement Areas at all times for the Purposes herein.
- b. Grantee, at its own expense, shall have the right to install, replace or improve any Facilities within the Easement Areas with Facilities of any size, capacity, or functionality; provided that, upon completion, any new Facilities will not unreasonably block, obstruct, hinder or otherwise prevent access over and across Grantor's Property.
- c. Grantee agrees to restore the Easement Areas following any activity by Grantee that disturbs the Easement Areas, to the condition it was in immediately prior to Grantee's work being commenced, except as may be provided under Section B.2 below regarding agreed upon protocols for handling certain environmental conditions.
- d. Grantee understands and acknowledges that portions of the Easement Areas lie within a federally regulated and secure marine facility under the jurisdiction of the U.S. Customs and Border Protection ("Secured Areas"), and leased to a marine terminal operator for handling domestic and international freight in containers. Access to Secured Areas is subject to the applicable requirements, as may be amended from time

to time, including requirements by the Federal Government such as the requirement to obtain Transportation Worker Identification Credentials (“TWIC”). Grantee understands and acknowledges that certain portions of Easement Areas B-6, B-8 and B-10 also lie within a secure facility that handles petroleum products that is managed separately from the Secured Areas (“Pipeline Areas”). Grantor and Grantee will work collaboratively to ensure access to both the Secure Areas and Pipeline Areas, which may include Grantor-escorted access in lieu of TWIC. Grantor’s tenants acknowledge Grantee’s rights of access in Exhibits F-1 and F-2 (“Utility Easements and Access Rights to Lease Areas”), copies of which are attached and incorporated herein.

- e. The Parties may mutually agree to reasonable alternate access protocols as needed, however, Grantee shall continue to have 24/7 access to the Facilities in cases of emergency. Any mutually agreed change to access protocols will be documented in writing by the Parties.
- f. Except in cases of emergency, for any Purposes that involve excavation, boring, or tunneling in the Easement Areas, Grantee shall submit its work plan to Grantor for review and comment no less than 60 days prior to the requested work commencement date. Grantor shall provide any comments within 30 days of submittal of Grantee’s work plan. Grantee and Grantor will cooperate in good faith to coordinate the work to reasonably minimize impact to Grantor’s or its tenants’ operations, including but not limited to scheduling adjustments, staging configuration, etc. Grantor will reimburse Grantee for any incremental costs Grantee incurs to do the work to the extent the costs result from a request from Grantor or its tenants to adjust Grantee’s work plan to minimize impact to Grantor’s or its tenants’ operations.

2. Grantor’s Uses of the Easement Areas

As used in this section A.2, “Grantor” shall include Grantor’s employees, contractors, tenants, lessees, agents, invitees, and consultants.

- a. **Subsurface Improvements.** Notwithstanding the nonexclusive easement, Grantor agrees that it will not place or permit placement of any other utility or subsurface facility, including without limitation, conduits, cable, pipelines, vaults, poles, posts, whether public or private, within the Easement Areas, without the prior written approval of Grantee, which approval may be subject to required conditions to protect the integrity and access to Facilities such as horizontal and vertical clearances depending on the type, size and depth of Facilities.
- b. **Storage and Surface Loading.** Grantor may place or store vehicles, containers, equipment, and similar items or personal property of a temporary or removable nature (“Grantor’s Equipment”) in, or move such items across, any part of the Easement Areas; subject to the following:
 - i. for any Easement Areas involving municipal water system Facilities (Easement Areas B-4, portions of B-6, B-8, and portions of B-12), the combined weight of Grantor’s Equipment may not exceed H-20 weight loading;

- ii. for any Easement Areas involving municipal sewer and storm system Facilities (B-1, B-3, B-5, portions of B-6, B-10, B-11, portions of B-12, B-13 through 16), the combined weight of Grantor's Equipment may exceed H-20, but shipping containers may not be stacked higher than 5 total;
 - iii. Notwithstanding subsections i. and ii. above, for all Easement Areas, Grantor's Equipment shall not be placed on or stored directly over any maintenance hole within the Easement Areas at any time, and any Grantor Equipment moving over or across maintenance holes may not exceed H-20 weight loading;
 - iv. Grantor endeavors to minimize movement and storage of any Grantor's Equipment that could result in excessive loading on or vibration of soils around the Facilities.
 - v. Grantor may request consent from Grantee, on a case-by-case basis, for a limited exception to these loading limitations by submitting a written request and a protection plan with proposed measures to protect the Facilities from excessive loading, e.g. bridging or other reinforcement.
 - vi. Grantee will have the right to temporarily limit Grantor's use of the Easement Areas, including eliminating parking or storage of Grantor's Equipment within the Easement Areas, when in its discretion, such temporary limit is necessary for the Purposes under this Easement Agreement. Grantee shall include any requirement to limit temporarily parking or storage within the particular Easement Areas upon at least 3 days' written notice to Grantor. Grantor will remove any Grantor's Equipment from within the affected portion of the Easement Areas, at Grantor's expense. If the Grantor has not removed Grantor's Equipment by the effective date in the notice, or in cases of emergency, the Grantee shall have the right, but not the obligation, to remove any Grantor's Equipment from within the affected Easement Areas and Grantor agrees to reimburse Grantee for any reasonable costs incurred under this section within 30 days of receiving an invoice.
- c. Excavation. Grantor shall not make any excavation, boring, or tunneling within the Easement Areas without the prior written consent of Grantee, which will not be unreasonably withheld, but may include conditions to protect the integrity of and access to the Facilities. Grantor shall request Grantee's consent by submitting work plans to Grantee no less than 60 days prior to the commencement of the proposed work. Grantee shall respond with any comments or conditions within 30 days of submittal of Grantor's work plans.
- d. Surface Improvements. Grantor shall not i) install or permit any permanent structures or improvements of any kind, including but not limited to buildings, walls, rockeries, etc; ii) plant or allow any trees or shrubbery; or iii) place or permit any fill material of any kind within the Easement Areas, without prior written consent of the Grantee, except as provided in Section B.3 below.
- e. Emergency Response. In an Emergency, Grantor shall cooperate immediately with the requests of Grantee, including without limitation immediate removal of Grantor's

Equipment from the Easement Areas, to facilitate Grantee's response to the situation in order to protect Facilities and public health, safety and welfare.

- f. Grantor's Inspection of Easement Area. Grantor shall make a good faith effort to notify Grantee if Grantor observes or receives notice of a maintenance concern with respect to the Facilities, including but not limited to, noticeable surface settlement, sudden changes in service, pipe breaks or severe leaks, so that Grantee can determine if it needs to take any action to protect the Facilities or surrounding property. Grantor personnel shall not operate the Facilities. If Grantor becomes aware of any such problem, Grantor shall contact the Seattle Public Utilities' Operations Response Center at (206) 386-1800. Nothing in this section shall reduce the Grantee's responsibility for the inspection and maintenance of the Facilities in accordance with their standard procedures and protocols, as amended from time to time.
- g. If Grantor's, or its employees', agents', contractors', invitees', licensee's or tenant's use of the Easement Areas results in any damage to the Facilities or Grantee's property, Grantor, at no expense to Grantee, shall repair such damage to the Facilities, Grantee's property or the Easement Areas to Grantee's reasonable satisfaction. If the Grantor has not repaired such damage within a reasonable time, or in cases of emergency, the Grantee shall have the right, but not the obligation, to repair the damage to the Facilities or Grantee's property and Grantor agrees to reimburse Grantee for any reasonable costs incurred under this section within 30 days of receiving an invoice.

B. Special Provisions

1. Railtrack Provisions

Grantor owns and operates railtracks located generally east of 11th Ave Southwest at the northern end of Terminal 18 and which currently cross Grantee's Facilities in Easement Area B-15 ("Railtracks").

- a. Grantee acknowledges and confirms that Grantor's use of the Railtracks is essential to Grantor's business operations upon Grantor's Property, and that unreasonable interruption to its use of the Railtracks could result in significant impacts to Grantor. Grantor acknowledges and confirms that Grantee's use of the Easement Areas is essential to the operation of Grantee's municipal utility systems and that unreasonable interference with the Facilities or access to them or Grantee's property could result in significant impacts to Grantee's municipal utility systems, Grantor's Property, or neighboring properties. Consequently, the parties agree to cooperate in good faith to avoid unreasonable interferences to either party. Therefore, Grantee shall be entitled to full and complete right of access to and use of any space currently occupied by the Railtracks within the Easement Areas for any of the Purposes under this Easement Agreement, subject to the following conditions:
 - i. **Approved Plans.** In the event that Grantee desires access to the affected Easement Areas for any Purpose which involves excavation, boring, tunneling or other activities that may interfere with Grantor's use of the Railtracks other

than Emergencies (the “Work”), the Grantee shall submit its work plan to Grantor for review and approval (“Approved Plans”) not less than thirty (30) days prior to the requested work commencement date. Grantor shall provide written approval or objections specifying the grounds therefor, within ten (10) working days of receipt of Grantee’s work plan or the plans will be deemed approved. Grantor’s approval shall not be unreasonably denied. Grantor may not make objections that will cause the Approved Plans to be inconsistent with Grantee’s standard specifications for its Facilities.

- ii. Short Term Work. If Grantor and Grantee agree that, pursuant to the Approved Plans, the expected interference with Grantor’s use of the Railtracks shall not exceed forty-eight (48) hours, then Grantee shall be entitled to enter upon the Easement Area, including any space currently occupied by existing Railtracks, in order to perform the Work at any reasonable time with consideration of Section B.1.b below and upon having provided Grantor the notice required by Section B.1.b below, unless another time is mutually agreed to by the parties.
 - iii. Long Term Work. In the event that either Grantor or Grantee estimate that the Work shall result in an interference with Grantor’s use of the Railtracks for a period in excess of forty-eight (48) hours, Grantor and Grantee shall cooperate in good faith to establish a mutually agreeable schedule for the Work (the “Work Schedule”). Notwithstanding the foregoing, in the event the parties cannot agree upon a mutually acceptable Work Schedule, Grantor shall have the final decision concerning the dates, times and duration of any nonemergency entry upon the Easement Areas by Grantee to perform the Work, provided however, that Grantor’s determination shall not unreasonably prevent Grantee access to the Easement Areas or prevent Grantee from performing the Work.
- b. Scope and Nature of Work. Subject to the provisions of this Section, Grantee and Grantor shall cooperate in good faith; (i) to use commercially reasonable efforts to avoid unreasonable interference with the Grantor’s use of the Railtracks during the Work, and (ii) to the extent possible, perform the Work in a manner that avoids or otherwise causes the least interference with the Railtracks. Upon at least sixty (60) days’ notice by Grantee, Grantor, at its own cost and expense, shall do any work on the Railtracks necessary to the allow Grantee access to its Facilities within the Easement Areas to do the Work in accordance with the Approved Plans, which may include relocating, removing, supporting or reinforcing the Railtracks (or any portion thereof); provide flagging and any necessary representatives or inspectors to supervise the Work; and replace or reconstruct the Railtracks (collectively, “Grantor’s Activity”). Grantor’s Activity shall be conducted in accordance with any applicable laws, ordinance, permits and regulations. Grantor may request that any Work by Grantee that requires relocation or removal of the Railtracks within the Easement Areas be alternatively done by tunneling or jacking beneath the Railtracks. If Grantee determines that tunneling or jacking is reasonably practicable under the circumstances, and upon Grantor’s written assurance that Grantor, in addition to performing the tunneling or jacking at its expense, will pay any additional costs incurred by Grantee due to completing its Work with the requested tunneling or jacking, which is over and above the cost of its Work with open

cutting after removal or relocation, the Grantee may approve the request. In the event Grantor does not accomplish Grantor's Activity within the timeframe noted above, or that may be mutually agreed to by the parties, Grantee may cause Grantor's Activity to be done and Grantor will promptly reimburse Grantee within 30 days of receipt for the reasonable and documented costs incurred to complete Grantor's Activity as required under this section.

- c. **Safety Requirements.** Any entry on and all Work performed within the Easement Areas by Grantee shall be subject to, and comport with Grantor's applicable safety requirements for work near Railtracks. Grantee shall also adopt and take any safety precautions that Grantor may, in its reasonable opinion, deem necessary from time to time.
- d. In the event of an Emergency which involves excavation, boring, tunneling or other activities that may interfere with Grantor's use of the Railtracks, Grantee shall provide notice to Grantor as soon as practicable and to the extent practicable, provide Grantor the opportunity to comment on proposed work plans and perform Grantor's Activity if it can be done immediately or in a timeframe agreed to by Grantee. If Grantor is unable to perform the Grantor's Activity within the timeframe necessary to respond to the Emergency, Grantee will cause the Grantor's Activity to be performed and Grantor will promptly reimburse Grantee within 30 days of receipt for the reasonable and documented costs incurred to do the Grantor's Activity as required to respond to the Emergency.
- e. In the event that the terms of this Section B.1 shall conflict with any of the terms, conditions or obligations set forth in this Easement Agreement, the terms in this Section B.1 shall control any matter involving Railtracks.

2. Notice of Consent Decree

- a. Notice is hereby given that portions of Grantor's Property are subject to the Harbor Island Soil & Groundwater Operable Unit Consent Decree, which was entered in the United States District Court, Western District of Washington Seattle Division, in Civil Action No. C95-1495Z ("Consent Decree"). A copy of that document has been filed at King County under King County Recording No. 9608211528.
- b. Section X of the Consent Decree requires that the United States and its representatives, including EPA and its contractors, be provided access to Grantor's Property at all reasonable times for the purposes of conducting activities related to the Consent Decree. Grantee may not interfere with that right of access.
- c. The Consent Decree includes conditions that apply to the Harbor Island Soil & Groundwater Operable Unit, which includes all or portions of the Easement Areas. Certain portions of the Easement Areas are subject to Harbor Island Soil & Groundwater Operable Unit Environmental Covenants, recorded as separate documents with King County, and listed by easement and effected parcel number in Exhibit C. The Parties have mutually negotiated and agreed to implement certain

protocols related to the conditions in the Consent Decree and Environmental Covenants and the rights and obligations under this Easement Agreement, which are attached and incorporated herein as Exhibit D.

3. Street Use Permits

- a. Grantor has been granted two Street Use Permits, as more particularly defined below (“Street Use Permit Areas”) by the City of Seattle Department of Transportation:
 - i. “Street Use Permit #34201” - formerly permit #W2454, which allows the long-term use and occupation of the City right-of-way (11th Avenue Southwest) for parking, fencing, and material storage in the area generally shown on the Street Use Permit Area Map, a copy of which is attached and incorporated herein as Exhibit E-1; and
 - ii. “Street Use Permit #99920” - formerly permit #65360, which allows the long-term use and occupation of the City right-of-way (11th Avenue Southwest) for the T-18 South Gate, including parking, OCR shed and security trailer operations, and truck queuing in the area generally shown on the Street Use Permit Area Map, a copy of which is attached and incorporated herein as Exhibit E-2.
 - iii. All Street Use Permits are wholly temporary in nature and vest no permanent right and may, in any case, be revoked upon 30-calendar days’ notice, or without notice, in case any use or occupation is dangerous or any structure or obstruction permitted is insecure or unsafe or is not constructed, maintained, or used in accordance with the provisions of Title 15 of the Seattle Municipal Code (“SMC”).
- b. Street Use Permits #34201 and #99920 impact Easement Areas B-11 and B-5 respectively, and access to certain Facilities in those right-of-way areas. Grantor understands and agrees that in the event of conflict between Grantee’s access to its Facilities for the Purposes and Grantor’s rights under Street Use Permits #34201 and #99920, Grantee’s needs to access its Facilities for the Purposes will supersede Grantor’s rights under Street Use Permits #34201 and #99920 to the extent and for the duration required for the Purposes and in accordance with the following conditions:
 - i. In the event that Grantee’s work on the Facilities requires the removal of any fencing or curbing or other improvements installed by Grantor and within the area authorized under Street Use Permits #34201 and #99920 (“Grantor’s Improvements”), Grantor will be responsible for removing or relocating and replacing Grantor’s Improvements at Grantor’s cost or expense upon 15 days’ prior written notice from Grantee and consistent with the Street Use Permits.
 - ii. Grantee will have the right to temporarily limit or eliminate any other use, including parking or storage of Grantor’s Equipment, within the Street Use Permit Areas, when in its discretion, such temporary limit is necessary for the Purposes. Grantee shall include any requirement to temporarily limit parking or storage or other use upon 3 days’ prior written notice from Grantee. Grantor will prevent parking and storage or remove any Grantor’s Equipment from the affected portion of the Street Use Permit Areas at Grantor’s expense.

- iii. If the Grantor has not removed Grantor’s Improvements or Equipment by the effective date(s) in the notice(s) in B.3.b.i and ii above, or in cases of emergency, the Grantee shall have the right, but not the obligation, to remove any Grantor’s Improvements or Equipment from within the Street Use Permit Areas and Grantor agrees to reimburse Grantee for any reasonable costs incurred under this section within 30 days of receiving an invoice.
- iv. Grantor’s Street Use Permit #99920 (the area shown on Exhibit E-2) near the South Gate at 11th Avenue Southwest and Southwest Spokane Street results in altering traffic patterns on City right-of-way so that direct vehicular access to Easement Area B-5 and Facilities from City right-of-way may be blocked. Grantee will follow the access route that is generally used to enter Terminal 18 employee parking area at Gate One, including over any portion of Grantor’s Property as necessary, generally described as follows: from the Loop Road Access Easement (Easement Area B-2) proceed to the stop-sign at SE margin of 11th Ave Southwest, continue east, crossing north-south Gate One, the relief truck lane and rail spur and proceed into fenced parking area. Easement Area B-5 is located in the NW corner of the fenced area. The gates are open during business hours. If gates are closed or for 24 hour (365 day) emergency access: (1) Contact Terminal 18 operations office, 206-654-3711 or (2) Terminal 18 Gate Four Office, 206-654-3725 or other emergency back-up contact number Grantor may provide to Grantee in writing from time to time. Grantee may also use any portion of Grantor’s Property for any reasonable alternative vehicular access route upon mutual agreement of the parties.
- v. Use of the City right-of-way by the Grantor beyond what is authorized in Street Use Permits #34201 and #99920 shall require additional review and permitting by the Seattle Department of Transportation per the requirements of SMC Title 15. These long-term occupation Street Use Permits do not allow construction activity.

4. Release of Easements

Upon the effective date of the street vacation ordinance, the City will record any and all documents necessary to release and relinquish the following easement interests and rights in accordance with this Agreement:

- a. Seattle Ordinance No. 114944 – to the extent rights were reserved for municipal storm facilities in that final vacation ordinance vacating a portion of 11th Avenue Southwest.
- b. King Co. Recording Nos. 5674818 and 5674820 – in their entirety for rights for municipal storm facilities (now Easement Area B-15).
- c. That portion of King Co. Recording No. 7708250859 to the extent it encumbers Grantor’s Property (Assessor’s Tax Parcel 7666701880) and King Co. Recording Nos. 7708250860 and 7708250861 in their entirety for rights for municipal sewer facilities (now Easement Area B-10).
- d. Seattle Ordinance No. 109970 – to the extent rights were reserved for municipal sewer facilities in that final vacation ordinance vacating a portion of 11th Avenue Southwest.

- e. Seattle Ordinance No. 100158 – to the extent rights were reserved for municipal sewer and storm facilities in that final vacation ordinance vacating a portion of 11th Avenue Southwest.
- f. King County Recording Nos. 5448709 and 8301860651 – in their entirety for rights for municipal storm facilities in a vacated portion of Southwest Hanford Street under Seattle Ordinance No. 91212.
- g. To the extent Seattle has any rights for municipal storm facilities in Block 394, Lots 9 & 10.
- h. King Co. Recording No. 5674821 – the City confirms its release of the remaining portion of easement rights for sewer facilities as described in King Co. Recording No. 9806020316, which was not notarized by the City at the time of recording.
- i. King Co. Recording No. 5674822 – the City confirms its release of a portion of easement rights for sewer facilities as described in King Co. Recording No. 9806020316, which was not notarized by the City at the time of recording.

5. Miscellaneous

a. Grantor agrees that it has revised the legal description and will amend the oil pipeline utility easement granted to Kinder Morgan (King County Recording No. 20040326002210) to reflect the correct legal description for the easement area for the as-built pipeline. The parties understand that the legal description of the recorded easement noted above overlapped with Easement Area B-15, but the actual as-built location of the pipeline does not. A revised legal description will avoid potential conflicts in easement area rights. Grantor will provide Grantee a copy of the revised easement promptly after recording.

b. The parties acknowledge that Grantor, at its expense, completed a final outstanding punch list item from the Project in 2014 to remove the pavement covering Grantee maintenance hole #41 located at the intersection of 11th Avenue Southwest and former Southwest Lander Street, raise it to grade and restore the pavement, all consistent with Grantee's and Grantor's applicable standard specifications.

c. The Parties acknowledge that Grantor has worked with CenturyLink to resolve concerns with CenturyLink's easement for telecommunications facilities (King County Recording No. 9209212171) in Southwest Lander Street by reducing the size of the communications facilities. Grantor will notify Grantee when the CenturyLink work is complete and provide Grantee a copy of the recorded substituted CenturyLink easement area.

d. The Parties acknowledge and agree that there is a potential conflict with a natural gas pipeline installed under an easement granted to Puget Sound Energy (PSE), King County Recording No. 20050609000737, and the municipal water system pipeline under Easement Area B-8, generally located east of the intersection of former Southwest Lander Street and 13th Avenue Southwest. The close proximity of the

pipelines does not allow normal and prudent horizontal clearances to be maintained resulting in risk to the integrity of the municipal water system Facilities. Accordingly, the Parties understand and agree that in the event any party is excavating in or near the area of potential conflict, Grantor will either invoke Section 7 Right of Relocation in the PSE easement to relocate that portion of the natural gas pipeline to reestablish minimum and prudent horizontal clearances or install additional protection measures, e.g. cathodic protection, to minimize the risk to the municipal water system Facilities in a form acceptable to Grantee and at no expense to Grantee.

e. The Parties acknowledge that Grantor is working to grant Olympic Pipeline an easement for its pipeline facilities located in portions of the Streets to be vacated and in proximity to portions of the Facilities which will be subject to this Easement. Grantor will provide Grantee a copy of the easement promptly after recording.

C. Indemnification

1. To the extent permitted by law, and except as defined in Section C.2 below, Grantor and Grantee shall protect, defend, indemnify, and save harmless the other party, and its officers, officials, employees, and agents from any and all costs, claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property (each, a “Claim”), to the extent caused by, resulting from or related to the negligent acts, omissions or willful misconduct of the indemnifying party; provided that if a court of competent jurisdiction, all appeals having been heard or appeals periods having run, determines that the indemnity provided by either party unlawful or otherwise ineffective, the other party shall have no further indemnity obligations hereunder. Each party agrees that its obligations under Section C extend to any Claim brought by, or on behalf of, any of its employees or agents. For this purpose, each party, by mutual negotiation, hereby waives, with respect to the other party only, any immunity that would otherwise be available against such Claims under the industrial insurance provisions of Title 51 RCW. In the event of any Claims, the indemnifying party, upon prompt notice from the other party, shall assume all costs of defense thereof, including legal fees incurred by the other party, and of all resulting judgments that may be obtained against the other party. In the event that any party incurs attorney fees, costs or other legal expenses to enforce the provisions of this section, all such fees, costs and expenses shall be recoverable by the prevailing party at the rates applicable if such enforcement were conducted by in-house attorneys and paralegals who are employees of the prevailing party.
2. In addition to the responsibilities under Exhibit D, Grantor shall indemnify, defend and hold Grantee harmless from costs and claims to the extent they arise from the existence of hazardous substances in the water at concentrations that exceed cleanup levels specified in the Consent Decree, unless the costs or claims arise from the Grantee having been negligent or having failed to follow industry best management practices to limit the quantity of water exposed to contaminants.

D. Compliance with Laws

The Grantee and the Grantor in the exercise of their respective rights under this Easement Agreement shall comply with all applicable federal, state and local laws, ordinances, and regulations, including environmental laws and regulations.

E. Runs with Land

This Easement Agreement and each of the terms, provisions, conditions and covenants herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

F. Payment

All payments required by one party to the other party under this Easement Agreement shall be made within thirty (30) days of receipt of a reasonably documented invoice.

G. Dispute Resolution

The parties shall negotiate in good faith and use their reasonable best efforts to resolve any disputes that may develop under this Easement Agreement. If staff representatives of the parties cannot resolve a dispute, the dispute shall be referred to the Director, Seaport Division at the Port and the Director of Seattle Public Utilities for further negotiation. Only upon failure to resolve the dispute through such negotiations may either party pursue legal action. The prevailing party in any such action shall be entitled to its reasonable costs and expenses, including the cost of in-house attorneys and paralegals whether in-house or outside legal assistance is used.

H. Notices

Except as otherwise specifically provided in this Easement Agreement, notices to Grantor and Grantee shall be made as follows:

Grantor: Manager, Maritime Properties
 Port of Seattle
 PO Box 1209
 Seattle, WA 98111
 Phone: (206) 787-3000

Grantee: City of Seattle
 SPU Real Property Services
 Post Office Box 34018
 Seattle, WA 98124-4018
 Phone: (206) 684-5850

Either party may change its contact, address or phone number by written notice to the other party.

I. Miscellaneous

This Easement Agreement and each of the terms, provisions, conditions and covenants herein have been explicitly negotiated between the parties and the language in all parts of this Easement Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either party. All titles and section headings are for convenience only and shall not be used to resolve disagreements over interpretation. All recitals and exhibits are by this reference made a part of this Easement Agreement.

Port of Seattle, a Washington municipal corporation

The City of Seattle, a Washington municipal corporation, acting through the Seattle Public Utilities

By: _____

By: _____

Its: _____

Its: _____

Date: _____, 20__

Date: _____, 20__

STATE OF)
)
COUNTY OF)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and signed this instrument, on oath stated that s/he is authorized to execute the instrument and acknowledged it as the _____, of the Port of Seattle, to be the free and voluntary act of such party(ies) for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this ____ day of _____, 20__.

NAME _____

(Print name) _____

NOTARY PUBLIC in and for the State of
Washington

Residing at _____

My appointment expires: _____, 20 __

STATE OF _____)
)
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and signed this instrument, on oath stated that s/he was authorized to execute the instrument and acknowledged it as _____ of Seattle Public Utilities of the City of Seattle, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this ____ day of _____, 20__.

NAME _____

(Print name) _____

NOTARY PUBLIC in and for the State of
Washington

Residing at _____

My appointment expires: _____, 20__