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KING COUNTY, WA

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

STORM WATER DRAINAGE FACILITIES EASEMENT

Reference Nos. of Document Released:	None
Grantor:	Port of Seattle
Grantee:	City of Seattle
Legal Description (abbreviated):	Portions of Lots 5, 6 and 7, Block 373, Seattle Tide Lands, portion of vacated South Forest Street as vacated by City of Seattle Street Vacation Ordinance #13732, and vacated South Forest Street adjoining
Assessor's Tax Parcel ID No.	*7666207830 & 7666207900*

This Easement ("Easement") is made effective as of the 29 day of October _____, 2010 by and between the Port of Seattle, a Washington municipal corporation ("Grantor"), and the City of Seattle, a Washington municipal corporation, acting by and through Seattle Public Utilities ("Grantee").

RECITALS

WHEREAS, Grantor petitioned the City of Seattle to vacate a sub-merged portion of South Forest Street, west of East Marginal Way South and east of the east margin of the East Waterway in the Duwamish Industrial area of Seattle ("Street"), as more particularly described in the vacation petition to the City of Seattle Clerk File No. 307732, and as legally described in the attached and herein incorporated **Exhibit A** ("Vacated Area"); and

WHEREAS, Grantor owns King County Assessor's Tax Parcel Numbers 7666207830 and 7666207900 (collectively, "Grantor's Property"), the real property abutting the Vacated Area to the north and south respectively; and

WHEREAS, Grantee owns and operates a municipal stormwater drainage system ("System") and its long-range System plan includes plans to construct a storm water drainage outfall and other necessary and convenient appurtenances or facilities ("Stormwater Facilities") from East Marginal Way South into the Vacated Area; and

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WHEREAS, Grantee's vacation of the Street is conditioned, in part, on Grantor conveying a satisfactory utility easement to Grantee for future Stormwater Facilities; and

WHEREAS, Grantor desires to fulfill conditions for the vacation of South Forest Street, in accordance with City of Seattle Clerk File No. 307732.

NOW, THEREFORE, the parties agree as follows:

EASEMENT

In consideration of Grantee's vacation of South Forest Street, and other good and valuable consideration, receipt of which are hereby acknowledged, Grantor hereby conveys and grants, insofar as it has rights, title and interest in South Forest Street, or hereinafter acquires rights, title or interest in the Street, to Grantee, a ten-foot (10') wide, nonexclusive, permanent easement for the construction, installation, operation and maintenance of Stormwater Facilities over, under, through, across and upon an easterly portion of Grantor's Property and the Vacated Area, as legally described in **Exhibit B** attached hereto and incorporated herein ("Easement Area").

This Easement shall include only such rights in the Easement Area as shall be necessary for the construction, installation, reconstruction, alteration, operation, improvement, maintenance, inspection, repair and replacement of Stormwater Facilities and access thereto ("Purposes"). Grantor, its successors and assigns, shall have the right to use the Easement Area in any way and for all purposes which do not unreasonably interfere with the easement rights for the Purposes herein granted to Grantee and which are consistent with the terms and conditions of this Easement.

A. Grantee's Purposes, Uses and Obligations

1. Grantee, and its employees, contractors and consultants shall have the right to enter upon and use the Easement Area at all times for the Purposes herein.

2. Grantee, at its own expense, shall have the right to install, replace and improve any Stormwater Facilities within the Easement Area with Stormwater Facilities of the same or larger diameter and capacity, or functionality; provided that, upon completion, any new Stormwater Facilities will not unreasonably block, obstruct, hinder or otherwise prevent access over and across the Grantor's Property.

2. Grantee agrees to restore the Easement Area following any activity by Grantee that disturbs the Easement Area, to the condition it was in immediately prior to Grantee's work being commenced.

B. Grantor's Obligations and Activities in Easement Area

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1. Grantor agrees that, it will not knowingly permit any other utility facility, including without limitation, conduits, cable, pipelines, vaults, poles, posts, whether public or private, to be installed within the Easement Area, without the prior written approval of Grantee, which may include required horizontal and vertical clearances depending on the type and size of Stormwater Facilities installed.

2. Grantor shall not, and shall not permit its employees, agents, lessees, tenants, licensees or invitees to make any excavation, boring, or tunneling within the Easement Area without the prior written approval of Grantee.

3. Grantor shall not, and shall not permit its employees, agents, lessees, tenants licensees or invitees to (a) erect, plant, or allow to remain any buildings, walls, rockeries, trees, shrubbery, or obstructions of any kind or (b) place any fill material of any kind within the Easement Area, without the prior written permission and approval of Grantee.

4. Grantor acknowledges and agrees that it has represented to Grantee that it will not fill or develop the submerged portion of the Street so that the Stormwater Facilities constructed within the Easement Area can properly function as an outfall into a waterway and that it has entered into agreements with other parties that run with the land that prevent Grantor from filling or developing the submerged portion of the Street. In the event those agreements are no longer valid, or for any other reason Grantor is allowed to and plans to fill or develop the submerged portion of the Street, which will frustrate the Purposes of this Easement Agreement, Grantor shall promptly grant and record an amended easement with a new alignment across Grantor's Property that is acceptable to Grantee to extend the Stormwater Facilities to an available waterway at no cost to Grantee. In addition, Grantor will reimburse Grantee for the reasonable costs to extend the Stormwater Facilities caused by Grantor's fill or development of the submerged portion of the Street within 60 days of receipt of an invoice from Grantee. Grantor will provide reasonable notice of the planned fill or development to Grantee and coordinate any plans and schedules to avoid disruption to Grantee's Stormwater Facilities.

C. Indemnification and Insurance

1. To the extent permitted by law, 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 the negligent acts, omissions or willful misconduct of the indemnifying party. Each party agrees that its obligations under this Section C extend to any claim, demand, or cause of action 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, demands, actions or lawsuits, the indemnifying

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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. The prevailing party shall be entitled to recover its reasonable costs and expenses (including reasonable attorneys' fees) incurred to enforce the provisions of this section.

2. Grantor shall indemnify, defend and hold harmless Grantee, its officers, employees and agents from any and all liabilities, losses, damages, costs, expenses or claims of any kind or nature (including, without limitation, reasonable attorneys' fees and any liability for costs of investigation, abatement, remediation, cleanup, fines, penalties, or other damages arising under any environmental laws) arising out of or in connection with the disposal, release or discharge, migration, handling, or transportation of hazardous materials or substances, as that term may be defined by applicable local, state or federal law on or from any portion of Grantor's Property, including the Easement Area, any time after the recording of this Easement, except to the extent caused by Grantee's operations for the Purposes herein.

D. Compliance with Laws

Grantee and 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 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, assigns and successors-in-title.

Grantor and Grantee hereby represent and warrant to each other that it has necessary authorization to enter into this Easement and that it has been executed by a duly authorized officer of Grantor and Grantee respectively.

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[SIGNATURE(S) ON ATTACHED PAGE(S)]

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Port of Seattle, a Washington municipal corporation

By _____

Date 10/25/10, 2010

The City of Seattle
Seattle Public Utilities

By _____
Ray Hoffman, Director

Date 10/29/10, 2010

STATE OF Washington)
)
COUNTY OF King)

I certify that I know or have satisfactory evidence that Tay Yoshitani is the person who appeared before me and signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the Chief Executive Officer **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 25th day of October 2010

JULIE KATHRYN THOMAS
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES 1-22-11

NAME Julie Kathryn Thomas
(Print name) Julie Kathryn Thomas
NOTARY PUBLIC in and for the State of Washington _____
Residing at ~~Seattle~~ Bothell, WA
My appointment expires: 1-22, 2011

STATE OF Washington)
) SS.
COUNTY OF King)

I certify that I know or have satisfactory evidence that **Ray Hoffman** 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 **Director 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 29 day of October 2010

S. DEWAYNE TICESON
NOTARY PUBLIC
STATE OF WASHINGTON
DEC. 5, 2010

NAME S. DeWayne Ticeson
(Print name) S. DeWayne Ticeson
NOTARY PUBLIC in and for the State of Washington _____
Residing at Seattle _____
My appointment expires: 12-5-, 2010

EXHIBIT A

LEGAL DESCRIPTION OF VACATED AREA

That portion of South Forest Street within the Southeast Quarter of Section 7, Township 24 North, Range 4 East, W.M., being a strip of land one hundred (100) feet in width and eight hundred and six and one-tenth (806.1) feet in length, lying West of East Marginal Way South, and South of Lot 5, Block 373, Seattle Tide Lands, King County, Washington.

(Also described, per City of Seattle Acceptance Ordinance No. 13809, as a strip of land one hundred (100) feet in width and eight hundred and six and one-tenth (806.1) feet in length, the same being all of Lot 6 and the north forty (40) feet of Lot 7, Block 373, Seattle Tide Lands, King County, Washington)

City Clerk File Copy

EXHIBIT B

EASEMENT AREA

That portion of the Southeast Quarter of Section 7, Township 24 North, Range 4 East, W.M., City of Seattle, King County, State of Washington, described as follows;

A strip of land 10 feet in width, West of and adjoining the following described line;

Commencing at the Northeast corner of Lot 5, Block 373, Plat of Seattle Tide Lands;

Thence South 01°08'30" West, along the Westerly margin of East Marginal Way South, a distance of 45.27 feet to the true point of beginning;

Thence continuing South 01°08'30" West, along said margin, a distance of 260.00 feet to the terminus of said Easement.

(Containing 2,600 square feet more or less)

Legislative Counsel Copy