

Donald Harris
 DPR Smith Cove West Yard Acquisition ORD ATT 2
 June 27, 2013
 Version #7

After recording return document to:

King County
 Department of Natural Resources
 Wastewater Treatment Division
 201 South Jackson Street
 MS KSC-NR-0512
 Seattle, WA 98104-3855

SUBSTITUTE PERMANENT PIPELINE/ACCESS EASEMENT AGREEMENT

Grantor:	City of Seattle
Grantee:	King County
Abbrev. Legal Description:	_____
Full Legal Description:	See Exhibits A, B and C to this Substitute Easement Agreement
Assessor's TPNos.:	_____
Ref. No. of Related Document:	_____

This Substitute Permanent Pipeline/Access Easement Agreement ("Substitute Easement Agreement") is made this ____ day of _____, 2013 by and between the CITY OF SEATTLE, a Washington municipal corporation ("CITY") and KING COUNTY, a political subdivision of the State of Washington, through its Wastewater Treatment Division, ("COUNTY").

RECITALS

A. The COUNTY and CITY, as buyers, entered into a three-way purchase and sale agreement with the Port of Seattle (PORT), as seller, dated _____ to purchase the PORT's real property known as the West Yard ("PSA").

B. The COUNTY acquired the real property legally described on **Exhibit A** attached hereto and incorporated herein (“Tank Area Property”) for its South Magnolia Combined Sewer Overflow Project (“CSO Project”) and the CITY acquired the rest of the West Yard legally described on **Exhibit B** attached hereto and incorporated herein (“City Property”) to expand its Smith Cove Park.

C. The COUNTY also acquired certain easements from the PORT for the CSO Project, including a Permanent Pipeline/Access Easement that was recorded under King County recording number _____ (“Port/County Permanent Pipeline/Access Easement”), and a West Yard Temporary Construction Easement that was recorded under King County recording number _____ (“West Yard TCE”), both of which burden the City Property.

D. The Port/County Permanent Pipeline/Access Easement omits certain provisions that are necessary for the CITY’s intended use of the City Property for park purposes.

E. The COUNTY recognizes the need to protect park land and public use of and access to the City Property, and the CITY recognizes the COUNTY’s need to own, protect, maintain, repair and reconstruct the CSO Project infrastructure, which serves both the CITY and the COUNTY.

F. The COUNTY is willing to replace the Port/County Permanent Pipeline/Access Easement with this Substitute Easement Agreement, which the parties have negotiated to protect both CITY and COUNTY interests, effective upon the date of termination of the West Yard TCE.

NOW, THEREFORE, the CITY and the COUNTY hereby agree as follows:

1. Grant and Purpose. Subject to the conditions contained in this Substitute Easement Agreement, **effective on the date of termination of the West Yard TCE, recorded under King County recording number _____**, the CITY grants to the COUNTY a permanent easement (“Easement”) in, on, under, across and through that portion of the City Property legally described as the “Permanent Pipeline/Access Easement Area” on **Exhibit C** and depicted on **Exhibit D** hereto, which Exhibits are incorporated herein by this reference.

This Easement is appurtenant to the Tank Area Property, legally described on **Exhibit B**, and is granted for the benefit of all property now owned or hereafter acquired by the COUNTY that constitutes a portion of the CSO Project (defined in Recital B above) and is for the purposes of access to and installation, construction, ownership, use, operation, maintenance,

repair, replacement and improvement of a subsurface pipeline and the following listed improvements at or below the surface of the Permanent Pipeline/Access Easement Area (collectively "Pipeline Easement Improvements") for the South Magnolia CSO Project: connections, manholes, valves, metering equipment, electric and communication cables, cathodic devices and any other necessary and convenient appurtenances. Access rights are for personnel, vehicles and equipment for the purposes described above. All Pipeline Easement Improvements of any kind that are acquired, constructed or installed within the Permanent Pipeline/Access Easement Area shall be and shall at all times remain the property of the COUNTY.

The Permanent Pipeline/Access Easement Area contains an area of 5,285 square feet (0.13 acres), more or less.

2. Limitations on COUNTY Use. The COUNTY shall keep the Pipeline Easement Improvements in safe condition and good repair at all times at the COUNTY's sole cost. Except in case of emergency or request by the CITY, the COUNTY shall provide ten (10) business days prior written notification to the CITY before undertaking any work in the Permanent Pipeline/Access Easement Area involving digging, trenching, removal of CITY park improvements (including paving), pruning or removal of vegetation. For purposes of this Substitute Easement Agreement, pruning or removal of vegetation that has overgrown or blocked surface Pipeline Easement Improvements does not require prior notice to the CITY.

All activities of the COUNTY in the Permanent Pipeline/Access Easement Area shall be completed without delay by COUNTY employees, or by a qualified, licensed and bonded contractor, 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 improvements (including paving), to their condition immediately prior to the initiation of such activity, unless otherwise mutually agreed in writing.

The COUNTY shall not store any vehicle, equipment or materials in the Permanent Pipeline/Access Easement Area except on a temporary basis and only with prior arrangement with the CITY.

If the COUNTY requires any use or occupation of the City Property outside of the Permanent Pipeline/Access Easement Area, the COUNTY shall first obtain a permit or other license or form of permission from the Superintendent of Parks and Recreation or duly authorized official and pay such fees or other charges as may be applicable or negotiated.

3. Rights and Obligations of the CITY. The CITY shall have the continuing right to use the Permanent Pipeline/Access Easement Area with the following limitations: (a) The CITY shall not grant easement rights to third parties in the Permanent Pipeline/Access Easement Area without the prior written consent of the COUNTY, which shall not be unreasonably withheld. (b) No improvements that might interfere with the use, operation, maintenance, repair or replacement of the Pipeline Easement Improvements or with the COUNTY's access to the Permanent Pipeline/Access Easement Area may be installed, and no permanent structures shall be installed, and no digging, tunneling or other form of construction activity shall be permitted, that might disturb or damage the Pipeline Easement Improvements or unearthen, puncture, obstruct or interfere with the COUNTY's access to or use and operation of, or endanger the lateral support for, the Pipeline Easement Improvements, by the CITY within the Permanent Pipeline/Access Easement Area without the prior written approval of the COUNTY, which approval shall not be unreasonably withheld; provided, however, that the CITY may use the surface of the Permanent Pipeline/Access Easement Area for landscaping, for a paved parking lot and for parking of vehicles so long as no vehicle exceeds the AASHTO H-20 load specifications (generally providing for loads up to a two axle truck with a total weight of 20 tons/40,000 pounds).

4. Compliance with Laws; Indemnity. The COUNTY shall at all times exercise its rights under this Substitute Easement Agreement in accordance with the requirements of all applicable statutes, orders, rules and regulations of any public authority having jurisdiction.

The CITY, its officers, officials, employees, agents and successors and assigns shall not be liable for any injury (including death) to any person(s) or for damage to any property, regardless of how such injury or damage be caused, sustained, or alleged to have been caused or sustained, by the COUNTY or by others, including, but not limited to, all persons directly or indirectly employed by the COUNTY, or any agents, contractors, subcontractors, licensees, or invitees of the COUNTY, as a result of any existing or future defects in the Permanent Pipeline/Access Easement Area or occurrence (including failure or interruption of utility service) whatsoever related in any way to the Permanent Pipeline/Access Easement Area or related in any way to such person's use or occupancy of the Permanent Pipeline/Access Easement Area and the areas adjacent thereto, or related in any way to the COUNTY's exercise or failure to exercise its rights in connection with the Easement or this Substitute Easement Agreement.

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 (except as provided below), caused by the acts or omissions of the COUNTY, its assigns, agents, contractors, licensees, invitees,

employees, in its use of or occupancy of the Permanent Pipeline/Access 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 (construction/road improvements), 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. In no event shall the COUNTY's indemnification obligations under this Substitute Easement Agreement be limited to the extent of any insurance available to or provided by the COUNTY.

5. Notices. Any notices required or permitted under this Substitute Easement Agreement shall be personally delivered or sent by certified mail, return receipt requested and shall be deemed given three (3) days following the date when mailed or one (1) business day following personal delivery. All notices shall be sent to the following addresses:

To the COUNTY: King County
 Wastewater Treatment Division
 Managing Supervisor,
 Regulatory Compliance and Land
 Acquisitions
 Mailstop: KSC-NR-0512
 201 South Jackson Street, Suite 512
 Seattle, WA 98104-3855

To the CITY: City of Seattle
 Department of Parks and Recreation
 Real Estate Management
 800 Maynard Avenue South
 4th Floor
 Seattle, WA 98134-1336

6. Termination and Survival. Upon its effective date, this Substitute Easement Agreement is intended to supersede the Permanent Pipeline/Access Easement that was recorded under King County recording number _____ (“Port/County Permanent Pipeline/Access Easement”), which shall terminate on the effective date of this Substitute Easement Agreement. Notwithstanding the termination of the Port/County Permanent Pipeline/Access Easement, the provisions in the Port/County Permanent Pipeline/Access Easement concerning COUNTY indemnification of the PORT as well as the COUNTY release of the PORT from certain claims shall survive termination of the Port/County Permanent Pipeline/Access Easement. The COUNTY’s release of claims from the Port/County Permanent Pipeline/Access Easement is hereby reaffirmed and set forth in full below:

The COUNTY hereby affirms that it releases and forever discharges the PORT from claims under Four Hundred Thousand Dollars (\$400,000), arising from the presence of Hazardous Substances on the Permanent Pipeline/Access Easement Area as identified in the Phase II Environmental Site Assessment on the West Yard prepared by Shannon and Wilson Inc. dated May 11, 2012 and the technical memorandum prepared by Landau & Associates dated November 9, 2012 (the “Environmental Reports”). Except for the waiver, release and discharge of claims set forth in this paragraph, nothing in this Substitute Easement Agreement shall be construed to waive or discharge any other rights or claims that the COUNTY may have or assert under any Environmental Law. The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning above ground or underground storage tanks, and any similar or comparable state or local law. The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions.

7. Abandonment. In the event the COUNTY abandons the Easement, the COUNTY shall remove the Pipeline Easement Improvements and restore the Permanent Pipeline/Access Easement Area to the same or similar condition as it was immediately before removal of the Pipeline Easement Improvements, unless otherwise agreed by the CITY.

8. General. The COUNTY shall have the right to assign its rights under this Substitute Easement Agreement, 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 Substitute Easement Agreement.

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9. Counterparts. This Substitute Easement Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Substitute Easement Agreement as of the day and year last signed below.

GRANTOR:
CITY OF SEATTLE,
A Washington municipal corporation

By: _____
Print Name: Christopher Williams
Title: Acting Superintendent of Parks and Recreation
Dated: _____

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GRANTEE:
KING COUNTY,
A Political Subdivision of the State of Washington

By: _____
Print Name: _____
Title: _____
Dated: _____

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Washington, residing at _____
My commission expires _____

**EXHIBIT A
TANK AREA PROPERTY
LEGAL DESCRIPTION**

TANK AREA PROPERTY

THAT PORTION OF PARCEL "A" OF THE PORT OF SEATTLE MAGNOLIA BASIN PROPERTY LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 23 AND THE NORTHEAST QUARTER OF SECTION 26 ALL IN TOWNSHIP 25 NORTH, RANGE 3 EAST, W.M., IN KING COUNTY WASHINGTON, CONSISTING OF:

ALL OF BLOCK 117 OF THE PLAT OF SEATTLE TIDE LANDS, VOLUME 1, PAGES 19 AND 20;

TOGETHER WITH ROADS AND ALLEYWAYS CONTAINED THEREIN VACATED BY COURT ORDER, APRIL 21, 1943, RECORDING NO. 3305751;

EXCEPT LOTS 8, 9, 10 AND 11, AND PORTIONS OF LOTS 7 AND LOTS 12 THROUGH 18 OF SAID BLOCK 117;

AND EXCEPT THAT PORTION OF SAID BLOCK 117 LYING WESTERLY OF THE EAST MARGIN OF 23RD AVENUE W AS DESCRIBED IN THE DEED FOR ROAD PURPOSES, AUDITOR'S NO. 9201060605, RECORDS OF KING COUNTY, WASHINGTON;

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK 117; THENCE N89°00'43"W ALONG THE NORTH LINE OF SAID BLOCK 117 A DISTANCE OF 218.52 FEET; THENCE DEPARTING FROM SAID NORTH LINE S05°45'51"E A DISTANCE OF 6.83 FEET; THENCE S16°44'09"W A DISTANCE OF 16.76 FEET; THENCE S79°09'47"W A DISTANCE OF 66.99 FEET; THENCE S52°49'35"W A DISTANCE OF 82.62 FEET TO THE TRUE POINT OF BEGINNING; THENCE S01°04'22"W A DISTANCE OF 148.60 FEET; THENCE N88°56'14"W A DISTANCE OF 215.96 FEET TO A POINT ON THE EAST MARGIN OF 23RD AVENUE W; THENCE N00°57'50"E ALONG SAID EAST MARGIN A DISTANCE OF 158.50 FEET; THENCE DEPARTING FROM SAID EAST MARGIN S88°56'14"E A DISTANCE OF 216.26 FEET; THENCE S01°04'22"W A DISTANCE OF 9.90 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING AND THE TERMINUS OF THIS LINE.

CONTAINING 34,254 SQUARE FEET (0.79 ACRES), MORE OR LESS.

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EXHIBIT B
CITY PROPERTY LEGAL DESCRIPTION

WEST YARD PURCHASE

THAT PORTION OF PARCEL "A" OF THE PORT OF SEATTLE MAGNOLIA BASIN PROPERTY LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 23 AND THE NORTHEAST QUARTER OF SECTION 26 ALL IN TOWNSHIP 25 NORTH, RANGE 3 EAST, W.M., IN KING COUNTY WASHINGTON, CONSISTING OF:

ALL OF BLOCK 117 OF THE PLAT OF SEATTLE TIDE LANDS, VOLUME 1, PAGES 19 AND 20;

TOGETHER WITH ROADS AND ALLEYWAYS CONTAINED THEREIN VACATED BY COURT ORDER, APRIL 21, 1943, RECORDING NO. 3305751;

EXCEPT LOTS 8, 9, 10 AND 11, AND PORTIONS OF LOTS 7 AND LOTS 12 THROUGH 18 OF SAID BLOCK 117;

AND EXCEPT THAT PORTION OF SAID BLOCK 117 LYING WESTERLY OF THE EAST MARGIN OF 23RD AVENUE W AS DESCRIBED IN THE DEED FOR ROAD PURPOSES, AUDITOR'S NO. 9201060605, RECORDS OF KING COUNTY, WASHINGTON;

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID BLOCK 117; THENCE $500^{\circ}59'17''$ W ALONG THE EAST LINE OF SAID BLOCK 117 A DISTANCE OF 44.47 FEET; THENCE DEPARTING FROM SAID EAST LINE $S71^{\circ}00'58''$ W A DISTANCE OF 248.76 FEET; THENCE $S01^{\circ}33'29''$ E A DISTANCE OF 74.99 FEET; THENCE $S00^{\circ}12'30''$ W A DISTANCE OF 120.99 FEET; THENCE $S01^{\circ}04'32''$ W A DISTANCE OF 150.97 FEET; THENCE $S01^{\circ}36'09''$ E A DISTANCE OF 162.34 FEET; THENCE $S19^{\circ}43'20''$ W A DISTANCE OF 13.67 FEET; THENCE $S59^{\circ}00'29''$ W A DISTANCE OF 28.49 FEET; THENCE $N87^{\circ}52'59''$ W A DISTANCE OF 36.39 FEET; THENCE $N72^{\circ}34'50''$ W A DISTANCE OF 45.20 FEET, MORE OR LESS, TO A POINT ON THE WEST LINE OF LOT 12 OF SAID BLOCK 117; THENCE $N00^{\circ}59'17''$ E ALONG SAID WEST LINE OF LOT 12 A DISTANCE OF 6.80 FEET; THENCE DEPARTING SAID WEST LINE $N89^{\circ}52'21''$ W A DISTANCE OF 212.82 FEET, MORE OR LESS, TO A POINT ON THE EAST MARGIN OF 23RD AVENUE W.; THENCE $N00^{\circ}57'50''$ E ALONG SAID EAST MARGIN A DISTANCE OF 94.40 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN $N44^{\circ}02'38''$ W A DISTANCE OF 14.14 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN $N00^{\circ}57'50''$ E A DISTANCE OF 262.00 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN $N32^{\circ}09'42''$ W A DISTANCE OF 29.28 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN $N00^{\circ}57'50''$ E A DISTANCE OF 22.47 FEET; THENCE DEPARTING SAID EAST MARGIN $S88^{\circ}56'14''$ E A DISTANCE OF 215.98 FEET; THENCE $N01^{\circ}04'19''$ E A DISTANCE OF 158.50 FEET; THENCE $N88^{\circ}56'14''$ W A DISTANCE OF 216.26 FEET, MORE OR LESS, TO A POINT ON THE EAST MARGIN OF 23RD AVENUE W.; THENCE ALONG SAID EAST MARGIN $N00^{\circ}57'50''$ E A DISTANCE OF 66.21 FEET; THENCE $N69^{\circ}01'01''$ E A DISTANCE OF 30.21 FEET TO A POINT ON THE NORTH LINE OF SAID BLOCK 117 (ALSO THE SOUTH MARGIN OF W. GARFIELD STREET); THENCE $S89^{\circ}00'43''$ E ALONG SAID NORTH LINE A DISTANCE OF 541.05 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING, AND THE TERMINUS OF THIS LINE.

CONTAINING 200,275 SQUARE FEET (4.60 ACRES), MORE OR LESS.

EXHIBIT C
PERMANENT PIPELINE/ACCESS EASEMENT AREA LEGAL DESCRIPTION

WEST YARD PERMANENT PIPELINE EASEMENT AREA

THAT PORTION OF PARCEL "A" OF THE PORT OF SEATTLE MAGNOLIA BASIN PROPERTY LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 23 AND THE NORTHEAST QUARTER OF SECTION 26 ALL IN TOWNSHIP 25 NORTH, RANGE 3 EAST, W.M., IN KING COUNTY WASHINGTON, CONSISTING OF:

ALL OF BLOCK 117 OF THE PLAT OF SEATTLE TIDE LANDS, VOLUME 1, PAGES 19 AND 20;

TOGETHER WITH ROADS AND ALLEYWAYS CONTAINED THEREIN VACATED BY COURT ORDER, APRIL 21, 1943, RECORDING NO. 3305751;

EXCEPT LOTS 8, 9, 10 AND 11, AND PORTIONS OF LOTS 7 AND LOTS 12 THROUGH 18 OF SAID BLOCK 117;

AND EXCEPT THAT PORTION OF SAID BLOCK 117 LYING WESTERLY OF THE EAST MARGIN OF 23RD AVENUE W AS DESCRIBED IN THE DEED FOR ROAD PURPOSES, AUDITOR'S NO. 9201060605, RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH LOT 6 OF BLOCK 116 OF THE PLAT OF SEATTLE TIDE LANDS, VOLUME 1, PAGES 19 AND 20;

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK 117, ALSO BEING A POINT ON THE SOUTH MARGIN OF W. GARFIELD STREET; THENCE N89°00'43"W ALONG THE NORTH LINE OF SAID BLOCK 117 (AND SAID SOUTH MARGIN OF W. GARFIELD STREET) A DISTANCE OF 218.52 FEET TO THE TRUE POINT OF BEGINNING; THENCE DEPARTING FROM SAID SOUTH MARGIN OF W. GARFIELD STREET S05°45'51"E A DISTANCE OF 6.83 FEET; THENCE S16°44'09"W A DISTANCE OF 16.76 FEET; THENCE S79°09'47"W A DISTANCE OF 66.99 FEET; THENCE S52°49'35"W A DISTANCE OF 82.62 FEET; THENCE N01°04'22"E A DISTANCE OF 9.90 FEET; THENCE N88°56'14"W A DISTANCE OF 216.26 FEET, MORE OR LESS, TO THE EAST MARGIN OF 23RD AVENUE W.; THENCE N00°57'50"E ALONG SAID EAST MARGIN A DISTANCE OF 10.00 FEET; THENCE DEPARTING FROM SAID EAST MARGIN S88°56'14"E A DISTANCE OF 209.21 FEET; THENCE N52°49'35"E A DISTANCE OF 80.53 FEET; THENCE N79°09'47"E A DISTANCE OF 59.55 FEET; THENCE N16°44'09"E A DISTANCE OF 0.66 FEET; THENCE N05°45'51"W A DISTANCE OF 5.22 FEET, MORE OR LESS, TO THE SOUTH MARGIN OF W. GARFIELD STREET; THENCE S89°00'43"E ALONG SAID SOUTH MARGIN A DISTANCE OF 20.14 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING AND THE TERMINUS OF THIS LINE.

CONTAINING 5,285 SQUARE FEET (0.13 ACRES), MORE OR LESS.

EXHIBIT D
DEPICTION OF PERMANENT PIPELINE/ACCESS EASEMENT AREA

