

#15

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

**CITY OF SEATTLE**  
**ORDINANCE** \_\_\_\_\_  
**COUNCIL BILL** 117836

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the acquisition of a portion of the real property commonly known as the Port of Seattle's West Yard; authorizing the acceptance and recording of the deed for open space, park and recreation purposes; authorizing the 2008 Parks and Green Spaces Levy Oversight Committee to perform all functions of the 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy; deleting a project from the Acquisition Category and a project from the Development Category of the 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy; reallocating funds to the Opportunity Fund categories of the 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy and the 2008 Parks Levy; abandoning certain appropriations to the Department of Parks and Recreation effective as of January 1, 2013; increasing the appropriations to the Department of Parks and Recreation in the 2013 Adopted Budget; amending the 2013-2018 Adopted Capital Improvement Program; and ratifying and confirming certain prior acts; all by three-fourths vote of the City Council.

WHEREAS, the U.S. Navy acquired property in the vicinity of Smith Cove during World War II, including property now known as the Port of Seattle's West Yard and Piers 90 and 91 and the City of Seattle's Smith Cove Park; and

WHEREAS, the U.S. Navy conveyed to the Port of Seattle the West Yard and Piers 90 and 91 following the war; and

WHEREAS, in 2003 the U.S. Navy conveyed to the City of Seattle Smith Cove Park; and

WHEREAS, King County's Wastewater Treatment Division needs a portion of the Port of Seattle's West Yard property for a combined sewer overflow (CSO) facility; and

WHEREAS, the portion of the West Yard property not needed by King County includes shoreline access; and

WHEREAS, the Port of Seattle is willing to sell all of its West Yard property and the Queen Anne and Magnolia communities have urged the City of Seattle to take advantage of this unique opportunity to expand and enhance Smith Cove Park; and

WHEREAS, King County and the City of Seattle have negotiated a purchase and sale agreement with the Port of Seattle, with the City's obligations subject to City Council approval; and



1 WHEREAS, Ordinance 120024 established a Parks and Green Spaces Levy Oversight  
2 Committee (2000 Parks Levy Oversight Committee) with responsibility to advise and  
3 make recommendations to the Superintendent, Mayor, and City Council about 2000  
4 Parks Levy Fund expenditures, including addition and deletion of projects and  
5 reallocation of funding between categories; and

6 WHEREAS, the 2000 Parks Levy Oversight Committee established by Ordinance 120024 no  
7 longer exists; and

8 WHEREAS, Ordinance 122749 established a Parks and Green Spaces Levy Oversight  
9 Committee (2008 Parks Levy Oversight Committee) with responsibility to advise and  
10 make recommendations to the Superintendent, Mayor, and City Council about 2008 Levy  
11 Fund expenditures, including addition and deletion of projects and reallocation of funding  
12 between categories; and

13 WHEREAS, on June 24, 2013, after public comments and consideration, and review of their  
14 recommendations made on February 25, 2013, the members of the 2008 Parks Levy  
15 Oversight Committee recommended deleting the First Hill Park Acquisition project from  
16 the Neighborhood Park Acquisition Subcategory of the 2000 Neighborhood Parks, Green  
17 Spaces, Trails, and Zoo Levy (2000 Parks Levy), thereby completing the Acquisition  
18 Category; recommended deleting the First Hill Park Development project from the  
19 Neighborhood Park Development subcategory of the 2000 Parks Levy; and  
20 recommended reallocating the remaining balance from the First Hill Development project  
21 and the Acquisition Category to the Opportunity Fund of the 2000 Parks Levy; and

22 WHEREAS, on June 24, 2013, after public comments and consideration, the 2008 Parks Levy  
23 Oversight Committee recommended using up to \$2,000,000 of 2000 Parks Levy  
24 Opportunity Funds for the purchase of a portion of the Port of Seattle's West Yard  
25 property for expansion of Smith Cove Park; and

26 WHEREAS, on June 24, 2013, after public comments and consideration, the 2008 Parks Levy  
27 Oversight Committee recommended reallocating \$3,261,000 from the Acquisition  
28 Category Inflation Adjustment of the 2008 Parks Levy to the Opportunity Fund for the  
purchase of a portion of the Port of Seattle's West Yard property for expansion of Smith  
Cove Park, with the expectation that an estimated \$2,761,000 will be reimbursed to the  
Acquisition Category upon future receipt of anticipated funds from King County for  
purchase of an easement on park land in connection with the CSO facility and  
Conservation Futures Levy fund awards; and

WHEREAS, Ordinance 120024 provides that, after considering any recommendations made by  
the 2000 Parks Levy Oversight Committee, the City Council may, by a three-fourths  
vote, delete projects and reallocate 2000 Parks Levy allocations across categories and  
subcategories; and



1 WHEREAS, Ordinance 122749 provides that, after considering any recommendations made by  
2 the 2008 Parks Levy Oversight Committee, the City Council may, by a three-fourths  
3 vote, reallocate 2008 Parks Levy allocations across categories and subcategories; and

4 WHEREAS, the City wishes to formally authorize the 2008 Parks Levy Oversight Committee to  
5 perform all functions of the 2000 Parks Levy Oversight Committee provided in  
6 Ordinance 120024; NOW, THEREFORE,

7 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

8 Section 1. The Superintendent of Parks and Recreation (Superintendent), or his or her  
9 designee, is authorized, on behalf of the City of Seattle, to acquire a portion of the real property  
10 commonly described as the Port of Seattle's West Yard and legally described below ("Property")  
11 substantially in accordance with the terms and conditions of the Real Estate Purchase and Sale  
12 Agreement attached hereto as Attachment 1 ("Agreement"):

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

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

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

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

24 *AND EXCEPT THAT PORTION OF SAID BLOCK 117 LYING WESTERLY OF*  
25 *THE EAST MARGIN OF 23<sup>RD</sup> AVENUE W AS DESCRIBED IN THE DEED FOR*  
26 *ROAD PURPOSES, AUDITOR'S NO. 9201060605, RECORDS OF*  
27 *KINGCOUNTY, WASHINGTON;*

28 *MORE PARTICULARLY DESCRIBED AS FOLLOWS:*



BEGINNING AT THE NORTHEAST CORNER OF SAID BLOCK 117; THENCE S00°59'17"W ALONG THE EAST LINE OF SAID BLOCK 117 A DISTANCE OF 44.47 FEET; THENCE DEPARTING FROM SAID EAST LINE S71°00'58"W A DISTANCE OF 248.76 FEET; THENCE S01°33'29"E A DISTANCE OF 74.99 FEET; THENCE S00°12'30"W A DISTANCE OF 120.99 FEET; THENCE S01°04'32"W A DISTANCE OF 150.97 FEET; THENCE S01°36'09"E A DISTANCE OF 162.34 FEET; THENCE S19°43'20"W A DISTANCE OF 13.67 FEET; THENCE S59°00'29"W A DISTANCE OF 28.49 FEET; THENCE N87°52'59"W A DISTANCE OF 36.39 FEET; THENCE N72°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°59'17"E ALONG SAID WEST LINE OF LOT 12 A DISTANCE OF 6.80 FEET; THENCE DEPARTING SAID WEST LINE N89°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°57'50"E ALONG SAID EAST MARGIN A DISTANCE OF 94.40 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N44°02'38"W A DISTANCE OF 14.14 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N00°57'50"E A DISTANCE OF 262.00 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N32°09'42"W A DISTANCE OF 29.28 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N00°57'50"E A DISTANCE OF 22.47 FEET; THENCE DEPARTING SAID EAST MARGIN S88°56'14"E A DISTANCE OF 215.96 FEET; THENCE N01°04'19"E A DISTANCE OF 158.50 FEET, THENCE N88°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°57'50"E A DISTANCE OF 66.21 FEET; THENCE N69°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°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.

Section 2. The Superintendent or his designee is authorized to execute such additional documents as he deems necessary or desirable to accomplish acquisition of the Property, including, without limitation, such consents, approvals, extensions of time, and minor amendments of the Agreement as he shall deem appropriate to carry out the intent of this ordinance.





1           Section 3. The Superintendent is further authorized to grant permanent easements to  
2 King County, substantially in the form of Attachments 2 and 3 to this ordinance with such  
3 amendments as the Superintendent deems prudent or necessary, in substitution for the easements  
4 to be granted by the Port of Seattle to King County in the form of Exhibits C and E to the  
5 Agreement.

6           Section 4. Upon delivery of the bargain and sale deed for the Property, subject only to  
7 such title exceptions deemed acceptable by the Superintendent, the Superintendent or his  
8 designee is authorized to accept the deed on behalf of the City of Seattle by attaching to the deed  
9 his written acceptance thereof, and to record the same. The Property shall be accepted for open  
10 space, park, and recreation purposes, and placed under the jurisdiction of the Department of  
11 Parks and Recreation.

12           Section 5. The Parks and Green Spaces Levy Oversight Committee established by  
13 Ordinance 122749 ("2008 Parks Levy Oversight Committee") is authorized to perform all  
14 functions of the Parks and Green Spaces Levy Oversight Committee established in Ordinance  
15 120024 ("2000 Parks Levy Oversight Committee").

16           Section 6. The recommendations of the 2008 Parks Levy Oversight Committee to delete  
17 the First Hill Park Acquisition project from the Neighborhood Park Acquisition Subcategory of  
18 the 2000 Parks Levy, to delete the First Hill Park Development project from the Neighborhood  
19 Park Development subcategory of the 2000 Parks Levy, to reallocate the remaining fund balance  
20 from the First Hill Development project and the Acquisition Category, up to \$2,000,000, to the  
21 total allocation for the Acquisition and Development Opportunity Fund of the 2000 Parks Levy  
22 for purchase of the Property are hereby accepted.

23           Section 7. The following appropriations from the funds displayed are abandoned  
24 effective January 1, 2013, in the amounts shown or in such lesser amount as the City Budget  
25  
26  
27



Director determines remained unexpended and unencumbered from each appropriation as of that date:

Fund	Department	Budget Control Level	Amount
2000 Parks Levy Fund (33850)	Parks and Recreation	2000 Parks Levy-Neighborhood Park Acquisitions (K723001)	\$5,670,000
2000 Parks Levy Fund (33850)	Parks and Recreation	2000 Parks Levy-Neighborhood Park Development (K723003)	\$598,000

Section 8. The recommendation of the 2008 Parks Levy Oversight Committee to reallocate \$3,126,000 from the Acquisition Category Inflation Adjustment of the 2008 Parks Levy to the Opportunity Fund of the 2008 Parks Levy for purchase of the Property is hereby accepted.

Section 9. In order to pay for necessary capital costs and expenses incurred, or to be incurred, but for which insufficient appropriations were made due to causes that could not reasonably have been foreseen at the time the 2013 budget was adopted, the appropriation for the following in the 2013 Adopted Budget and the 2013-2018 Adopted Capital Improvement Program is increased from the funds shown, as follows:

Fund	Department	Budget Control Level	Amount
2000 Parks Levy Fund (33850)	Parks and Recreation	2008 Parks Levy Opportunity Fund (K720041)	\$2,000,000
2008 Parks Levy Fund (33860)	Parks and Recreation	2008 Parks Levy Opportunity Fund (K720041)	\$3,261,000

Section 10. Any acts consistent with the authority and prior to the effective date of this ordinance, including recommendations of the 2008 Parks Levy Oversight Committee with respect to deletion of projects, addition of projects, reallocation of funds and other duties allocated to the 2000 Parks Levy Oversight Committee in Ordinance 120024, are hereby ratified and confirmed.

Section 11. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by a three-fourths (3/4) vote of all the members of the City Council the \_\_\_\_ day of \_\_\_\_, 2013, and signed by me in open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_, 2013.

\_\_\_\_\_  
President \_\_\_\_ of the City Council

Approved by me this \_\_\_\_ day of \_\_\_\_, 2013.

\_\_\_\_\_  
Michael McGinn, Mayor

Filed by me this \_\_\_\_ day of \_\_\_\_, 2013.

\_\_\_\_\_  
Monica Martinez Simmons, City Clerk



(Seal)

Attachment 1: Real Estate Purchase and Sale Agreement

- Exhibit A to Attachment 1: West Yard Legal Description
- Exhibit B to Attachment 1: Tank Area Property Legal Description
- Exhibit C to Attachment 1: West Yard Pipeline/Access Easement and Legal Description
- Exhibit D to Attachment 1: West Yard TCE and Legal Description
- Exhibit E to Attachment 1: Surface/Aerial Easement and Legal Description
- Exhibit F to Attachment 1: T-91 Pipeline Easement and Legal Description
- Exhibit G to Attachment 1: T-91 Pipeline TCE and Legal Description
- Exhibit H to Attachment 1: T-91 Pipeline Assembly TCE and Legal Description
- Exhibit I to Attachment 1: West Yard Remainder Legal Description
- Exhibit J to Attachment 1: Agreed Order for Possession and Use
- Exhibit K to Attachment 1: Minor Modification to Agreed Order DE 8938

Attachment 2: Substitute Permanent Pipeline/Access Easement Agreement

- Exhibit A to Attachment 2: Tank Area Property Legal Description
- Exhibit B to Attachment 2: City Property Legal Description
- Exhibit C to Attachment 2: Permanent Pipeline/Access Easement Area Legal

Description

- Exhibit D to Attachment 2: Depiction of Permanent Pipeline/Access Easement Area

Attachment 3: Substitute Surface/Aerial Easement Agreement

- Exhibit A to Attachment 3: Tank Area Property Legal Description
- Exhibit B to Attachment 3: City Property Legal Description
- Exhibit C to Attachment 3: Surface/Aerial Easement Area Legal Description
- Exhibit D to Attachment 3: Surface/Aerial Easement Area Depiction
- Exhibit E to Attachment 3: Permanent Pipeline/Access Easement Area Legal Description



## REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into by and between the Port of Seattle, a municipal corporation of the State of Washington ("Port"), King County, a political subdivision of the State of Washington ("County"), and the City of Seattle, a municipal corporation of the State of Washington ("City") effective as of the date signed by all parties ("Effective Date"). The Port, the County and the City are hereinafter sometimes referred to collectively as the "Parties".

### RECITALS

A. The Port is the owner of property located in King County, Washington adjacent to the Port's Terminal 91 ("T-91"), and commonly known as the West Yard, legally described in Exhibit A, attached hereto and incorporated herein by this reference.

B. In order to acquire the necessary easement rights to construct the South Magnolia Combined Sewer Outflow Project ("CSO Project"), the County filed a condemnation action, King County Superior Court No. 12-2-19667-2 SEA ("Condemnation"). Rather than condemn all easement rights, the County now desires to acquire in fee those portions of the West Yard necessary for the tank for the CSO Project, legally described in Exhibit B, attached hereto and incorporated herein by this reference ("Tank Area Property").

C. The County also desires to acquire a permanent pipeline/access easement on a portion of the West Yard Remainder Property (defined in Recital E below) legally described in Exhibit C attached hereto and incorporated herein by this reference ("West Yard Pipeline/Access Easement"), a temporary construction easement over a portion of the West Yard Remainder Property legally described in Exhibit D attached hereto and incorporated herein by this reference ("West Yard TCE"), and a surface/aerial easement over a portion of the West Yard Remainder Property legally described in Exhibit E attached hereto and incorporated herein by this reference ("Surface/Aerial Easement").

D. In addition, the County requires a permanent pipeline easement over a portion of T-91 legally described in Exhibit F attached hereto and incorporated herein by this reference ("T-91 Pipeline Easement"), a temporary pipeline easement over a portion of T-91 legally described in Exhibit G attached hereto and incorporated herein by this reference ("T-91 Pipeline TCE"), and, at the County's option as provided in Part A, Paragraph 1 below, a temporary pipeline assembly easement over a portion of T-91 depicted on Exhibit H attached hereto and incorporated herein by this reference ("T-91 Pipeline Assembly TCE").

E. In order to expand its Smith Cove Park facility, the City desires to acquire from the Port those portions of the West Yard legally described in attached Exhibit I, attached hereto and incorporated herein by this reference ("West Yard Remainder Property"). The West Yard Remainder Property includes a viewpoint park designed with a corridor to provide public access to the tidelands and provide a passive recreation facility.

F. The County, the City and the Port are entering into this Agreement pursuant to the authority granted in Chapter 39.33 Revised Code of Washington, (Intergovernmental Disposition



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

of Property Act) which permits a political subdivision of the State of Washington to sell real property interests to the State or any municipality or any political subdivision thereof on such terms and conditions as may be mutually agreed upon by the proper authority of the state and/or the subdivisions concerned.

NOW, THEREFORE, in consideration of the agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## AGREEMENT

### A. COUNTY TRANSACTION

1. The County Property. The Port agrees to sell to the County, and the County agrees to purchase from the Port, the Tank Area Property, described in Exhibit B, the West Yard Pipeline/Access Easement, in a form substantially as Exhibit C, the West Yard TCE, in a form substantially as Exhibit D, the Surface/Aerial Easement, in a form substantially as Exhibit E, the T-91 Pipeline Easement, in a form substantially as Exhibit F, the T-91 Pipeline TCE, in a form substantially as Exhibit G, and at the County's option, to be exercised by no later than ten (10) days before the Date of Closing (defined below), the T-91 Pipeline Assembly TCE, in a form substantially as Exhibit H (all, collectively referred to as the "County Property").

1.1 The County acknowledges and agrees that the Port is not conveying any personal property to the County under this Agreement.

2. Purchase Price if City Proceeds with Purchase Under Part B. In the event that the full City Council takes action by no later than July 29, 2013 to approve the City transactions contemplated by this Agreement, then the total purchase price for the Tank Area Property, the West Yard Pipeline/Access Easement, the West Yard TCE and the Surface/Aerial Easement described in Exhibits C, D and E, is Three Million One Hundred Eighty Three Thousand Five Hundred and Four Dollars (\$3,183,504.00) ("County West Yard Purchase Price"), allocated among the property interests as follows:

Tank Area Property (fee)	\$2,000,000
West Yard Pipeline/Access Easement	\$ 115,146
Surface/Aerial Easement	\$ 400,000
West Yard TCE	\$ 668,358

2.1 Except as otherwise noted in this Part A subparagraph 2.1, the County shall also pay to the Port a total purchase price of Fifty Five Thousand Eighty Three Dollars (\$55,083.00) ("T-91 Easement Purchase Price") for all of the easements located on T-91 and described in Exhibits F, G and H, allocated among the property interests as follows:

T-91 Pipeline Easement	\$ 17,933
T-91 TCE	\$ 7,900
T-91 Pipeline Assembly TCE	\$ 29,250



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

No later than ten (10) days before the Date of Closing, the County shall notify the Port whether it intends to purchase the T-91 Pipeline Assembly TCE. If the County notifies the Port that it will not purchase the T-91 Pipeline Assembly TCE, the County will not have the obligation to pay the Port that portion of the T-91 Easement Purchase Price allocated to the T-91 Pipeline Assembly TCE ("T-91 Pipeline Assembly TCE Amount"). In such event, the T-91 Easement Purchase Price shall be revised to a total of Twenty Five Thousand Eight Hundred and Thirty Three Dollars (\$25,833.00) ("Revised T-91 Easement Purchase Price").

2.1.1 If the County notifies the Port prior to Closing that it will purchase the T-91 Pipeline Assembly TCE, then the County and the Port shall execute the T-91 Pipeline TCE at Closing reflecting a post-Closing commencement date and committing the County to pay to the Port the T-91 Pipeline Assembly TCE Amount by no later than thirty (30) days before its commencement date, all as provided in Exhibit H.

2.2 The total purchase price for the County Property under this Part A paragraph 2 shall be the sum of the County West Yard Purchase Price and the T-91 Easement Purchase Price totaling Three Million Two Hundred and Thirty Eight Five Hundred and Eighty Seven Dollars (\$3,238,587.00) ("Total Purchase Price"). If revised in accordance with Part A subparagraph 2.1, the total revised purchase price under this Part A paragraph 2 shall be the sum of the West Yard Purchase Price and the Revised T-91 Easement Purchase Price totaling Three Million Two Hundred and Nine Thousand Three Hundred and Thirty Seven Dollars (\$3,209,337.00) ("Revised Total Purchase Price").

3. Possession and Use. No later than April 30, 2013, the Port and the County will execute an Agreed Order for Possession and Use in substantially the form attached hereto as Exhibit J. Effective as of the date the County deposits into the registry of the Court the amount of Two Million One Hundred Fifteen Thousand One Hundred and Forty Six Dollars (\$2,115,146.00) ("Tank Area Property and West Yard Pipeline/Access Easement Possession and Use Payment"), the County shall have and shall be awarded and granted possession and use of the Tank Area Property described in attached Exhibit B and the West Yard Pipeline/Access Easement described in Exhibit C.

3.1 Any and all amounts deposited by the County for the Tank Area Property and West Yard Pipeline/Access Possession and Use Payment and/or the West Yard TCE Possession and Use Payment (defined in paragraph 10 of Exhibit J) shall be credited towards the County West Yard Purchase Price (defined in Part A paragraph 2) for the Tank Area Property, the West Yard Pipeline/Access Easement, the West Yard TCE and the Surface/Aerial Easement.

3.2 The Port and the County agree to continue the Condemnation trial date to October 31, 2013, and amend the case schedule accordingly pending the City Council's approval of the City transaction contemplated by this Agreement by no later than July 29, 2013.

4. Purchase Price with County Only Transaction. In the event the full City Council does not take action by July 29, 2013, to approve the City transactions contemplated by this Agreement, the County and the Port will execute an amendment to this Agreement deleting all references to the City from the transaction, agreeing that the County will acquire the Tank Area



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

Property described in Exhibit B in fee, the West Yard Pipeline/Access Easement described on Exhibit C and the West Yard TCE described on Exhibit D for a total purchase price of Three Million Two Hundred Three Thousand Six Hundred Fourteen Dollars (\$3,203,614.00) ("County Only Purchase Price"), allocated among the property interests as follows:

Tank Area Property (fee)	\$1,541,430
West Yard Pipeline/Access Easement	\$ 190,260
West Yard TCE	\$ 668,358
Damage to remaining Port Property	\$ 803,566

4.1 Any and all amounts deposited by the County for the Tank Area Property and West Yard Pipeline/Access Possession and Use Payment and/or the West Yard TCE Possession and Use Payment shall be credited towards the County Only Purchase Price (defined in this Part A. paragraph 4) for the Tank Area Property, the West Yard Pipeline/Access Easement and the West Yard TCE.

4.2 Except as otherwise noted in this Part A subparagraph 4.2, the County shall also pay to the Port a total purchase price of Fifty Five Thousand Eighty Three Dollars (\$55,083.00) ("T-91 Easement Purchase Price") for all of the easements located on T-91 and described in Exhibits F, G and H, allocated among the property interests as follows:

T-91 Pipeline Easement	\$ 17,933
T-91 TCE	\$ 7,900
T-91 Pipeline Assembly TCE	\$ 29,250

No later than ten (10) days prior to the Date of Closing, the County shall notify the Port whether it intends to purchase the T-91 Pipeline Assembly TCE. If the County notifies the Port that it will not purchase the T-91 Pipeline Assembly TCE, the County will not have the obligation to pay the Port that portion of the T-91 Easement Purchase Price allocated to the T-91 Pipeline Assembly TCE. In such event, the T-91 Easement Purchase Price shall be revised to a total of Twenty Five Thousand Eight Hundred and Thirty Three Dollars (\$25,833.00) ("Revised T-91 Easement Purchase Price").

4.2.1 If the County notifies the Port ten (10) days prior to the Date of Closing that it will purchase the T-91 Pipeline Assembly TCE, then the County and the Port shall execute the T-91 Pipeline TCE at Closing reflecting a post-Closing commencement date and committing the County to pay to the Port the T-91 Pipeline Assembly TCE Amount by no later than thirty (30) days before its commencement date, all as provided in Exhibit H.

4.3 The total purchase price for the County Property under this Part A paragraph 4 shall be the sum of the County Only Purchase Price and the T-91 Easement Purchase Price totaling Three Million Two Hundred and Thirty Eight Five Hundred and Eighty Seven Dollars (\$3,258,697.00) ("County Only Total Purchase Price"). If revised in accordance with Part A subparagraph 4.2, the total revised purchase price under this Part A paragraph 4 shall be the sum of the County Only Purchase Price and the Revised T-91 Easement Purchase Price





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013  
totaling Three Million Two Hundred and Nine Thousand Three Hundred and Thirty Seven Dollars (\$3,229,447.00) ("Revised County Only Total Purchase Price").

5. The transactions contemplated between the Port and the County under this Part A shall close no later than October 31, 2013, in accordance with the provisions of Part C of this Agreement. No later than seven (7) business days after the closing of the transactions contemplated in this Part A, the County shall dismiss the Condemnation against the Port.

6. Title.

6.1 Conveyance of Tank Area Property. The Port shall convey the Tank Area Property to the County by bargain and sale deed ("County Deed") subject to all Permitted Exceptions (defined below) and all matters which would be disclosed by a current, accurate survey of the Tank Area Property.

6.2. Condition of Title. Title to the Tank Area Property shall, at the option of the County, be insurable by an ALTA extended coverage owner's policy of title insurance or a standard owner's policy of title insurance, in the amount of the County's Purchase Price (as defined in Part A paragraph 2 or 4, as applicable), subject only to the Permitted Exceptions (defined in subparagraph 6.6 below). The Port shall satisfy all requirements of the Title Company in connection with issuance of the title policy ("Title Policy") in accordance with the Title Commitment (defined in Part A subparagraph 6.3 below).

6.3. Title Insurance Commitment. The Port shall provide a current title insurance commitment issued by Chicago Title Insurance Company ("Title Company"). Updates to the commitment shall commit Title Company to insure title in the County for the Tank Area Property in the amount of the County's Purchase Price (as defined in Part A paragraph 2 or 4, as applicable) subject only to the Permitted Exceptions (defined in subparagraph 6.6 below) and shall commit the Title Company to issue such policy endorsements as required by the County. If required by the Title Company to issue an extended coverage owner's ALTA title insurance policy, the County shall obtain a survey and title updates for an extended policy at its own expense. The commitment is referred to as the "Title Commitment."

6.4 Due Diligence. From the Effective Date until May 31, 2013 ("Due Diligence Period"), the County, its designated representatives or agents shall have the right, at their expense, to enter upon the West Yard to (i) perform any and all tests, inspections, studies, surveys or appraisals of the West Yard deemed necessary, by the County; and (ii) examine due diligence materials pertaining to the West Yard that are provided by the Port. The County shall indemnify and hold harmless the Port from and against any mechanic's or other liens or claims that may be filed or asserted against the West Yard or the Port as a result of actions taken by the County or its contractors in connection with any of the County's due diligence inspection activities, including County due diligence inspection activities occurring prior to the Effective Date of this Agreement.

6.5 To the maximum extent permitted by RCW 64.06, the County expressly waives its right to receive from the Port a seller disclosure statement as provided for in



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

RCW 64.06 (the "Seller Disclosure Statement"). Port and County acknowledge that County cannot waive its right to receive the environmental section of the Seller Disclosure Statement (which is contained in Section 6 of the form). Port will provide the same, with only such environmental section completed by the Port, to County within five (5) days after the Execution Date. Nothing in the Seller Disclosure Statement creates a representation or warranty by the Port, nor does it create any rights or obligations in the parties except as set forth in RCW 64.06, as amended. The County is advised to use due diligence to inspect the Tank Area Property to County's satisfaction, subject to the terms of this Agreement, and the Port may not have knowledge of defects that careful inspection might reveal. The County specifically acknowledges and agrees that the Seller Disclosure Statement is not part of this Agreement, Port has no duties to the County other than those set forth in this Agreement, including delivery of the completed environmental section of the Seller Disclosure Statement, County has no independent cause of action under the Seller Disclosure Statement and specifically and without limitation, County will not have a remedy for economic loss resulting from negligent errors, inaccuracies or omissions on the Seller Disclosure Statement.

6.6 Title Review. During the Due Diligence Period, the County shall have fifteen (15) days after receipt of the Title Commitment (or any subsequent update) to notify the Port of any objections it may have to any matters shown or referred to in a Title Commitment ("Objectionable Title Matters"). With regard to Objectionable Title Matters to which the County does object within the Due Diligence Period, the Port shall notify the County within ten (10) days after the Port receives the County's notice whether the Port is able or willing to remove or otherwise resolve the County's request. If the Port is not able or willing to remove an Objectionable Title Matter, then at Closing all Objectionable Title Matters accepted by the County or not objected to by the County shall be deemed to be Permitted Exceptions. Notwithstanding the foregoing, all monetary liens or encumbrances placed on the Tank Area Property during the term of the Port's ownership and resulting from Port action or inaction shall be paid by the Port at Closing.

## 7. Condition of Property.

7.1 The County has been allowed to make an inspection of the Tank Area Property and has received a Phase II Environmental Site Assessment on the West Yard prepared by Shannon and Wilson Inc. dated May 11, 2012 ("Shannon & Wilson Report") which disclosed the presence of oil range hydrocarbons, total lead, and mercury at concentrations greater than Model Toxics Control Act (MTCA) Method A Cleanup Levels in one groundwater sample (GP-11:GW) collected from the southern portion of the West Yard. The Port has received a technical memorandum of an analysis of additional samples and the findings by the County, prepared by Landau & Associates and dated November 9, 2012 ("Landau Report"). These reports have been shared with all of the Parties. The Shannon & Wilson Report and the Landau Report, collectively, will be referred to as the "Environmental Reports."

7.2 The County shall release and forever discharge the Port from claims under Four Hundred Thousand Dollars (\$400,000), arising from the presence of Hazardous Substances on the Tank Area Property as identified in the Environmental Reports. Except for the waiver, release and discharge of claims set forth above, nothing in the Agreement shall be construed to waive or discharge any other rights or claims that the County may have or assert under



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

Environmental Laws. 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.

7.3 Subject to the Port's express representations, warranties and obligations under this Agreement, the County Deed, the provisions of Part A subparagraph 7.2, and satisfaction of all conditions, **THE COUNTY IS PURCHASING ITS INTERESTS IN THE PROPERTY IN AN "AS-IS" CONDITION BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, IS NOT RELYING ON, AND HEREBY WAIVES ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE PORT WITH RESPECT TO ANY MATTERS CONCERNING THE TANK AREA PROPERTY** including, but not limited to the physical condition of the Tank Area Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Tank Area Property with other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Tank Area Property; and the condition of title to the Tank Area Property (collectively, the "Condition of the Property").

7.4 The West Yard is currently subject to and part of Department of Ecology Agreed Order No. DE 8938 ("Agreed Order"). Pursuant to the Minor Modification to Agreed Order dated March 28, 2013 ("Minor Modification"), the West Yard will be removed from the Agreed Order effective upon fee conveyance of the Tank Area Property to the County. A copy of the Minor Modification is attached hereto as Exhibit K and incorporated herein by this reference.

7.5 The County represents and warrants to the Port that except for the Port's express representations, warranties and obligations under this Agreement, and the County Deed the County has not relied and will not rely on, and the Port is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Tank Area Property or relating thereto made or furnished by the Port, any agent or contractor of the Port, or any real estate broker or agent representing or purporting to represent the Port, to whomever made or given, directly or indirectly, orally or in writing.

7.6 The County and the Port acknowledge that the Port's willingness to convey the Tank Area Property reflects that the Tank Area Property is being conveyed subject to the provisions of this Part A paragraph 7.



7.7 Notwithstanding any provision of this Agreement to the contrary, the provisions of this Part A paragraph 7 shall survive the Closing of the transaction contemplated herein and the delivery of the County Deed to the County.

8. Closing Conditions.

8.1 The County's obligation to purchase the Tank Area Property shall be subject to the following conditions that must be satisfied as of Closing or such earlier date as specified below:

8.1.1 All representations and warranties of the Port contained herein shall be true, accurate and complete in all material respects at the time of Closing as if made again at such time.

8.1.2 The Title Company shall be prepared to issue the Title Policy to the County insuring the County's interest in the Tank Area Property in the amount of the County Purchase Price (as defined in Part A subparagraph 2.2 or Part A subparagraph 4.3, whichever may be applicable) subject to no exceptions other than the Permitted Exceptions and the preprinted General Conditions of the Title Policy.

8.1.3 The Port shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance).

8.1.4 Approval by the County Council, if required, and by the Port Commission of the transactions contemplated by this Agreement.

If the conditions set forth in this subparagraph 8.1 are not satisfied as of Closing and the County does not waive the same, the Port and the County shall extend the Closing Date an additional thirty (30) days.

8.2 The Port's obligation to sell the Tank Area Property shall be subject to the following conditions that must be satisfied as of Closing:

8.2.1 All representations and warranties of the County contained herein shall be true, accurate and complete in all material respects at the time of Closing as if made again at such time;

8.2.2 The County shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance).

8.2.3 Approval by the County Council, if required, and by the Port Commission of the transactions contemplated by this Agreement.



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

If the conditions set forth in this Paragraph 8.2 are not satisfied as of Closing and the Port does not waive the same, the Port and the County shall extend the Date of Closing an additional thirty (30) days.

9. Representations and Warranties of the Port. The Port hereby makes the following representations and warranties, which representations and warranties shall be deemed made by the Port to the County as of the Effective Date and as of the Date of Closing:

9.1 From the Effective Date to the Date of Closing, the Port will timely perform all of obligations required by the terms of this Agreement to be performed by the Port.

9.2 From the Effective Date to the Date of Closing, the Port will notify the County of each event of which the Port becomes aware is affecting the Tank Area Property or any part thereof, promptly upon learning of the occurrence of such event.

9.3 The Port is a municipal corporation of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby.

9.4 From the Effective Date to the Date of Closing, the Port will not grant, create or amend any easement, right-of-way, encumbrance, restriction, covenant, lease, license, permit, option to purchase or other right which would affect the Tank Area Property prior to or after Closing ("Third Party Interests") without the County's written consent first having been obtained.

9.5 To the Port's actual knowledge, there is no threatened lawsuit or material claim against or relating to the Port with respect to the Tank Area Property that would impede or materially affect the Port's ability to perform the terms of this Agreement, and other than as noted in Recital B, there is no other pending or, to the Port's actual knowledge, contemplated condemnation or similar proceeding with respect to the Tank Area Property or any part thereof.

10. Representations and Warranties of the County. The County hereby makes the following representations and warranties, which representations and warranties shall be deemed made by the County to the Port as of the Effective Date and as of the Date of Closing:

10.1 From the Effective Date to the Date of Closing, the County will timely perform all of obligations required by the terms of this Agreement to be performed by the County.

10.2 The County is a political subdivision of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby.



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# **EXHIBIT E**



## **B. CITY TRANSACTION**

1. **West Yard Remainder Property.** The Port agrees to sell to the City, and the City agrees to purchase from the Port, the West Yard Remainder Property, legally described in Exhibit I.

2. **Purchase Price.** The total purchase price for the West Yard Remainder Property is Five Million Two Hundred and Sixteen Thousand Dollars (\$5,216,000.00) ("City Purchase Price").

3. **Title.**

3.1 **Conveyance.** The Port shall convey the West Yard Remainder Property to the City by bargain and sale deed ("City Deed") subject only to the Permitted Exceptions (defined in subparagraph 3.4 below) and a covenant running with the land requiring that use of the West Yard Remainder Property include a viewpoint park consistent within City of Seattle Shoreline Substantial Development Permit 76-48, dated November 12, 1976 ("Permit"), until such time as the Permit viewpoint park conditions are amended, modified, terminated or released by the Seattle Department of Planning and Development or successor agency, at which time the Port shall cooperate with the City to amend, modify, terminate or release the covenant, as applicable.

3.2. **Condition of Title.** Title to the West Yard Remainder Property shall, at the option of the City, be insurable by an ALTA extended coverage owner's policy of title insurance or a standard owner's policy of title insurance, in the amount of the City Purchase Price, subject only to the Permitted Exceptions (defined in subparagraph 3.4 below). The Port shall satisfy all requirements of the Title Company in connection with issuance of the title policy (the "Title Policy") in accordance with the Title Commitment (defined in subparagraph 3.3 below).

3.3. **Title Insurance Commitment.** The Port shall provide a current title insurance commitment issued by Chicago Title Insurance Company ("Title Company"). Updates to the commitment shall commit Title Company to insure title in the City in the amount of the City Purchase Price subject only to the Permitted Exceptions (defined in subparagraph 3.4 below) and shall commit the Title Company to issue such policy endorsements as required by the City. If required by the Title Company to issue an extended coverage owner's ALTA title insurance policy, the City shall obtain a survey and title updates for an extended policy at its own expense. The commitment is referred to as the "Title Commitment."

3.4 **Title Review.** The City shall have thirty (30) days after receipt of the Title Commitment to notify the Port of any objections it may have to any matters shown or referred to in the Title Commitment ("Objectionable Title Matters"). With regard to Objectionable Title Matters to which the City does object within the applicable time period, the Port shall notify the City within ten (10) days after the Port receives the City's notice whether the Port is able or willing to remove or otherwise resolve the City's request. If the Port is not able or willing to remove an Objectionable Title Matter, then the City shall have ten (10) days after receipt of written notice from the Port to decide whether to accept the Objectionable Title Matter as a Permitted Exception or to terminate the City's agreement to purchase the West Yard Remainder



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

Property. If the City elects to terminate, both the Port and the City shall be released and discharged from all further obligations under this Agreement. All matters shown or referred to in the Title Commitment to which the City does not object or to which the City waives its objections are referred to as Permitted Exceptions. Notwithstanding the foregoing, all monetary liens or encumbrances on the West Yard Remainder Property, except those arising under Part B subparagraph 4.3, placed on the West Yard Remainder Property during the term of the Port's ownership and resulting from Port action or inaction are not Permitted Exceptions and shall be paid by the Port at Closing.

4. Due Diligence.

4.1 Within seven (7) days after the Effective Date, the Port shall, at its sole expense, deliver to the City signed complete copies of all leases affecting the West Yard Remainder Property, including, without limitation, all subleases, assignments, and rental or occupancy agreements; all licenses and all contracts affecting the West Yard Remainder Property, if any; and other documents, records and materials concerning the physical condition of the West Yard Remainder Property, including, without limitation, all surveys, maps, plans, and soils reports.

4.2 To the maximum extent permitted by RCW 64.06, the City expressly waives its right to receive from the Port a seller disclosure statement as provided for in RCW 64.06 ("Seller Disclosure Statement"). Port and City acknowledge that City cannot waive its right to receive the environmental section of the Seller Disclosure Statement (which is contained in Section 6 of the form). Port will provide the same, with only such environmental section completed by Port, to City within five (5) days after the Effective Date. Nothing in the Seller Disclosure Statement creates a representation or warranty by the Port, nor does it create any rights or obligations in the parties except as set forth in RCW 64.06, as amended. The City is advised to use due diligence to inspect the West Yard Remainder Property to City's satisfaction, subject to the terms of this Agreement, and the Port may not have knowledge of defects that careful inspection might reveal. The City specifically acknowledges and agrees that the Seller Disclosure Statement is not part of this Agreement, Port has no duties to the City other than those set forth in this Agreement, including delivery of the completed environmental section of the Seller Disclosure Statement, City has no independent cause of action under the Seller Disclosure Statement and specifically and without limitation, City will not have a remedy for economic loss resulting from negligent errors, inaccuracies or omissions on the Seller Disclosure Statement.

4.3 Without limiting any other rights of the City under this Agreement, the City and the City's agents and employees shall have the right to enter the West Yard Remainder Property to conduct soils, engineering, and other tests, inspections, surveys and investigations at the West Yard Remainder Property ("Investigations") at the City's sole expense. The City shall coordinate its Investigations with the County so as not to interfere with County activities on the Property. The Port agrees to cooperate and to cause all tenants or other occupants of the West Yard Remainder Property to cooperate with any Investigations made by or at the City's direction. The exercise by the City of any of the preceding rights shall not negate any representation, warranty or covenant of the Port, or modify any of the City's rights or the Port's





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

obligations in the event of any breach by the Port of any of its representations, warranties or covenants under this Agreement. Contingent upon the City having the budget authority at the time the indemnity is triggered, the City shall indemnify and hold the Port harmless from any and all damages, expense, liens or claims arising from the City's negligence in exercise of its rights under this Part B subparagraph 4.3 or failure to pay third parties. Notwithstanding the foregoing, the Port does not waive any rights or remedies it may have to proceed against the City for any and all damages, expense, liens or claims, including the City's failure to pay third parties, attorney fees and other defense costs, arising from the City's negligence in the exercise of its rights under this Part B subparagraph 4.3.

4.4 Closing of this transaction is conditioned on the City's satisfaction with the West Yard Remainder Property, the suitability of the West Yard Remainder Property for the City's intended uses and the feasibility of this transaction in the City's sole and absolute discretion. The City shall have until the later of thirty (30) days after the date the Port delivers to the City all documents required under Part B subparagraphs 4.1 and 4.2 above, or thirty (30) days after the Effective Date to conduct its investigations, and to review the items delivered by the Port pursuant to Part B subparagraphs 4.1 and 4.2 above ("City Contingency Period"). If the City fails to notify the Port in writing that this condition is satisfied or waived prior to 5:00 p.m. Pacific Time on the final day of the City Contingency Period, then this Agreement shall be deemed terminated, and both the Port and the City shall be released and discharged from all further obligations under this Agreement.

4.5 The City has been allowed to make an environmental inspection of the West Yard Remainder Property and has received a Phase II Environmental Site Assessment on the West Yard prepared by Shannon and Wilson Inc. dated May 11, 2012 ("Shannon & Wilson Report") which disclosed the presence of oil range hydrocarbons, total lead, and mercury at concentrations greater than Model Toxics Control Act (MTCA) Method A Cleanup Levels in one groundwater sample (GP-11:GW) collected from the southern portion of the West Yard. The Port has received a technical memorandum of an analysis of additional samples and the findings by the County, prepared by Landau & Associates and dated November 9, 2012 ("Landau Report"). These reports have been shared with all of the Parties. The Shannon & Wilson Report and the Landau Report, collectively, will be referred to as the "Environmental Reports."

5. Release; As-Is.

5.1 The City shall release and forever discharge the Port from claims under One Million Dollars (\$1,000,000.00) arising from the presence of Hazardous Substances on the West Yard Remainder Property as identified in the Environmental Reports. Except for the waiver, release and discharge of claims set forth above, nothing in the Agreement shall be construed to waive or discharge any other rights or claims that the City may have or assert under Environmental Laws. 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



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

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.

5.2 Subject to the Port's express representations, warranties and obligations under this Agreement, the City Deed, the provisions of Part B subparagraph 5.1 and satisfaction of all conditions, **THE CITY IS PURCHASING THE WEST YARD REMAINDER PROPERTY IN AN "AS-IS" CONDITION BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, IS NOT RELYING ON, AND HEREBY WAIVES ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE PORT WITH RESPECT TO ANY MATTERS CONCERNING THE WEST YARD REMAINDER PROPERTY** including, but not limited to the physical condition of the West Yard Remainder Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the West Yard Remainder Property with other laws, statutes, ordinances, decrees, regulations and other applicable requirements; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the West Yard Remainder Property; and the condition of title to the West Yard Remainder Property (collectively, the "Condition of the Property").

5.3 The West Yard is currently subject to and part of Department of Ecology Agreed Order No. DE 8938 ("Agreed Order"). Pursuant to the Minor Modification to Agreed Order dated March 28, 2013 ("Minor Modification"), the West Yard will be removed from the Agreed Order effective upon fee conveyance of the Tank Area Property to the County. A copy of the Minor Modification is attached hereto as Exhibit K and incorporated herein by this reference.

5.4 The City represents and warrants to the Port that except for the Port's express representations, warranties and obligations under this Agreement and the City Deed, the City has not relied and will not rely on, and the Port is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the West Yard Remainder Property or relating thereto made or furnished by the Port, any agent or contractor of the Port, or any real estate broker or agent representing or purporting to represent the Port, to whomever made or given, directly or indirectly, orally or in writing.

5.5 The City and the Port acknowledge that the Port's willingness to convey the West Yard Remainder Property reflects that the West Yard Remainder Property is being conveyed subject to the provisions of this Part B paragraph 5.

5.6 Notwithstanding any provision of this Agreement to the contrary, the provisions of this Part B paragraph 5 shall survive the Closing of the transaction contemplated herein and the delivery of the City Deed to the City.



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

6. Closing Conditions.

6.1 The City's obligation to purchase the West Yard Remainder Property is subject to all of the conditions contained in this Agreement, including the following conditions, which must be satisfied as of Closing or such earlier date as specified below:

6.1.1 All representations and warranties of the Port contained herein shall be true, accurate and complete in all material respects at the time of Closing as if made again at such time.

6.1.2 The Port shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance).

6.1.3 An effective ordinance, passed by the City Council and signed by the Mayor, authorizing the Superintendent of Parks and Recreation to acquire the West Yard Remainder Property in accordance with this Agreement, including the form and substance of easements for the benefit of the County affecting the West Yard Remainder Property, and to accept the City Deed, and appropriating all necessary funds for the transaction.

6.1.4 Approval by the Port Commission of the transactions contemplated by this Agreement.

6.1.5 The West Yard Remainder Property shall have been lawfully divided from the larger parcel to allow lawful conveyance of the West Yard Remainder Property to the City.

6.1.6 The Title Company shall be prepared to issue the Title Policy to the City insuring the City's interest in the West Yard Remainder Property in the amount of the City Purchase Price subject to no exceptions other than the Permitted Exceptions and the preprinted General Conditions of the Title Policy.

6.1.7 All leases, contracts, licenses and permits or agreements for use or occupancy (other than easements to the County approved by the City) affecting the West Yard Remainder Property shall be terminated as of Closing.

6.1.8 Except for personal property and equipment of the County in connection with the County's CSO Project, as permitted by the West Yard TCE, the West Yard Remainder Property shall be free of all garbage, debris, equipment, and personal property as of Closing.

6.1.9 The City and the County shall have negotiated a substitute West Yard Pipeline/Access Easement and a substitute Surface/Aerial Easement affecting the West Yard Remainder Property in form and substance acceptable to the City.

If the conditions set forth in this Part B subparagraph 6.1 are not satisfied as of the Date of Closing and the City does not waive the same, the Port and the City shall extend the Date of Closing an additional thirty (30) days.



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

6.2 The Port's obligation to sell the West Yard Remainder Property to the City shall be subject to the following conditions that must be satisfied as of Closing:

6.2.1 All representations and warranties of the City contained herein shall be true, accurate and complete in all material respects at the time of Closing as if made again at such time; and

6.2.2 The City shall have performed all obligations to be performed by it hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance).

6.2.3 Approval by the City Council and by the Port Commission of the transactions contemplated by this Agreement.

If the conditions set forth in this Part B subparagraph 6.2 are not satisfied as of October 31, 2013 and the Port does not waive the same, the Port and the City shall extend the Date of Closing an additional thirty (30) days. If the transaction between the City and the Port does not close by December 2, 2013, the Port will agree to proceed with Closing the County Transaction and extend the Closing of the City Transaction to December 30, 2013 ("Extended City Closing Date"), *if and only if*, the City requests such extension in writing by no later than fifteen (15) days before December 2, 2013, and at the time of the request (i) there is an effective ordinance, passed by the City Council and signed by the Mayor, authorizing the Superintendent of Parks and Recreation to acquire the West Yard Remainder Property in accordance with this Agreement, including the form and substance of easements for the benefit of the County affecting the West Yard Remainder Property, and to accept the City Deed, and appropriating all necessary funds for the transaction; *and* (ii) the City provides evidence, to the full and sole satisfaction of the Port, that the City will complete the process for dividing the West Yard Remainder Property from the larger parcel by no later than the Extended Closing Date.

7. Representations and Warranties of the Port. The Port hereby makes the following representations and warranties, which representations and warranties shall be deemed made by the Port to the City as of the Effective Date and as of the Date of Closing (or Extended Closing Date, if applicable):

7.1 From the Effective Date to the Date of Closing (or Extended Closing Date, if applicable), the Port will timely perform all of obligations required by the terms of this Agreement to be performed by the Port.

7.2 From the Effective Date to the Date of Closing (or Extended Closing Date, if applicable), the Port will notify the City of each event of which the Port becomes aware is affecting the West Yard Remainder Property or any part thereof, promptly upon learning of the occurrence of such event.

7.3 The Port is a municipal corporation of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington and subject to satisfaction of Part B subparagraph 6.2.3, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby.



7.4 From the Effective Date to the Date of Closing (or Extended Closing Date, if applicable), the Port will not grant, create or amend any easement, right-of-way, encumbrance, restriction, covenant, lease, license, permit, option to purchase or other right which would affect the West Yard Remainder Property prior to or after Closing ("Third Party Interests") without the City's written consent first having been obtained.

7.5 To the Port's actual knowledge, there is no threatened lawsuit or material claim against or relating to the Port with respect to the West Yard Remainder Property that would impede or materially affect the Port's ability to perform the terms of this Agreement, and other than as noted in Recital B, there is no other pending or, to the Port's actual knowledge, contemplated condemnation or similar proceeding with respect to the West Yard Remainder Property or any part thereof.

8. Representations and Warranties of the City. The City hereby makes the following representations and warranties, which representations and warranties shall be deemed made by the City to the Port as of the Effective Date and as of the Date of Closing (or Extended Closing Date, if applicable):

8.1 From the date of this Agreement to the Date of Closing (or Extended Closing Date, if applicable), the City will timely perform all of obligations required by the terms of this Agreement to be performed by the City.

8.2 The City is a municipal corporation of the State of Washington, duly organized, validly existing and in good standing under the laws of the State of Washington, and, subject to satisfaction of Part B subparagraph 6.1.3, has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations under this Agreement and the transactions contemplated hereby.

#### **C. PROVISIONS APPLICABLE TO BOTH THE COUNTY TRANSACTION AND THE CITY TRANSACTION**

##### **1. Closing.**

1.1 Time and Place. The closing of the County Transaction and the City Transaction shall occur simultaneously ("Closing"), and shall take place at the offices of Chicago Title Insurance Company, 701 5<sup>th</sup> Avenue, Seattle, Washington, escrow agent for the closing of this transaction ("Escrow Agent"), on or before October 31, 2013 ("Date of Closing").

1.2 Port Obligations. At or before Closing, the Port shall deliver to Escrow Agent, for delivery to the County and/or City, as applicable, the following:



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

1.2.1 Bargain and Sale Deed.

1.2.1.1 To the County. The County Deed, as described in Part A subparagraph 6.1; and

1.2.1.2 To the City. The City Deed, as described in Part B subparagraph 3.1; and

1.2.2 West Yard Easements. The executed West Yard Pipeline/Access Easement, the West Yard TCE and the Surface/Aerial Easement in favor of the County and in substantially the form attached hereto as Exhibits C, D and E, or as otherwise negotiated pursuant to Part A subparagraph 8.1.4 and Part B subparagraph 6.1.9; and

1.2.3 The T-91 Easements. The executed T-91 Easements in favor of the County and in substantially the form attached hereto as Exhibits F, G and H; and

1.2.4 Excise Tax Affidavit. An executed excise tax affidavit for the Tank Area Property and an executed excise tax affidavit for the West Yard Remainder Property, each signed by the responsible and authorized officials of the Port; and

1.2.5 Other Documents. Such other documents and funds as may be required to close this transaction, including a Foreign Investment in Real Property Tax Act ("FIRPTA") certificate.

1.3 County's Obligations. At or before Closing, the County shall deliver to Escrow Agent, for delivery to the Port the following:

1.3.1 Excise Tax Affidavit. An appropriate excise tax affidavit for the Tank Area Property, signed and notarized by the responsible and authorized officials of the County; and

1.3.2 Easements. The executed T-91 Easements in substantially the form attached hereto as Exhibits F, G and H, the executed West Yard Pipeline/Access Easement, in substantially the form attached as Exhibit C, or as otherwise negotiated pursuant to Part A subparagraph 8.1.4 and Part B subparagraph 6.1.9, the executed West Yard TCE in substantially the form attached hereto as Exhibit D and the executed West Yard Surface/Aerial Easement in substantially the form attached hereto as Exhibit E, or as otherwise negotiated pursuant to Part A subparagraph 8.1.4 and Part B subparagraph 6.1.9; and

1.3.3 Other Documents. Such other documents and funds as may be required to close this transaction.

1.4 City's Obligations. At or before Closing, the City shall deliver to Escrow Agent, for delivery to the Port, the following:



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

1.4.1 Excise Tax Affidavit. An appropriate excise tax affidavit for the West Yard Remainder Property, signed by the responsible and authorized official of the City; and

1.4.2 Other Documents. Such other documents and funds as may be required to close this transaction.

1.5 Proration. All taxes, fees and charges payable by governmental entities, including, without limitation, surface water management fees, noxious weeds fees and special district charges associated with the Tank Area Property and the West Yard Remainder Property, shall be prorated as of Closing.

1.6 Closing Costs. The Port and the County shall share equally the escrow fees with respect to the sale of the Tank Area Property. The Port and the City shall share equally the escrow fees with respect to the sale of the West Yard Remainder Property. The County and/or the City shall be solely responsible for their respective cost of title insurance premiums, title endorsements, extended coverage or other title coverage requested by each.

2. Possession. The County shall be entitled to possession of the Tank Area Property at the earlier of the County's deposit of the Tank Area and West Yard Pipeline/Access Easement Possession and Use Payment referred to in Part A. Paragraph 3 above or immediately following Closing. The City shall be entitled to possession, of the West Yard Remainder Property immediately following Closing subject to the West Yard Pipeline/Access Easement, the West Yard TCE and the West Yard Surface/Aerial Easement.

3. Liability. Subject to and without in any way limiting the provisions of Part A. County Transaction, Paragraph 6, and Part B. City Transaction, Paragraph 4, of this Agreement, each party to this Agreement shall be responsible for its own acts and omissions and those of its officers, employees, and agents.

4. Default.

4.1 By Port. If there is an event of default under this Agreement by the Port, the County and/or the City, as may be applicable, will be entitled to pursue any remedies in law or equity.

4.2 By the County. If there is an event of default under this Agreement by the County, the Port will be entitled to pursue any remedies in law or equity.

4.3 By the City. If there is an event of default under this Agreement by the City, the Port will be entitled to pursue any remedies in law or equity.

5. Notices. All notices to be given by each party to the other pursuant to this Agreement shall be delivered in person, by facsimile or deposited in the United States mail, properly addressed, postage fully prepaid, for delivery by certified or registered mail, return receipt requested. Notices given by personal delivery or facsimile shall be deemed effective upon receipt (provided notice by facsimile is on a business day and receipt is acknowledged);



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

notices given by mail shall be deemed effective on the third business day after deposit. Notices may be given at the following addresses and facsimile numbers, until further notice by either party:

If to Port: Port of Seattle  
Real Estate Division  
P. O. Box 1209  
Seattle, WA 98111  
Attn: Managing Director Real Estate Division  
Facsimile: 206 787-3280  
Telephone: 206 787-3722

With a copy to: Port of Seattle  
Legal Department  
P.O. Box 1209  
Seattle, WA 98111  
Attn: General Counsel  
Facsimile: 206 787-3205  
Telephone: 206 787-3218

If to the County: King County  
DNRP/WTB  
Regulatory Compliance and Land Acquisition  
Services Unit  
201 South Jackson Street, Suite 0512  
Seattle, WA 98104

Attn: Bill Wilbert, Environmental Programs  
Managing Supervisor

Facsimile: 206 684-2057  
Telephone: 206 296-7806

With a copy to: King County Prosecutor's Office, Civil Division  
W400 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104  
Attn: Verna Bromley  
Facsimile: 206 296-0191  
Telephone: 206 477-1097

If to the City: City of Seattle, Department of Parks and  
Recreation  
Property and Acquisition Services Division  
800 Maynard Avenue South, Third Floor  
Seattle, WA 98134





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

Attn: Donald Harris, Manager  
Facsimile: 206 233-7038  
Telephone: 206 684-8018

With a copy to:

Seattle City Attorney's Office  
City Hall, 4<sup>th</sup> Floor (personal delivery only)  
P.O. Box 94769  
Seattle, WA 98124-4769  
Attn: Judy Nevins  
Facsimile: 206 684-8284  
Telephone: 206 684-8246

6. Miscellaneous:

6.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

6.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the sale of the real property interests in the West Yard and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the parties.

6.3 Modification or Amendment. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the parties hereto, and authorized by appropriate legislative actions of the Port, County and City.

6.4 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

6.5 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties. The County, the City or the Port shall not assign this Agreement, or any part thereof, without the other party's prior written consent, which consent may be withheld in the other party's sole and absolute discretion.

6.6 Event Date. If any event date falls on a Saturday, Sunday or legal holiday, then the time for performance shall be extended until the next business day.

6.7 Non-Waiver. No term or condition of this Agreement will be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition.



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

6.8 Exhibits and Schedules. This Agreement contains the following Exhibits, which are attached and made a part of this Agreement: Exhibits A, B, C, D, E, F, G, H, I, J and K.

6.9 Brokers. None of the Parties has had any contact or dealings regarding the West Yard, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee based on the purchase and sale transactions contemplated by this Agreement.

6.10 Time. Time is of the essence of this Agreement.

6.11 Attorneys Fees/Litigation Expenses. Each party shall pay their respective attorneys fees with respect to this Agreement and Closing. In any controversy, claim or dispute arising out of, or relating to, this Agreement, the prevailing party shall be entitled to recover its costs and expenses of suit, including reasonable attorneys' fees.

6.12 Recitals; Construction; Definitions. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein. Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if all parties had prepared it.

6.13 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

6.14 Survival. The indemnifications made in this Agreement shall survive the Closing unimpaired and shall not merge into the County Deed or the City Deed and the recordation of each. The representations and warranties made in this Agreement shall not merge into the County Deed or the City Deed.

**KING COUNTY:**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**PORT OF SEATTLE:**

By *[Signature]*  
Its *CEO*  
Date: *5/30/13*

**CITY OF SEATTLE:**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_



6.8 Exhibits and Schedules. This Agreement contains the following Exhibits, which are attached and made a part of this Agreement: Exhibits A, B, C, D, E, F, G, H, I, J and K.

6.9 Brokers. None of the Parties has had any contact or dealings regarding the West Yard, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee based on the purchase and sale transactions contemplated by this Agreement.

6.10 Time. Time is of the essence of this Agreement.

6.11 Attorneys Fees/Litigation Expenses. Each party shall pay their respective attorneys fees with respect to this Agreement and Closing. In any controversy, claim or dispute arising out of, or relating to, this Agreement, the prevailing party shall be entitled to recover its costs and expenses of suit, including reasonable attorneys' fees.

6.12 Recitals: Construction: Definitions. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein. Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if all parties had prepared it.

6.13 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

6.14 Survival. The indemnifications made in this Agreement shall survive the Closing unimpaired and shall not merge into the County Deed or the City Deed and the recordation of each. The representations and warranties made in this Agreement shall not merge into the County Deed or the City Deed.

**KING COUNTY:**

By BB Binn  
Its Deputy Director  
Date: May 30, 2013

**CITY OF SEATTLE:**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

**PORT OF SEATTLE:**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_



6.8 Exhibits and Schedules. This Agreement contains the following Exhibits, which are attached and made a part of this Agreement: Exhibits A, B, C, D, E, F, G, H, I, J and K.

6.9 Brokers. None of the Parties has had any contact or dealings regarding the West Yard, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee based on the purchase and sale transactions contemplated by this Agreement.

6.10 Time. Time is of the essence of this Agreement.

6.11 Attorneys Fees/Litigation Expenses. Each party shall pay their respective attorneys fees with respect to this Agreement and Closing. In any controversy, claim or dispute arising out of, or relating to, this Agreement, the prevailing party shall be entitled to recover its costs and expenses of suit, including reasonable attorneys' fees.

6.12 Recitals; Construction; Definitions. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein. Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if all parties had prepared it.

6.13 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

6.14 Survival. The indemnifications made in this Agreement shall survive the Closing unimpaired and shall not merge into the County Deed or the City Deed and the recordation of each. The representations and warranties made in this Agreement shall not merge into the County Deed or the City Deed.

KING COUNTY:

PORT OF SEATTLE:

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF SEATTLE:

By [Signature]  
Its ACTING SUPERINTENDENT  
Date: JUNE 6, 2013



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

Exhibits:

- A West Yard legal description
- B Tank Area Property legal description
- C West Yard Pipeline/Access Easement and legal description
- D West Yard TCE and legal description
- E Surface/Aerial Easement and legal description
- F T-91 Pipeline Easement and legal description
- G T-91 Pipeline TCE and legal description
- H T-91 Pipeline Assembly TCE and legal description
- I West Yard Remainder legal description
- J Agreed Order for Possession and Use
- K Minor Modification to Agreed Order DE 8938



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# **EXHIBIT A**



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**TERMINAL 91 WEST YARD  
LEGAL DESCRIPTION**

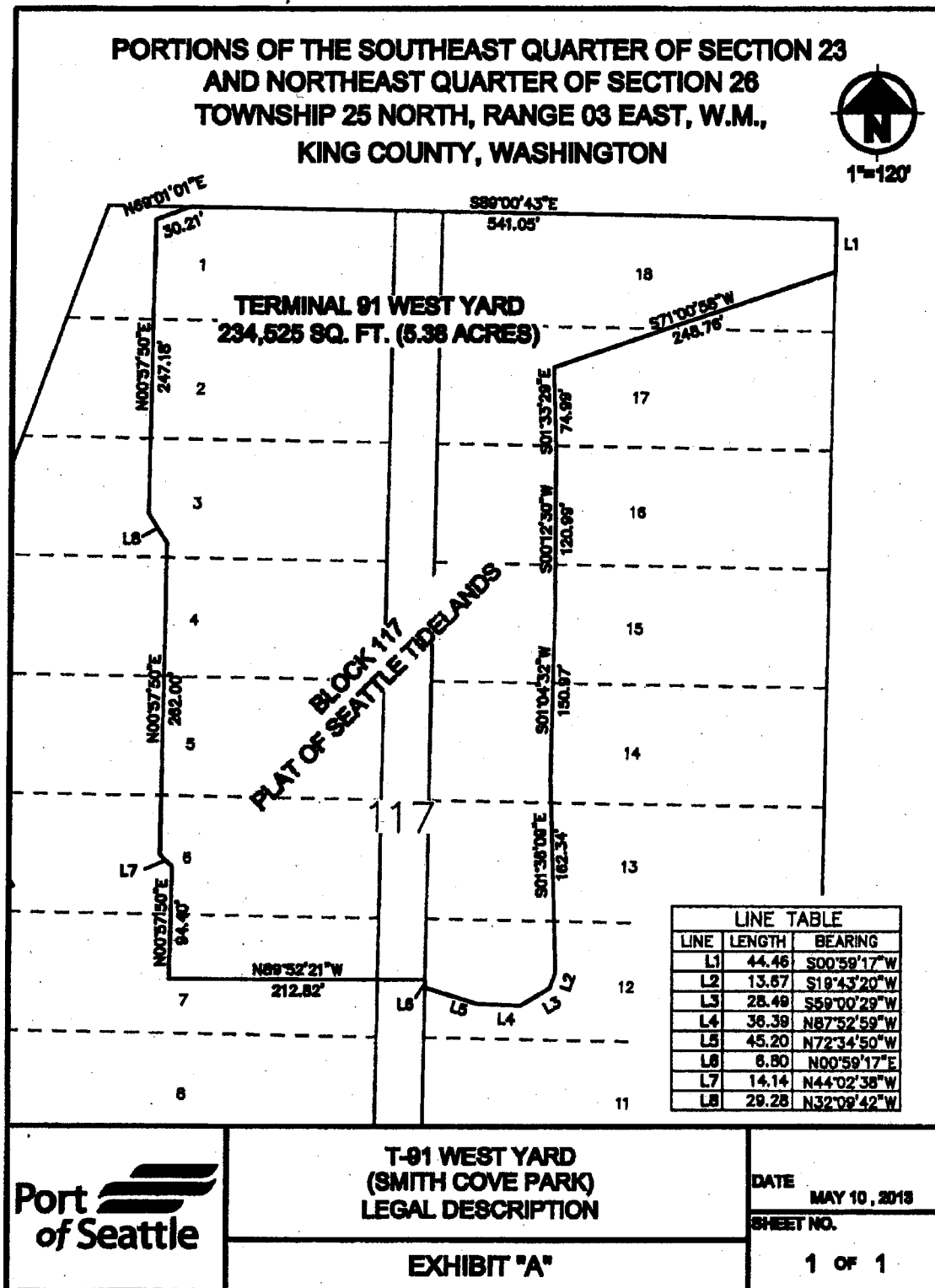
**THAT PORTIONS OF THE SOUTHEAST QUARTER OF SECTION 23 AND  
NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 25 NORTH, RANGE  
03 EAST, W.M., COUNTY OF KING, STATE OF WASHINGTON  
DESCRIBED AS FOLLOWS:**

BEGINNING AT THE NORTHEAST CORNER OF BLOCK 117 OF THE  
PLAT OF SEATTLE TIDE LANDS, VOLUME 1, PAGES 19 AND 20;  
THENCE SOUTH 00°59'17" WEST ALONG THE EAST LINE OF SAID  
BLOCK 117 A DISTANCE OF 44.46 FEET;  
THENCE DEPARTING FROM SAID EAST LINE SOUTH 71°00'58" WEST  
A DISTANCE OF 248.76 FEET;  
THENCE SOUTH 01°33'29" EAST A DISTANCE OF 74.99 FEET;  
THENCE SOUTH 00°12'30" WEST A DISTANCE OF 120.99 FEET;  
THENCE SOUTH 01°04'32" WEST A DISTANCE OF 150.97 FEET;  
THENCE SOUTH 01°36'09" EAST A DISTANCE OF 162.34 FEET;  
THENCE SOUTH 19°43'20" WEST A DISTANCE OF 13.67 FEET;  
THENCE SOUTH 59°00'29" WEST A DISTANCE OF 28.49 FEET;  
THENCE SOUTH 87°52'59" WEST A DISTANCE OF 36.39 FEET;  
THENCE NORTH 72°34'50" WEST A DISTANCE OF 45.20 FEET, MORE OR  
LESS, TO A POINT ON THE WEST LINE OF LOT 12 OF SAID BLOCK 117;  
THENCE NORTH 00°59'17" EAST ALONG SAID WEST LINE OF LOT 12 A  
DISTANCE OF 6.80 FEET;  
THENCE DEPARTING SAID WEST LINE NORTH 89°52'21" WEST A  
DISTANCE OF 212.82 FEET, MORE OR LESS, TO A POINT ON THE EAST  
MARGIN OF 23<sup>RD</sup> AVENUE W.;  
THENCE NORTH 00°57'50" EAST ALONG SAID EAST MARGIN A  
DISTANCE OF 94.40 FEET;  
THENCE CONTINUING ALONG SAID EAST MARGIN NORTH 44°02'38"  
WEST A DISTANCE OF 14.14 FEET;  
THENCE CONTINUING ALONG SAID EAST MARGIN NORTH 00°57'50"  
EAST A DISTANCE OF 262.00 FEET;  
THENCE CONTINUING ALONG SAID EAST MARGIN NORTH 32°09'42"  
WEST A DISTANCE OF 29.28 FEET;  
THENCE NORTH 00°57'50" EAST A DISTANCE OF 247.18 FEET;  
THENCE NORTH 69°01'01" EAST 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 SOUTH 89°00'43" EAST ALONG SAID NORTH LINE A  
DISTANCE OF 541.05 FEET, MORE OR LESS, TO THE POINT OF  
BEGINNING.

CONTAINING 234,525 SQUARE FEET (5.38 ACRES), MORE OR LESS.

H:\Projects\Seaport\T-91\5318\130508-1\_Magnolia Basen Property\_Isabel S\DOC  
May 13, 2013 -ERR







Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# **EXHIBIT B**



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 ALLEYS 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.

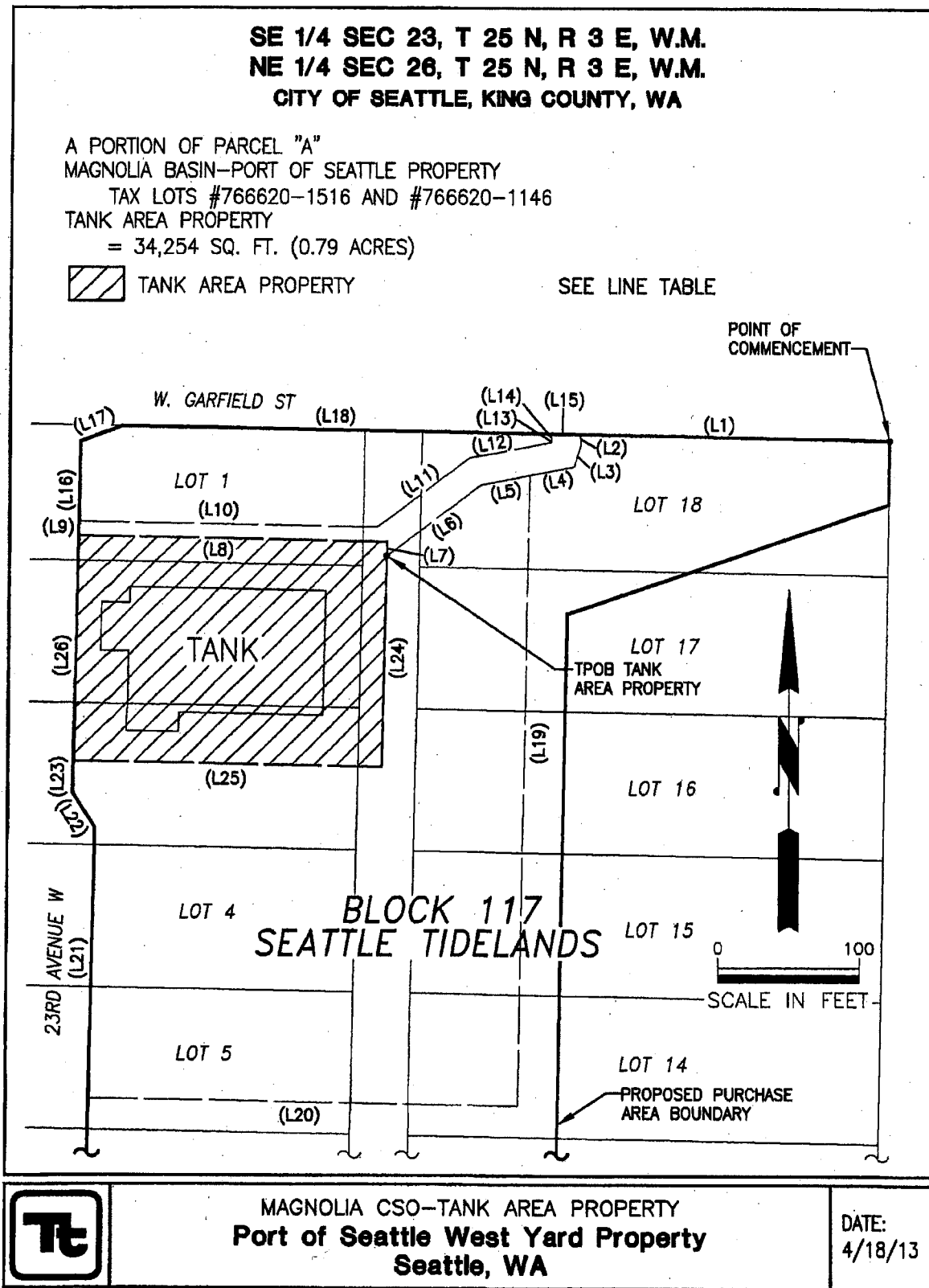
CONTAINING 34,254 SQUARE FEET (0.79 ACRES), MORE OR LESS.



MAGNOLIA CSO-TANK AREA PROPERTY  
**Port of Seattle West Yard Property**  
**Seattle, WA**

DATE:  
4/18/13





A PORTION OF PARCEL "A"  
MAGNOLIA BASIN—PORT OF SEATTLE PROPERTY  
TAX LOTS #766620-1516 AND #766620-1146

LINE TABLE

L1:	N 89°00'43" W	218.52'
L2:	S 05°45'51" E	6.83'
L3:	S 16°44'09" W	16.76'
L4:	S 79°09'47" W	31.95'
L5:	S 79°09'47" W	35.04'
L6:	S 52°49'35" W	82.62'
L7:	S 01°04'22" W	9.90'
L8:	S 88°56'14" E	216.26'
L9:	N 00°57'50" E	10.00'
L10:	S 88°56'14" E	209.21'
L11:	N 52°49'35" E	80.53'
L12:	N 79°09'47" E	59.55'
L13:	N 16°44'09" E	0.66'
L14:	N 05°45'51" W	5.22'
L15:	S 89°00'43" E	20.14'
L16:	N 00°57'50" E	56.21'
L17:	N 69°01'01" E	30.21'
L18:	S 89°00'43" E	302.40'
L19:	N 00°57'50" E	443.69'
L20:	N 89°00'43" W	299.34'
L21:	N 00°57'50" E	190.15'
L22:	N 32°09'42" W	29.28'
L23:	N 00°57'50" E	22.47'
L24:	S 01°04'22" W	148.60'
L25:	N 88°56'14" W	215.96'
L26:	N 00°57'50" E	158.50'



MAGNOLIA CSO—TANK PROPERTY AND EASEMENT LINE TABLE  
**Port of Seattle West Yard Property-Easements**  
**Seattle, WA**

DATE:  
4/18/13



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# EXHIBIT C



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

After recording return document to:

Port of Seattle  
Pier 69 PO Box 1209  
Seattle WA 98111  
Attn: Isabel R. Safora  
Deputy General Counsel

---

**WEST YARD PIPELINE/ACCESS EASEMENT**

<b>Grantor:</b>	Port of Seattle
<b>Grantee:</b>	King County
<b>Abbrev. Legal Description:</b>	
<b>Full Legal Description:</b>	See Exhibit A to this Easement
<b>Assessor's TPNos.:</b>	766620-1516-01 and 766620-1146-09
<b>Ref. No. of Related Document:</b>	N/A

The PORT OF SEATTLE, ("Grantor"), for and in consideration of Ten Dollars (\$10.00) and other valuable consideration including mutual benefits for public use, does hereby grant to KING COUNTY, a county of the State of Washington, and its successors and assigns, (hereinafter collectively "Grantee"), under the imminent threat of the King County's exercise of its rights of Eminent Domain, a permanent exclusive easement in, on, over, across and through that portion of the real property commonly known as the West Yard (the "Property"), which portion is legally described as the "Permanent Pipeline/Access Easement Area" on Exhibit A and depicted on Exhibit B hereto, which Exhibits are incorporated herein by this reference.

This Easement is granted for the benefit of all property now owned or hereafter acquired by Grantee which constitutes a portion of the South Magnolia CSO Project and is for the purpose of installation, construction, ownership, use, operation, maintenance, repair, replacement and improvement of, and access to, a subsurface pipeline serving as part of the South Magnolia CSO Project, including but not limited to all connections, manholes, valves, metering equipment, electric and communication cables, the installation of additional conduits for cathodic protection and any other necessary and convenient appurtenances (collectively, the



"Pipeline Easement Improvements") and providing ingress and egress for personnel, vehicles and equipment related to the uses described above. No improvements that might interfere with the use, operation, maintenance, repair or replacement of the Pipeline Easement Improvements 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 or Pipeline Easement Improvements or unearth, puncture, obstruct or interfere with the use and operation of, or endanger the lateral support for, the pipeline and Pipeline Easement Improvements, by the Grantor within the Pipeline/Access Easement Area without the prior written approval of Grantee, which approval shall not be unreasonably withheld; provided, however, that the Grantor may use the surface of the Pipeline/Access Easement Area for landscaping and parking of vehicles so long as such use will not exceed 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) in the Pipeline Easement Area. 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 Grantee.

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

The Easement granted hereby is solely for the benefit of Grantee, and is personal to Grantee. Grantee shall have the right to permit third parties ("Grantee's invitees") to enter upon the Permanent Pipeline/Access Easement Area to accomplish the purposes described herein, provided that such invitees shall abide by the terms of this Easement.

The Easement granted hereby, and the duties, restrictions, limitations and obligations herein created, shall run with the land, shall burden the Permanent Pipeline/Access Easement Area and shall be binding upon the parties and their respective successors and assigns.

The Grantor, its officers, 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 Grantee or by others, including, but not limited to, all persons directly or indirectly employed by Grantee, or any agents, contractors, subcontractors, licensees, or invitees of Grantee, 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 Grantee's exercise or failure to exercise its rights under this Easement.



Grantee agrees to defend, save and hold harmless Grantor, its 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 Grantee, its assigns, agents, contractors, licensees, invitees, employees, in its use of or occupancy under this Easement. Provided, however, this obligation does not include such claims, actions, costs, damages or expenses which may be caused by the sole negligence of the Grantor, 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 Grantor, its successors or assigns and/or their agents or employees and (b) the Grantee, 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 Grantee, its agents or employees. Grantee specifically and expressly waives any immunity that it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW.

Grantee shall release and forever discharge the Port from claims under Four Hundred Thousand Dollars (\$400,000), arising from the presence of Hazardous Substances on the Property 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 Easement shall be construed to waive or discharge any other rights or claims that Grantee 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.

If in the course of the exercise of its rights under this Easement, or otherwise, Grantee damages or disturbs the Permanent Pipeline/Access Easement Area and/or adjacent property Grantee shall restore the surface of the damaged or disturbed property to the same or similar condition as it was immediately before Grantee's actions.

In the event Grantee abandons this Easement, Grantee shall restore the Permanent Pipeline/Access Easement Area to the same or similar condition as it was immediately before Grantee entered the Permanent Pipeline/Access Easement Area. Grantee shall maintain the Permanent Pipeline/Access Easement Area in a reasonably safe condition.





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

This Easement 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 Easement as of the day and year last signed below.

**GRANTOR:**  
**PORT OF SEATTLE,**  
A Washington municipal corporation

By: \_\_\_\_\_  
Print Name: Tay Yoshitani  
Title: CEO, Port of Seattle  
Dated: \_\_\_\_\_

**GRANTEE:**  
**KING COUNTY,**  
A county of the State of Washington

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

STATE OF WASHINGTON     )  
                                  ) ss.  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that Tay Yoshitani is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Chief Executive Officer of the PORT OF SEATTLE, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission 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/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of KING COUNTY, a county of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

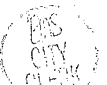
\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**EXHIBIT A**  
**WEST YARD 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;

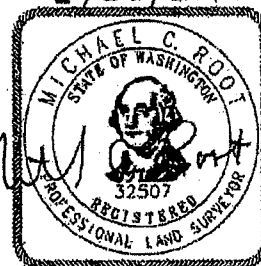
AND EXCEPT THAT PORTION OF SAID BLOCK 117 LYING WESTERLY OF THE EAST MARGIN OF 23RD AVENUE W AS DESCRIBED IN THE DEED FOR ROAD PURPOSES, AUDITOR'S NO. 9201060605, RECORDS OF KING COUNTY, WASHINGTON;

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.



MAGNOLIA CSO—PERMANENT PIPELINE EASEMENT  
Port of Seattle West Yard Property  
Seattle, WA

DATE:  
2/22/13

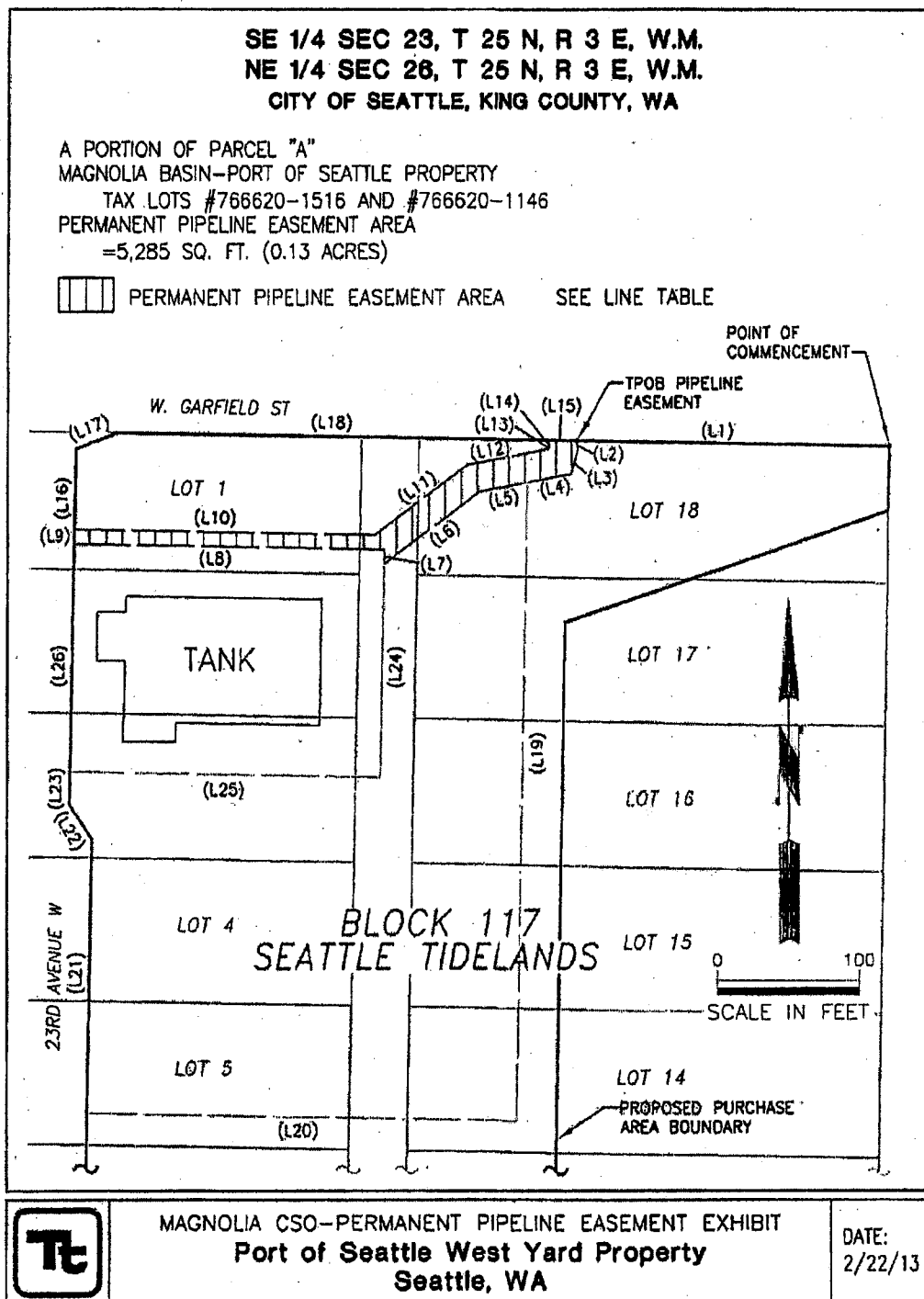


Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**EXHIBIT B**  
**WEST YARD PIPELINE/ACCESS EASEMENT AREA**



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# EXHIBIT D



After recording return document to:

Port of Seattle  
Pier 69 PO Box 1209  
Seattle WA 98111  
Attn: Isabel R. Safora  
Deputy General Counsel

---

**WEST YARD TEMPORARY CONSTRUCTION EASEMENT**

<b>Grantor:</b>	Port of Seattle
<b>Grantee:</b>	King County
<b>Abbrev. Legal Description:</b>	
<b>Full Legal Description:</b>	See Exhibit A to this Easement
<b>Assessor's TPNos.:</b>	766620-1516-01 and 766620-1146-09
<b>Ref. No. of Related Document:</b>	N/A

The PORT OF SEATTLE, ("Grantor"), for and in consideration of Ten Dollars (\$10.00) and other valuable consideration including mutual benefits for public use, does hereby grant to KING COUNTY, a county of the State of Washington, and its successors and assigns, (hereinafter collectively "Grantee"), under the imminent threat of the King County's exercise of its rights of Eminent Domain, a temporary construction easement for access on, over, across and through that portion of the real property commonly known as the West Yard (the "Property"), which portion is legally described as the "West Yard TCE Area" on Exhibit A and depicted on Exhibit B hereto, which Exhibits are incorporated herein by this reference.

This Easement is granted for the purpose of permitting the following construction activity within the West Yard TCE Area in connection with construction of the South Magnolia CSO Project: mobilization, site preparation, grading, excavation and construction which includes, but is not limited to, lighting, ventilation, removal of excavated material, equipment maintenance, storage of equipment and construction materials, stockpiling materials, storm water handling facilities (such as baker tanks), loading and unloading of trucks and/or conveyors, maintenance of trailers and utilities, construction activities for tank, building and pipeline construction, instrumentation, monitoring wells as needed to monitor stormwater quality and quantity (which wells shall be abandoned pursuant to Department of Ecology standards), roadwork, landscaping, and final site cleanup, together with the right for access by





pedestrians, vehicles and equipment and utility services required for purposes of this Easement.

Grantee shall not install, construct or place any permanent structures or items, or leave any permanent structures or items, in the West Yard TCE Area. At the termination of this Easement, Grantee shall restore the West Yard TCE Area and any other impacted property to the same or similar condition as it was immediately before Grantee entered the West Yard TCE Area. Grantee shall also backfill any excavated areas with clean fill as necessary to restore the disturbed property to the level surface grade (approximately 130").

Stockpiling entails stockpiling materials and equipment necessary for construction of the Magnolia CSO facility, landscaping and ancillary buildings in the Permanent Tank Fee Area and/or the Permanent Pipeline/Access Easement Area and could also entail any excavated clean material, which will be covered and controlled pursuant to City code, or clean fill material delivered to the West Yard TCE Area. All equipment will be removed from the West Yard TCE Area after conclusion of construction and restoration of the Property. Any material remaining will be removed from the West Yard TCE Area at the termination of the term of the Easement.

During the term of the Easement, Grantee shall accomplish its construction in such a manner that any improvements existing in said West Yard TCE Area shall not be disturbed or destroyed, or in the event that they are disturbed or destroyed, Grantee shall restore them as nearly as possible to the conditions existing immediately before the West Yard TCE Area was entered upon by the Grantee and will do so in such a manner so as to ensure that the current uses can be resumed by or on behalf of Grantor without cost or expense to Grantor.

The West Yard TCE Area contains an area of approximately 142,853 square feet (3.28 acres), more or less.

The term of this Easement shall commence upon the date Grantee makes payment to Grantor in the amount of Six Hundred Sixty Eight Thousand Three Hundred Fifty Eight Dollars (\$668,358.00) and thereby takes possession and use of the West Yard TCE Area, and shall remain in force until completion of the Project construction and restoration, estimated to be approximately 24 months in duration. Grantee shall provide 30 days written notice to Grantor prior to making the payment and taking possession and use of the West Yard TCE Area which will activate the initial 24 month term of the Easement.

Grantee may extend the term of this Easement and use the Easement for additional time for a period not to exceed 24 months. In order to exercise the right to additional time, Grantee shall give Grantor 30 day's written notice prior to the expiration of the original term of this Easement that Grantee intends to use the Easement for additional time along with a statement



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

as to the amount of additional time for which Grantee shall use the Easement. Nothing herein shall prevent Grantee from submitting serial notices of extended use; provided, however, that in no event shall the term of this Easement be extended to a date more than five years from the date activated. If Grantee requires additional time beyond the initial 24-month term for this Easement, Grantee shall pay Grantor Twenty Seven Thousand Eight Hundred Forty Eight and 25/100 Dollars (\$27,848.25) which is one/twenty-fourth of the agreed value of Six Hundred Sixty Eight Thousand Three Hundred Fifty Eight Dollars (\$668,358.00) to be paid for the initial 24-month term of this Easement for each such month of additional use. Any partial months of additional use shall be paid on a pro rata basis.

The Easement granted hereby is solely for the benefit of Grantee, and is personal to Grantee. Grantee shall have the right to permit third parties ("Grantee's invitees") to enter upon the West Yard TCE Area to accomplish the purposes described herein, provided that such invitees shall abide by the terms of this Easement.

The Easement granted hereby, and the duties, restrictions, limitations and obligations herein created, shall run with the land, shall burden the West Yard TCE Area and shall be binding upon and the parties and their respective successors and assigns.

The Grantor, its officers, 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 Grantee or by others, including, but not limited to, all persons directly or indirectly employed by Grantee, or any agents, contractors, subcontractors, licensees, or invitees of Grantee, as a result of any existing or future defects in the West Yard TCE Area or occurrence (including failure or interruption of utility service) whatsoever related in any way to the West Yard TCE Area and the areas adjacent thereto, or related in any way to such person's use or occupancy of the West Yard TCE Area and the areas adjacent thereto, or related in any way to Grantee's exercise or failure to exercise its rights under this Easement.

Grantee agrees to defend, save and hold harmless Grantor, its 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 Grantee, its assigns, agents, contractors, licensees, invitees, employees, in its use of or occupancy under this Easement. Provided, however, this obligation does not include such claims, actions, costs, damages or expenses which may be caused by the sole negligence of the Grantor, 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 Grantor, its successors or assigns and/or their agents or employees and (b) the Grantee, its agents or employees, or involves those actions covered by RCW 4.24.115 (construction/road improvements), this indemnity provision shall be valid and



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

enforceable only to the extent of the negligence of the Grantee, its agents or employees. Grantee specifically and expressly waives any immunity that it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW.

Grantee shall release and forever discharge the Port from claims under Four Hundred Thousand Dollars (\$400,000), arising from the presence of Hazardous Substances on the Property 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 Easement 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.

This Easement shall be of no further force or effect upon the later of the date the Project is constructed or upon the expiration of five (5) years.

This Easement 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 Easement as of the day and year last signed below.

**GRANTOR:**  
**PORT OF SEATTLE,**  
A Washington municipal corporation

By: \_\_\_\_\_  
Print Name: Tay Yoshitani  
Title: CEO, Port of Seattle  
Dated: \_\_\_\_\_



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**GRANTEE:**  
**KING COUNTY,**  
A county of the State of Washington

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

STATE OF WASHINGTON       )  
  ) ss.  
COUNTY OF KING            )

I certify that I know or have satisfactory evidence that Tay Yoshitani is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Chief Executive Officer of the PORT OF SEATTLE, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission 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/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of KING COUNTY, a county of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**EXHIBIT A**  
**WEST YARD TCE AREA**  
**LEGAL DESCRIPTION**



TEMPORARY CONSTRUCTION EASEMENT

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 (ALSO THE SOUTH MARGIN OF W. GARFIELD STREET) A DISTANCE OF 238.66 FEET TO THE TRUE POINT OF BEGINNING; THENCE DEPARTING FROM SAID NORTH LINE S05°45'51"E A DISTANCE OF 5.22 FEET; THENCE S16°44'09"W A DISTANCE OF 0.66 FEET; THENCE S79°09'47"W A DISTANCE OF 59.55 FEET; THENCE S52°49'35"W A DISTANCE OF 80.53 FEET; THENCE N88°56'14"W A DISTANCE OF 209.21 FEET, MORE OR LESS, TO A POINT ON THE EAST MARGIN OF 23RD AVENUE W.; THENCE N00°57'50"E ALONG SAID EAST MARGIN A DISTANCE OF 56.21 FEET; THENCE N69°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°00'43"E ALONG SAID NORTH LINE A DISTANCE OF 302.40 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING, AND THE TERMINUS OF THIS LINE;

TOGETHER WITH ALL THAT LAND LYING WITHIN THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK 117; THENCE S00°59'17"W ALONG THE EAST LINE OF SAID BLOCK 117 A DISTANCE OF 41.17 FEET; THENCE DEPARTING FROM SAID EAST LINE N89°05'19"W A DISTANCE OF 170.52 FEET; THENCE S80°36'32"W A DISTANCE OF 73.14 FEET; THENCE S59°36'00"W A DISTANCE OF 8.44 FEET; THENCE S12°32'13"W A DISTANCE OF 19.34 FEET; THENCE S00°59'17"W A DISTANCE OF 395.22 FEET; THENCE S03°13'35"W A DISTANCE OF 54.46 FEET; THENCE N87°20'54"W A DISTANCE OF 67.55 FEET; THENCE S46°12'43"W A DISTANCE OF 69.16 FEET; THENCE N89°30'15"W A DISTANCE OF 149.94 FEET; THENCE N44°02'38"W A DISTANCE OF 29.16 FEET TO A POINT ON THE EAST MARGIN OF 23RD AVENUE W.; THENCE CONTINUING ALONG SAID EAST MARGIN

(CONTINUED...)



MAGNOLIA CSO-TEMP CONSTRUCTION EASEMENT EXHIBIT  
Port of Seattle West Yard Property  
Seattle, WA

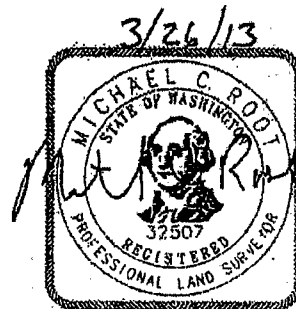
PAGE 3  
OF 4  
3-26-13



TEMPORARY CONSTRUCTION EASEMENT (CONT.)

N44°02'38"W A DISTANCE OF 14.14 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN  
N00°57'50"E A DISTANCE OF 262.00 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN  
N32°09'42"W A DISTANCE OF 29.28 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN  
N00°57'50"E A DISTANCE OF 22.47 FEET; THENCE DEPARTING FROM SAID EAST MARGIN  
S88°56'14"E A DISTANCE OF 215.96 FEET; THENCE N01°04'22"E A DISTANCE OF 148.60  
FEET; THENCE N52°49'35"E A DISTANCE OF 82.62 FEET; THENCE N79°09'47"E A DISTANCE  
OF 66.99 FEET; THENCE N16°44'09"E A DISTANCE OF 16.76 FEET; THENCE N05°45'51"W  
A DISTANCE OF 6.83 FEET, MORE OR LESS, TO A POINT ON THE NORTH LINE OF SAID  
BLOCK 117 (ALSO THE SOUTH MARGIN OF W. GARFIELD STREET); THENCE S 89°00'43"E  
ALONG SAID NORTH LINE A DISTANCE OF 218.52 FEET, MORE OR LESS, TO THE TRUE  
POINT OF BEGINNING, AND THE TERMINUS OF THIS LINE.

CONTAINING 142,853 SQUARE FEET (3.28 ACRES),  
MORE OR LESS.



MAGNOLIA CSO-TEMP CONSTRUCTION EASEMENT EXHIBIT  
Port of Seattle West Yard Property  
Seattle, WA

PAGE 4  
OF 4  
3-26-13





A PORTION OF PARCEL "A"  
MAGNOLIA BASIN-PORT OF SEATTLE PROPERTY  
TAX LOTS #766620-1516 AND #766620-1146  
TEMPORARY CONSTRUCTION EASEMENT AREA=  
= 142,853 SQ. FT. (3.28 ACRES)

LINE TABLE (NORTH AREA)

L1: N 89°00'43" W 238.66'  
L2: S 05°45'51" E 5.22'  
L3: S 16°44'09" W 0.66'  
L4: S 79°09'47" W 59.55'  
L5: S 52°49'35" W 80.53'  
L6: N 88°56'14" W 209.21'  
L7: N 00°57'50" E 56.21'  
L8: N 69°01'01" E 30.21'  
L9: S 89°00'43" E 302.40'

LINE TABLE (SOUTH AREA)

L10: S 00°59'17" W 41.17'  
L11: N 89°05'19" W 170.52'  
L12: S 80°36'32" W 73.14'  
L13: S 59°36'00" W 8.44'  
L14: S 12°32'13" W 19.34'  
L15: S 00°59'17" W 395.22'  
L16: S 03°13'35" W 54.46'  
L17: N 87°20'54" W 67.55'  
L18: S 46°12'43" W 69.16'  
L19: N 89°30'15" W 149.94'  
L20: N 44°02'38" W 29.16'  
L21: N 44°02'38" W 14.14'  
L22: N 00°57'50" E 262.00'  
L23: N 32°09'42" W 29.28'  
L24: N 00°57'50" E 22.47'  
L25: S 88°56'14" E 215.96'  
L26: N 01°04'22" E 148.60'  
L27: N 52°49'35" E 82.62'  
L28: N 79°09'47" E 66.99'  
L29: N 16°44'09" E 16.76'  
L30: N 05°45'51" W 6.83'  
L31: S 89°00'43" E 218.52'



MAGNOLIA CSO-TEMP CONSTRUCTION EASEMENT EXHIBIT  
**Port of Seattle West Yard Property**  
**Seattle, WA**

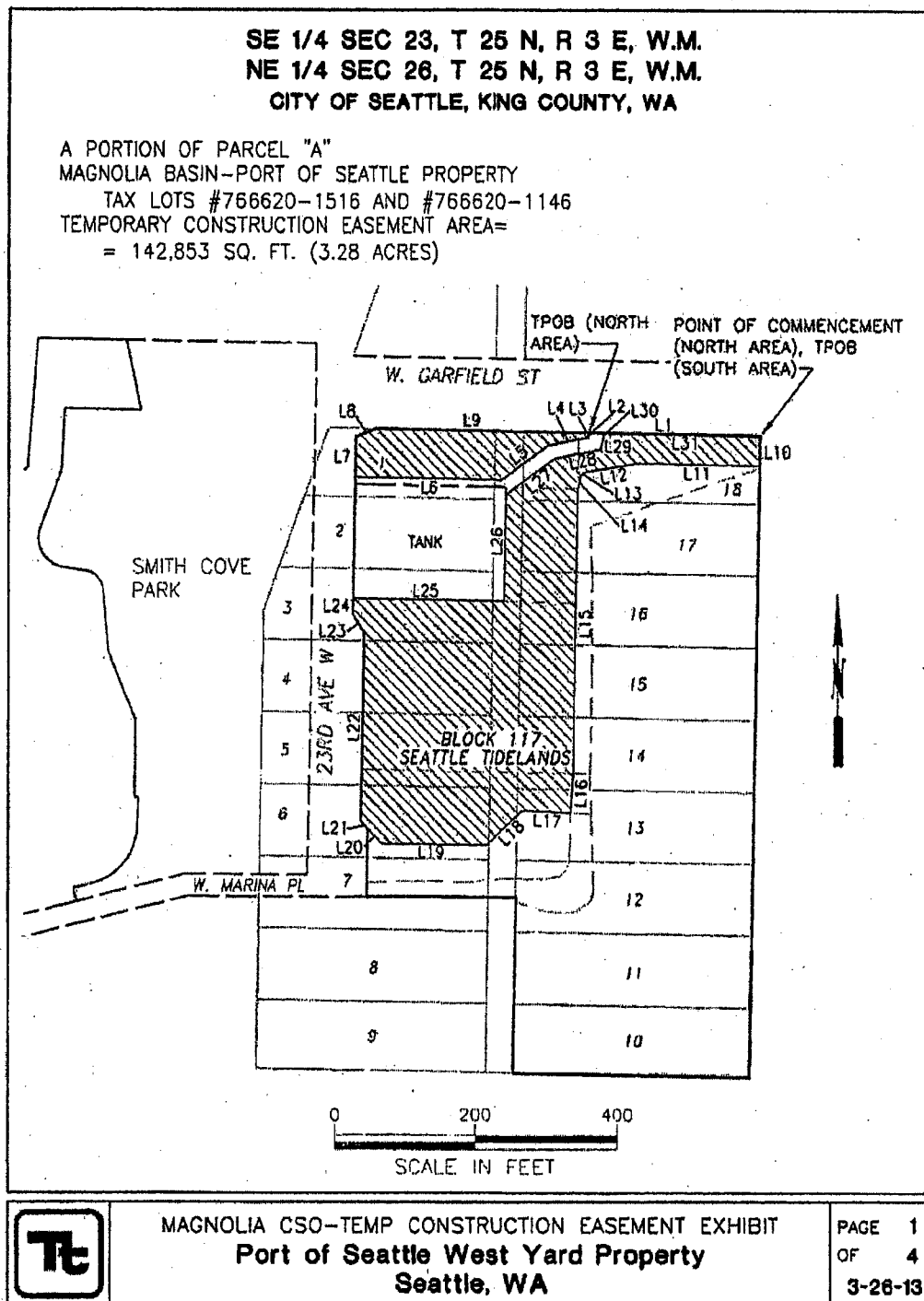
PAGE 2  
OF 4  
3-28-13



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**EXHIBIT B**  
**WEST YARD TCE AREA**





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

After recording return document to:

Port of Seattle  
Pier 69 PO Box 1209  
Seattle WA 98111  
Attn: Isabel R. Safora  
Deputy General Counsel

---

**SURFACE/AERIAL EASEMENT**

<b>Grantor:</b>	Port of Seattle
<b>Grantee:</b>	King County
<b>Abbrev. Legal Description:</b>	
<b>Full Legal Description:</b>	See Exhibit A to this Easement
<b>Assessor's TPNos.:</b>	766620-1516-01 and 766620-1146-09
<b>Ref. No. of Related Document:</b>	N/A

The PORT OF SEATTLE, ("Grantor"), for and in consideration of Ten Dollars (\$10.00) and other valuable consideration including mutual benefits for public use, does hereby grant to KING COUNTY, a county of the State of Washington, and its successors and assigns, (hereinafter collectively "Grantee"), under the imminent threat of the King County's exercise of its rights of Eminent Domain, a permanent exclusive surface and aerial easement in, on, over, across and through that portion of the real property commonly known as the West Yard (the "Property"), which portion is legally described as the "Surface/Aerial Easement Area" on Exhibit A and depicted on Exhibit B hereto, which Exhibits are incorporated herein by this reference.

This Easement is granted for the benefit of all property now owned or hereafter acquired by Grantee which constitutes a portion of the South Magnolia CSO Project and is for the purpose of installing, constructing, using, operating, inspecting, maintaining, repairing, replacing, enhancing and improving the pipelines, tanks, vaults, connections, manholes, valves, metering equipment, electric and communication cables, and any other necessary and convenient appurtenances, including, but not limited to, all utilities and facilities comprising the South Magnolia CSO Project including equipment maintenance, storage of equipment and



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

construction materials, stockpiling materials, loading and unloading of trucks and/or conveyors, maintenance of trailers and utilities, together with the right of ingress and egress for personnel, vehicles and equipment related to the uses described herein.

No improvements that might interfere with the rights granted to Grantee under this Surface/Aerial 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 obstruct, endanger the usefulness or interfere with the rights granted to Grantee under this Easement without the prior written approval of Grantee, in Grantee's sole discretion.

The Surface/Aerial Easement Area contains an area of 20,026 square feet (0.46 acres), more or less.

The Easement granted hereby is solely for the benefit of Grantee, and is personal to Grantee. Grantee shall have the right to permit third parties ("Grantee's invitees") to enter upon the Surface/Aerial Easement Area to accomplish the purposes described herein, provided that such invitees shall abide by the terms of this Easement.

The Easement granted hereby, and the duties, restrictions, limitations and obligations herein created, shall run with the land, shall burden Surface/Aerial Easement Area and shall be binding upon the parties and their respective successors and assigns.

The Grantor, its officers, 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 Grantee or by others, including, but not limited to, all persons directly or indirectly employed by Grantee, or any agents, contractors, subcontractors, licensees, or invitees of Grantee, as a result of any existing or future defects in the Surface/Aerial Easement Area or occurrence (including failure or interruption of utility service) whatsoever related in any way to the Surface/Aerial Easement Area or related in any way to such person's use or occupancy of the Surface/Aerial Easement Area and the areas adjacent thereto, or related in any way to Grantee's exercise or failure to exercise its rights under this Easement.

Grantee agrees to defend, save and hold harmless Grantor, its 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 Grantee, its assigns, agents, contractors, licensees, invitees, employees, in its use of or occupancy under this Easement. Provided, however, this obligation does not include such claims, actions, costs, damages or expenses which may be caused by the sole negligence of the Grantor, 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 Grantor, its successors or assigns and/or their agents



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

or employees and (b) the Grantee, 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 Grantee, its agents or employees. Grantee specifically and expressly waives any immunity that it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW.

Grantee shall release and forever discharge the Port from claims under Four Hundred Thousand Dollars (\$400,000), arising from the presence of Hazardous Substances on the Property 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 Easement shall be construed to waive or discharge any other rights or claims that Grantee 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.

If in the course of the exercise of its rights under this Easement, or otherwise, Grantee damages or disturbs the Surface/Aerial Easement Area and/or adjacent property Grantee shall restore the surface of the damaged or disturbed property to the same or similar condition as it was immediately before Grantee's actions.

In the event Grantee abandons this Easement, Grantee shall restore the Surface/Aerial Easement Area to the same or similar condition as it was immediately before Grantee entered the Surface/Aerial Easement Area. Grantee shall maintain the Surface Aerial Easement Area in a reasonably safe condition.

This Easement 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.

(Signatures on following page)

Page 3 of 5

Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

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

**GRANTOR:**  
**PORT OF SEATTLE,**  
A Washington municipal corporation

By: \_\_\_\_\_  
Print Name: Tay Yoshitani  
Title: CEO, Port of Seattle  
Dated: \_\_\_\_\_

**GRANTEE:**  
**KING COUNTY,**  
A county of the State of Washington

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Tay Yoshitani is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Chief Executive Officer of the PORT OF SEATTLE, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission 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/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of KING COUNTY, a county of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**EXHIBIT A**  
**SURFACE/AERIAL AREA**  
**LEGAL DESCRIPTION**



**PERMANENT SURFACE EASEMENT**

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 28 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. 9201060505, RECORDS OF KING COUNTY, WASHINGTON;

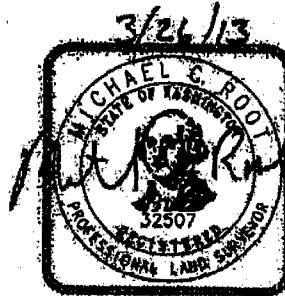
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK 117; THENCE N89°00'43"W ALONG THE NORTH LINE OF SAID BLOCK 117 (ALSO THE SOUTH MARGIN OF W. GARFIELD STREET) A DISTANCE OF 238.66 FEET TO THE TRUE POINT OF BEGINNING; THENCE DEPARTING FROM SAID NORTH LINE S05°45'51"E A DISTANCE OF 5.22 FEET; THENCE S16°44'09"W A DISTANCE OF 0.66 FEET; THENCE S79°09'47"W A DISTANCE OF 59.55 FEET; THENCE S32°49'35"W A DISTANCE OF 80.53 FEET; THENCE N88°56'14"W A DISTANCE OF 209.21 FEET, MORE OR LESS, TO A POINT ON THE EAST MARGIN OF 23RD AVENUE W.; THENCE N00°57'50"E ALONG SAID EAST MARGIN A DISTANCE OF 58.21 FEET; THENCE N69°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°00'43"E ALONG SAID NORTH LINE A DISTANCE OF 302.40 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING, AND THE TERMINUS OF THIS LINE;

TOGETHER WITH ALL THAT LAND LYING WITHIN THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK 117; THENCE N89°00'43"W ALONG THE NORTH LINE OF SAID BLOCK 117 (ALSO THE SOUTH MARGIN OF W. GARFIELD STREET) A DISTANCE OF 238.66 FEET; THENCE DEPARTING FROM SAID NORTH LINE S05°45'51"E A DISTANCE OF 5.22 FEET; THENCE S16°44'09"W A DISTANCE OF 0.66 FEET; THENCE S79°09'47"W A DISTANCE OF 15.84 FEET; THENCE S00°59'17"W A DISTANCE OF 20.43 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING S00°59'17"W A DISTANCE OF 48.46 FEET; THENCE N88°56'14"W A DISTANCE OF 86.69 FEET; THENCE N52°49'35"E A DISTANCE OF 66.63 FEET; THENCE N79°09'47"E A DISTANCE OF 35.04 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING, AND THE TERMINUS OF THIS LINE.

CONTAINING 20,026 SQUARE FEET (0.46 ACRES), MORE OR LESS.



MAGNOLIA CSO-PERMANENT SURFACE EASEMENT LEGAL  
Port of Seattle West Yard Property  
Seattle, WA

PAGE 3  
OF 3  
3-26-13



A PORTION OF PARCEL "A"  
MAGNOLIA BASIN—PORT OF SEATTLE PROPERTY  
TAX LOTS #766620-1516 AND #766620-1146  
PERMANENT SURFACE EASEMENT AREA=  
= 20,026 SQ. FT. (0.46 ACRES)

LINE TABLE (NORTH AREA)

L1:	N 89°00'43" W	238.66'
L2:	S 05°45'51" E	5.22'
L3:	S 16°44'09" W	0.66'
L4:	S 79°09'47" W	59.55'
L5:	S 52°49'35" W	80.53'
L6:	N 88°56'14" W	209.21'
L7:	N 00°57'50" E	58.21'
L8:	N 69°01'01" E	30.21'
L9:	S 89°00'43" E	302.40'

LINE TABLE (SOUTH AREA)

L1:	N 89°00'43" W	238.66'
L2:	S 05°45'51" E	5.22'
L3:	S 16°44'09" W	0.66'
L10:	S 79°09'47" W	15.64'
L11:	S 00°59'17" W	20.43'
L12:	S 00°59'17" W	48.46'
L13:	N 88°56'14" W	86.69'
L14:	N 52°49'35" E	66.63'
L15:	N 79°09'47" E	35.04'



MAGNOLIA CSO—PERMANENT SURFACE EASEMENT LINE TABLE  
Port of Seattle West Yard Property  
Seattle, WA

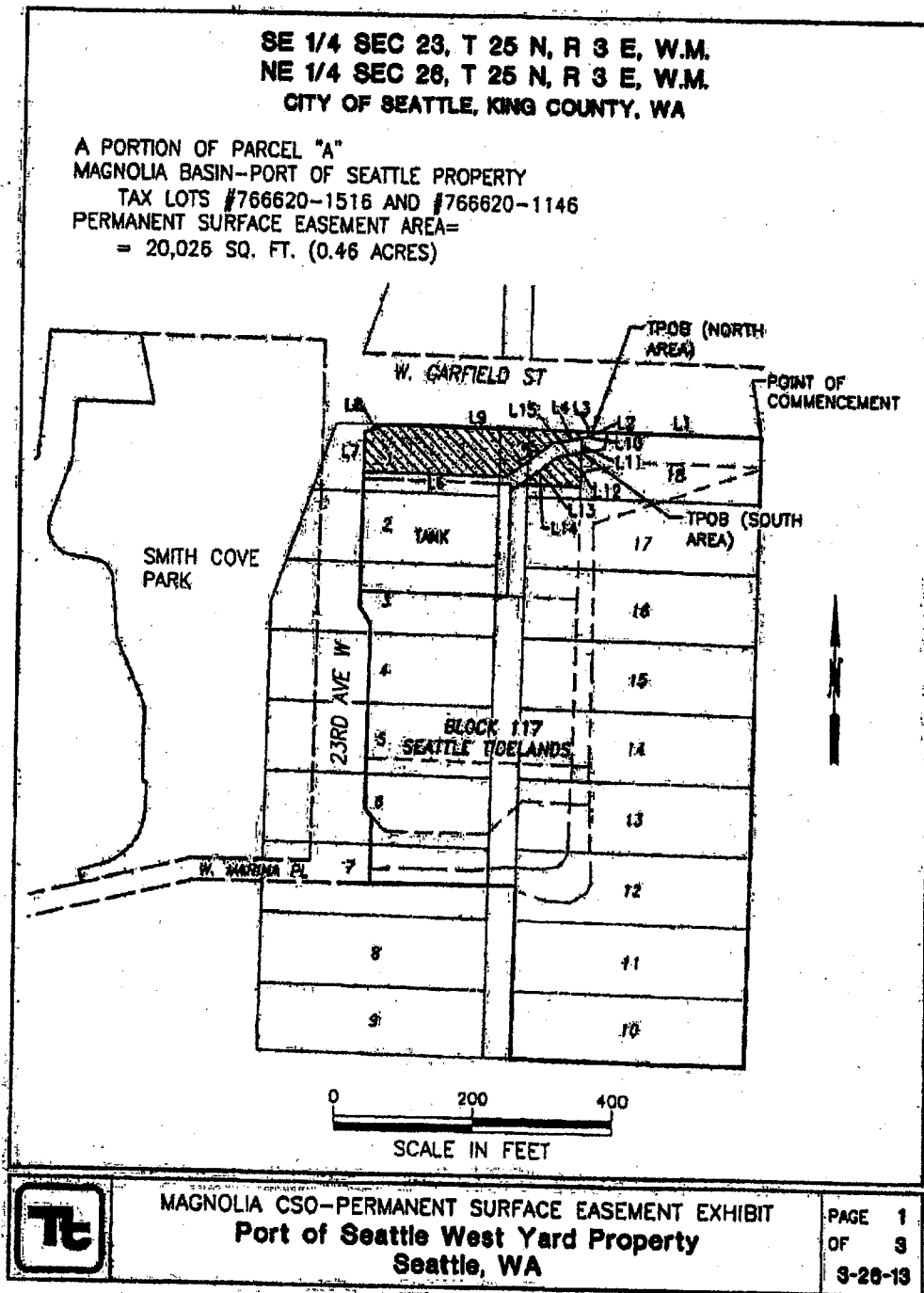
PAGE 2  
OF 3  
3-26-13



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**EXHIBIT B**  
**SURFACE/AERIAL EASEMENT AREA**





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# EXHIBIT F



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

After recording return document to:

Port of Seattle  
Pier 69 PO Box 1209  
Seattle WA 98111  
Attn: Isabel R. Safora  
Deputy General Counsel

---

**T-91 PERMANENT PIPELINE EASEMENT**

<b>Grantor:</b>	Port of Seattle
<b>Grantee:</b>	King County
<b>Abbrev. Legal Description:</b>	
<b>Full Legal Description:</b>	See Exhibit A to this Easement
<b>Assessor's TPNos.:</b>	
<b>Ref. No. of Related Document:</b>	N/A

The PORT OF SEATTLE, ("Grantor"), for and in consideration of Ten Dollars (\$10.00) and other valuable consideration, including mutual benefits for public use, does hereby grant to KING COUNTY, a county of the State of Washington, and its successors and assigns, (hereinafter collectively "Grantee"), under the imminent threat of the King County's exercise of its rights of Eminent Domain, a permanent exclusive easement in, on, over, across and through that portion of the real property commonly known as Terminal 91 (the "Property"), which portion is legally described as the "T-91 Permanent Pipeline Easement Area" on



**Exhibit A** and depicted on **Exhibit B** hereto, which Exhibits are incorporated here by this reference.

This Easement is granted for the purpose of installation, construction, use, operation, maintenance, repair, replacement and improvement of, and access to, a subsurface pipeline serving as part of the South Magnolia CSO Project, including but not limited to all connections, manholes, valves, metering equipment, electric and communication cables, the installation of additional conduits for cathodic protection and any other necessary appurtenances (collectively, the "Pipeline Easement Improvements"). Grantor shall not be subject to any surface use restrictions within the T-91 Permanent Pipeline Easement Area.

The T-91 Permanent Pipeline Easement Area contains an area of 797 square feet (0.02 acres), more or less.

The Easement granted hereby is solely for the benefit of Grantee, and is personal to Grantee. Grantee shall have the right to permit third parties ("Grantee's invitees") to enter upon the T-91 Permanent Pipeline Easement Area to accomplish the purposes described herein, provided that such invitees shall abide by the terms of this Easement.

The Easement granted hereby, and the duties, restrictions, limitations and obligations herein created, shall run with the land, shall burden the T-91 Permanent Pipeline Easement Area and shall be binding upon the parties and their respective successors and assigns.

The Grantor, its officers, 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 Grantee or by others, including, but not limited to, all persons directly or indirectly employed by Grantee, or any agents, contractors, subcontractors, licensees, or invitees of Grantee, as a result of any existing or future defects in the T-91 Permanent Pipeline Easement Area or occurrence (including failure or interruption of utility service) whatsoever related in any way to the T-91 Permanent Pipeline Easement Area or related in any way to such person's use or occupancy of the T-91 Permanent Pipeline Easement Area and the areas adjacent thereto, or related in any way to Grantee's exercise or failure to exercise its rights under this Easement.

Grantee agrees to defend, save and hold harmless Grantor, its 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 Grantee, its assigns, agents, contractors, licensees, invitees, employees, in its use of or occupancy under this Easement. Provided, however, that this obligation does not include such claims, actions, costs, damages or expenses which may be caused by the sole negligence of the Grantor, 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 Grantor, its successors or assigns





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

and/or their agents or employees and (b) the Grantee, 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 Grantee, its agents or employees. Grantee specifically and expressly waives any immunity that it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW.

If in the course of the exercise of its rights under this Easement, or otherwise, Grantee damages or disturbs the T-91 Permanent Pipeline Easement Area and/or adjacent property Grantee shall restore the surface of the damaged or disturbed property to the same or similar condition as it was immediately before Grantee's actions.

In the event Grantee abandons this Easement, Grantee shall restore the T-91 Permanent Pipeline Easement Area to the same or similar condition as it was immediately before Grantee entered the T-91 Permanent Pipeline Easement Area. During the Term, Grantee shall maintain the Pipeline Easement Improvements in a reasonably safe and sanitary manner.

This Easement 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 Easement as of the day and year last signed below.

**GRANTOR:**  
**PORT OF SEATTLE,**  
A Washington municipal corporation

By: \_\_\_\_\_  
Print Name: Tay Yoshitani  
Title: CEO, Port of Seattle  
Dated: \_\_\_\_\_

**GRANTEE:**  
**KING COUNTY,**  
A county of the State of Washington

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_



STATE OF WASHINGTON       )  
                                      ) ss.  
COUNTY OF KING            )

I certify that I know or have satisfactory evidence that Tay Yoshitani is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Chief Executive Officer of the PORT OF SEATTLE, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission 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/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of KING COUNTY, a county of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**EXHIBIT A**  
**PERMANENT PIPELINE EASEMENT AREA**  
**LEGAL DESCRIPTION**

m45141-1953267\_5.doc



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**TERMINAL 91 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 SOUTHEAST CORNER OF SAID BLOCK 116, ALSO BEING A POINT ON THE NORTH MARGIN OF W. GARFIELD STREET; THENCE N89°00'43"W ALONG THE SOUTH LINE OF SAID BLOCK 116 (AND SAID NORTH MARGIN OF W. GARFIELD STREET) A DISTANCE OF 235.40 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N89°00'43"W A DISTANCE OF 10.06 FEET; THENCE DEPARTING FROM SAID SOUTH LINE N05°45'51"W A DISTANCE OF 57.74 FEET; THENCE S50°45'51"W A DISTANCE OF 17.13 FEET; THENCE N39°14'09"E A DISTANCE OF 10.00 FEET; THENCE S50°45'51"E A DISTANCE OF 21.27 FEET; THENCE S03°45'51"W A DISTANCE OF 63.07 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING AND THE TERMINUS OF THIS LINE.

CONTAINING 797 SQUARE FEET (0.02 ACRES), MORE OR LESS.



MAGNOLIA CSO—PERMANENT TANK EASEMENT  
Port of Seattle Terminal 91 Property  
Seattle, WA

DATE:  
02/06/13



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

A PORTION OF PARCEL "A"  
MAGNOLIA BASIN—PORT OF SEATTLE PROPERTY  
TAX LOTS #766620-1516 AND #766620-1146

PERMANENT PIPELINE EASEMENT AREA (TERMINAL 91)  
=797 SQ. FT. (0.02 ACRES)

TEMPORARY CONSTRUCTION EASEMENT AREA (TERMINAL 91)  
=10,532 SQ. FT. (0.25 ACRES)

LINE TABLE (TERMINAL 91)

L15:	N 89°00'43" W	185.43'
L16:	N 89°00'43" W	49.97'
L17:	N 89°00'43" W	10.06'
L18:	N 89°00'43" W	57.97'
L19:	N 00°59'17" E	96.00'
L20:	S 89°00'43" E	118.00'
L21:	S 00°59'17" W	96.00'
L22:	N 05°45'51" W	57.74'
L23:	N 50°45'51" W	17.13'
L24:	N 39°14'09" E	10.00'
L25:	S 50°45'51" E	21.27'
L26:	S 05°45'51" E	63.07'



MAGNOLIA CSO—EASEMENT LINE TABLE  
Port of Seattle Terminal 91 Property  
Seattle, WA

DATE:  
02/06/13



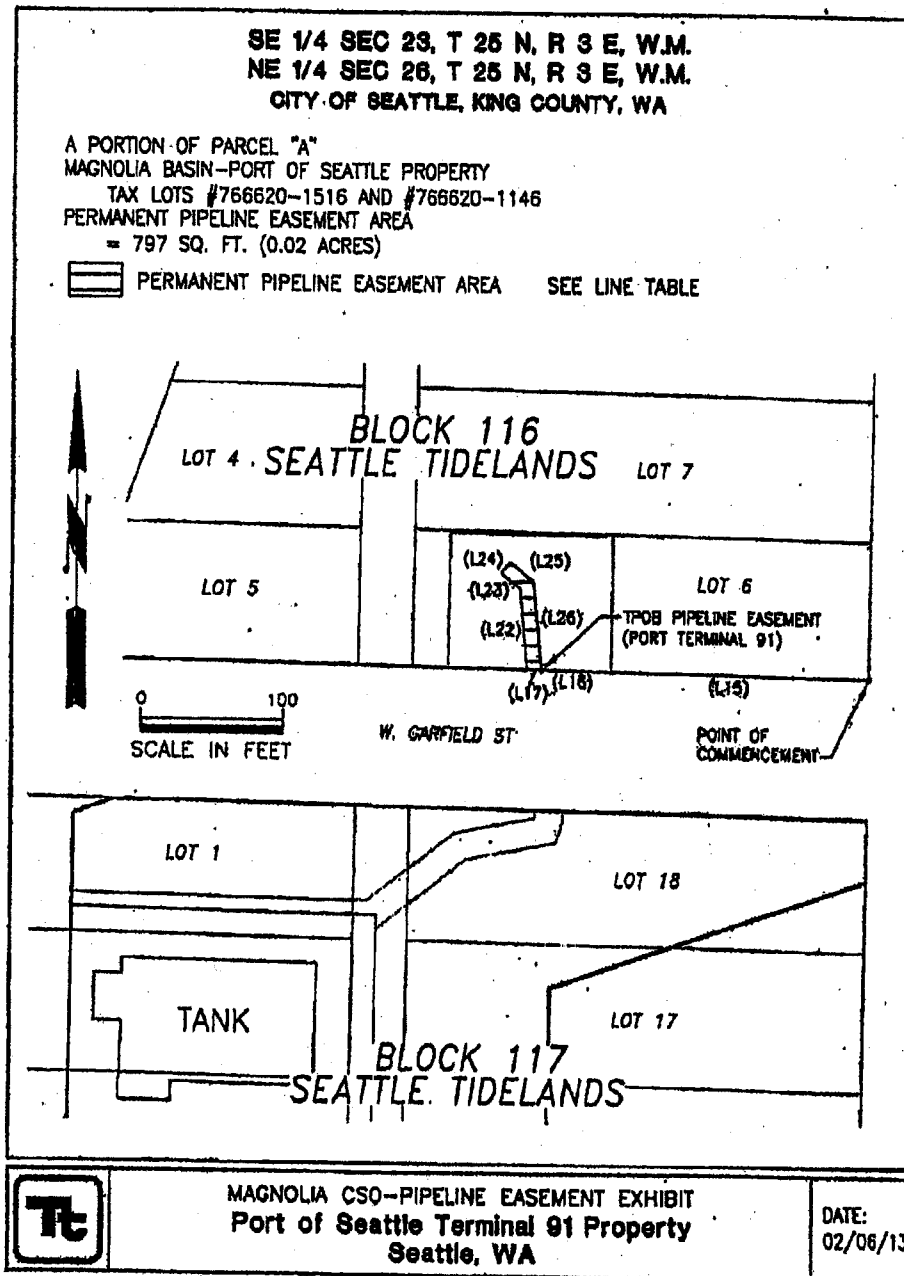
Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**EXHIBIT B**  
**PERMANENT PIPELINE EASEMENT AREA**

m45141-1953267\_5.doc



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# EXHIBIT G





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

After recording return document to:

Port of Seattle  
Pier 69 PO Box 1209  
Seattle WA 98111  
Attn: Isabel R. Safora  
Deputy General Counsel

---

**T-91 PIPELINE TEMPORARY CONSTRUCTION EASEMENT**

<b>Grantor:</b>	Port of Seattle
<b>Grantee:</b>	King County
<b>Abbrev. Legal Description:</b>	
<b>Full Legal Description:</b>	See Exhibit A to this Easement
<b>Assessor's TPNos.:</b>	
<b>Ref. No. of Related Document:</b>	N/A

The PORT OF SEATTLE, ("Grantor"), for and in consideration of Ten Dollars (\$10.00) and other valuable consideration including mutual benefits for public use, does hereby grant to KING COUNTY, a county of the State of Washington, and its successors and assigns, (hereinafter collectively "Grantee"), under the imminent threat of the King County's exercise of its rights of Eminent Domain, a temporary construction easement for access on, over, across and through that portion of the real property commonly known as Terminal 91 (the "Property"), which portion is legally described as the "T-91 Pipeline TCE Area" on Exhibit A and depicted on Exhibit B hereto.

This Easement is granted for the purpose of permitting the following construction activity within the T-91 Pipeline TCE Area in connection with construction of the South Magnolia CSO Project: mobilization, site preparation, grading, excavation and construction which



includes, but is not limited to, lighting, ventilation, removal of excavated material, equipment maintenance, storage of equipment and construction materials, stockpiling materials, storm water handling facilities (such as baker tanks), loading and unloading of trucks and/or conveyors, maintenance of trailers and utilities, construction activities for pipeline construction, instrumentation, monitoring wells as needed to monitor stormwater quality and quantity (which wells shall be abandoned pursuant to Department of Ecology standards), , and final site cleanup, together with the right for access by pedestrians, vehicles and equipment and utility services required for purposes of this Easement.

Grantee shall not install, construct or place any permanent structures or items, or leave any permanent structures or items, in the T-91 Pipeline TCE Area. At the termination of this Easement, Grantee shall restore the T-91 Pipeline TCE Area and any other impacted property to the same or similar condition (and elevations) as it was immediately before Grantee entered the T-91 Pipeline TCE Area. Grantee shall also backfill any excavated areas with clean fill as necessary to restore the disturbed property and elevations.

Stockpiling entails stockpiling materials and equipment necessary for construction of the Magnolia CSO facility and could also entail any excavated clean material, which will be covered and controlled pursuant to City code, or clean fill material delivered to the T-91 Pipeline TCE Area. All equipment and unused materials will be removed from the T-91 Pipeline TCE Area after conclusion of construction and restoration of the Property.

During the term of the Easement, Grantee shall accomplish its construction in such a manner that any improvements existing in said T-91 Pipeline TCE Area shall not be disturbed or destroyed, or in the event that they are disturbed or destroyed, Grantee shall restore them as nearly as possible to the conditions existing immediately before the T-91 Pipeline TCE Area was entered upon by the Grantee and will do so at its own cost and in such a manner so as to ensure that the current uses can be resumed by or on behalf of Grantor without cost or expense to Grantor.

The T-91 Pipeline TCE Area contains an area of approximately 10,532 square feet (0.25 acres), more or less.

Grantee may activate this Easement on or after November 1, 2013. Grantee shall provide no less than 15 days written notice to Grantor of Grantee's intent to activate the Easement (the "Notice"). The Notice shall state the date on which the Easement shall be activated. The term of the Easement shall commence effective as of the activation date provided for in the Notice. The initial term of the Easement shall be two (2) months.

Grantee may extend the term of this Easement and use the Easement for additional time for a period not to exceed four (4) months. In order to exercise the right to additional time, Grantee shall give Grantor 15 days written notice prior to the expiration of the original term of this Easement that Grantee intends to use the Easement for additional time along with a statement as to the amount of additional time for which Grantee shall use the Easement (the "Extension



Notice"). If Grantee requires additional time for this Easement, Grantee shall pay Grantor \$3,950 per month for each such month of additional use. Any partial months of additional use shall be paid on a pro rata basis. Nothing herein shall prevent Grantee from submitting serial notices of extended use; provided, however, that in no event shall the term of this Easement be extended to a date more than six (6) months from the activation date provided for in the Notice.

Grantor agrees that upon receipt of the Notice and/or Extension Notice Grantor will undertake good faith, reasonable efforts to clear the Easement Area of any then existing uses (Tenants or otherwise) in order to deliver possession to Grantee as of the date identified in the Notice and/or Extension Notice. In the event, however, that Grantor is ultimately unable to clear the Easement Area by the date stated in the Notice and/or Extension Notice, Grantor and Grantee agree that in consideration for Grantor's agreement to a 15 day notice period, as provided for above, there shall be no reduction in the amount owed Grantor for this Easement.

This Easement shall be of no further force or effect upon the earlier of the expiration of the term (including any extensions) or December 31, 2015.

The Easement granted hereby is solely for the benefit of Grantee, and is personal to Grantee. Grantee shall have the right to permit third parties ("Grantee's invitees") to enter upon the T-91 Pipeline TCE Area to accomplish the purposes described herein, provided that such invitees shall abide by the terms of this Easement.

The Easement granted hereby, and the duties, restrictions, limitations and obligations herein created, shall run with the land, shall burden the T-91 Pipeline TCE Area and shall be binding upon and the parties and their respective successors and assigns.

The Grantor, its officers, 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 Grantee or by others, including, but not limited to, all persons directly or indirectly employed by Grantee, or any agents, contractors, subcontractors, licensees, or invitees of Grantee, as a result of any existing or future defects in the T-91 Pipeline TCE Area or occurrence (including failure or interruption of utility service) whatsoever related in any way to the T-91 Pipeline TCE Area and the areas adjacent thereto, or related in any way to such person's use or occupancy of the T-91 Pipeline TCE Area and the areas adjacent thereto, or related in any way to Grantee's exercise or failure to exercise its rights under this Easement.

Grantee agrees to defend, save and hold harmless Grantor, its 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 Grantee, its assigns, agents, contractors, licensees, invitees, employees, in its use of or occupancy under this Easement. Provided, however, this obligation does not include such claims, actions, costs, damages or expenses



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

which may be caused by the sole negligence of the Grantor, its successors or assigns, and provided further that if the claims, actions, costs, damages or expenses are caused by the result of the concurrent negligence of (a) the Grantor, its agents or employees and (b) the Grantee, 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 Grantee, its agents or employees. Grantee specifically and expressly waives any immunity that it may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW.

This Easement 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 Easement as of the day and year last signed below.

**GRANTOR:**  
**PORT OF SEATTLE,**  
A Washington municipal corporation

By: \_\_\_\_\_  
Print Name: Tay Yoshitani  
Title: CEO, Port of Seattle  
Dated: \_\_\_\_\_

**GRANTEE:**  
**KING COUNTY,**  
A county of the State of Washington

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_



STATE OF WASHINGTON       )  
                                      ) ss.  
COUNTY OF KING            )

I certify that I know or have satisfactory evidence that Tay Yoshitani is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Chief Executive Officer of the PORT OF SEATTLE, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission 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/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of KING COUNTY, a county of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**EXHIBIT A**

**T-91 PIPELINE TCE AREA  
LEGAL DESCRIPTION**

m45141-1953233\_9.doc



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**TERMINAL 91 TEMPORARY CONSTRUCTION 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 ALLEYS 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 SOUTHEAST CORNER OF SAID BLOCK 118, ALSO BEING A POINT ON THE NORTH MARGIN OF W. GARFIELD STREET; THENCE N89°00'43"W ALONG THE SOUTH LINE OF SAID BLOCK 116 (AND SAID NORTH MARGIN OF W. GARFIELD STREET) A DISTANCE OF 185.43 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTH LINE N89°00'43"W A DISTANCE OF 49.87 FEET; THENCE DEPARTING FROM SAID SOUTH LINE N05°45'51"W A DISTANCE OF 63.07 FEET; THENCE N50°45'51"W A DISTANCE OF 21.27 FEET; THENCE S39°14'08"W A DISTANCE OF 10.00 FEET; THENCE S50°45'51"E A DISTANCE OF 17.13 FEET; THENCE S05°45'51"E A DISTANCE OF 57.74 FEET TO SAID SOUTH LINE OF BLOCK 116; THENCE N89°00'43"W ALONG SAID SOUTH LINE A DISTANCE OF 57.97 FEET; THENCE DEPARTING FROM SAID SOUTH LINE N00°59'17"E A DISTANCE OF 96.00 FEET; THENCE S89°00'43"E A DISTANCE OF 118.00 FEET; THENCE S00°59'17"W A DISTANCE OF 96.00 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING AND THE TERMINUS OF THIS LINE.

CONTAINING 10,532 SQUARE FEET (0.25 ACRES), MORE OR LESS.



MAGNOLIA CSO-TEMPORARY CONSTRUCTION EASEMENT  
Port of Seattle Terminal 91 Property  
Seattle, WA

DATE:  
02/06/13



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

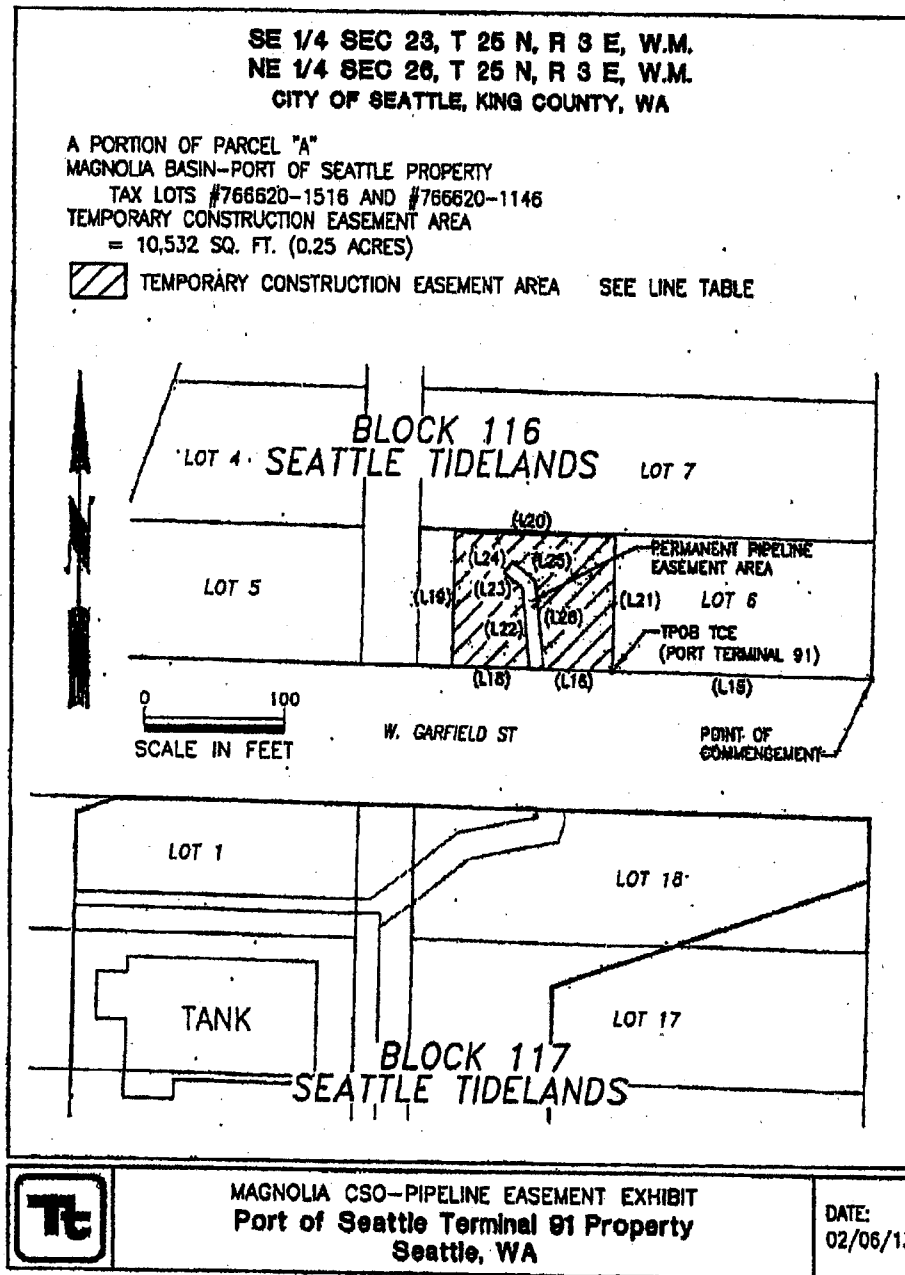
**EXHIBIT B**  
**EASEMENT AREAS DEPICTED**

m45141-1953233\_9.doc





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# **EXHIBIT H**



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

After recording return document to:

Port of Seattle  
Pier 69 PO Box 1209  
Seattle WA 98111  
Attn: Isabel R. Safora  
Deputy General Counsel

---

**T-91 TEMPORARY PIPELINE ASSEMBLY CONSTRUCTION EASEMENT**

<b>Grantor:</b>	Port of Seattle
<b>Grantee:</b>	King County
<b>Abbrev. Legal Description:</b>	
<b>Full Legal Description:</b>	See Exhibit A to this Easement
<b>Assessor's TPNos.:</b>	
<b>Ref. No. of Related Document:</b>	N/A

The PORT OF SEATTLE, ("Grantor"), for and in consideration of Ten Dollars (\$10.00) and other valuable consideration including mutual benefits for public use, does hereby grant to KING COUNTY, a county of the State of Washington, and its successors and assigns, (hereinafter collectively "Grantee"), under the imminent threat of the King County's exercise of its rights of Eminent Domain, a temporary pipeline assembly construction easement for access on, over, across and through that portion of the real property commonly known as Terminal 91 (the "Property"), which portion is described as the "T-91 Pipeline Assembly TCE Area" and is depicted on Exhibit A hereto.

This Easement is granted for the purpose of permitting the following construction activity within the T-91 Pipeline Assembly TCE Area in connection with construction of the South Magnolia CSO Project: mobilization, storage of equipment and construction materials,

Page 1 of 5

m45141-1953252\_7.doc



stockpiling pipe and pipe assembly materials, loading and unloading of trucks and/or conveyors, pipeline construction, facilitating installation of the pipeline to the West Yard and Smith Cove Park and final site cleanup, together with the right for access by pedestrians, vehicles and equipment and utility services required for purposes of this Easement.

Grantee shall not install, construct or place any permanent structures or items, or leave any permanent structures or items, in the T-91 Pipeline Assembly TCE Area. At the termination of this Easement, Grantee shall restore the T-91 Pipeline Assembly TCE Area and any other impacted property to the same or similar condition (and elevations) as it was immediately before Grantee entered the T-91 Pipeline Assembly TCE Area.

Stockpiling entails stockpiling materials and equipment necessary for construction and transfer of pipeline materials for the Magnolia CSO project. All equipment and unused materials will be removed from the T-91 Pipeline Assembly TCE Area after conclusion of construction and restoration of the Property.

During the term of the Easement, Grantee shall accomplish its construction in such a manner that any improvements existing in said T-91 Pipeline Assembly TCE Area shall not be disturbed or destroyed, or in the event that they are disturbed or destroyed, Grantee shall restore them as nearly as possible to the conditions existing immediately before the T-91 Pipeline Assembly TCE Area was entered upon by the Grantee and will do so at its own cost and in such a manner so as to ensure that the current uses can be resumed by or on behalf of Grantor without cost or expense to Grantor.

Grantee may activate this Easement on or after November 1, 2013. Grantee shall provide no less than 30 days written notice to Grantor of Grantee's intent to activate the Easement (the "Notice"). The Notice shall state the date on which the Easement shall be activated. The term of the Easement shall commence effective as of the activation date provided for in the Notice. The initial term of the Easement shall be two (2) months (the "Term"). Grantee shall pay Grantor \$29,250 for the Term on or before the activation date provided for in the Notice.

Grantee may extend the Term for a total period not to exceed five (5) months, inclusive of all extensions (the "Extended Term"), *provided* that in no event shall the Term or Extended Term of this Easement run concurrently with the cruise season (April 1 through October 31). In order to exercise the right to extend the Term, Grantee shall give Grantor 30 days written notice prior to the expiration of the Term that Grantee intends to use the Easement for additional time along with a statement as to the amount of additional time for which Grantee shall use the Easement (the "Extension Notice"). If Grantee requires additional time for this Easement, Grantee shall pay Grantor \$14,625 per month during the Extended Term. Any partial months of the Extended Term shall be paid on a pro rata basis.

Grantor agrees that upon receipt of the Notice and/or the Extension Notice, Grantor shall identify foreseeable schedule conflicts, if any, to Grantee and Grantor will undertake good faith, reasonable efforts to clear the Easement Area of any then existing uses (Tenants or



otherwise) in order to deliver possession to Grantee as of the date identified in the Notice and/or Extension Notice (including reasonable efforts to temporarily dock vessels as needed) to allow Grantee to transfer its pipe to Smith Cove. In the event, however, that Grantor is ultimately unable to clear the Easement Area by the date stated in the Notice and/or Extension Notice, Grantor and Grantee agree that in consideration for Grantor's agreement to a 30 day notice period, as provided for above, there shall be no reduction in the amount owed Grantor for this Easement. Grantee shall be responsible for payment of any cost to raft/crew-up as needed in the event of a schedule conflict, upon Grantor's presentation to Grantee of a written invoice of the actual costs.

The Easement shall not create any access or traffic circulation issues and if it does the solution to such access or traffic circulation issues must be acceptable to Grantor and shall be at the Grantee's sole cost. In order to satisfy this provision of the Easement, at the time that Grantee provides Grantor with the Notice, Grantee shall also schedule a meeting with Grantor to identify access and/or traffic issues, if any, and an acceptable solution. For purposes of this meeting, Grantee shall contact the following representative of the Grantor: Greg Englin, Mgr. Maritime Operations Seaport Cruise & Maritime Operations (206) 787-3628, or his successor.

This Easement shall be of no further force or effect upon the earlier of the expiration of the Term including any Extended Term or December 31, 2015.

The Easement granted hereby is solely for the benefit of Grantee, and is personal to Grantee. Grantee shall have the right to permit third parties ("Grantee's invitees") to enter upon the T-91 Pipeline Assembly TCE Area to accomplish the purposes described herein, provided that such invitees shall abide by the terms of this Easement.

The Easement granted hereby, and the duties, restrictions, limitations and obligations herein created, shall run with the land, shall burden the T-91 Pipeline Assembly TCE Area and shall be binding upon and the parties and their respective successors and assigns.

The Grantor, its officers, 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 Grantee or by others, including, but not limited to, all persons directly or indirectly employed by Grantee, or any agents, contractors, subcontractors, licensees, or invitees of Grantee, as a result of any existing or future defects in the T-91 Pipeline Assembly TCE Area or occurrence (including failure or interruption of utility service) whatsoever related in any way to the T-91 Pipeline Assembly TCE Area and the areas adjacent thereto, or related in any way to such person's use or occupancy of the T-91 Pipeline Assembly TCE Area and the areas adjacent thereto, or related in any way to Grantee's exercise or failure to exercise its rights under this Easement.

Grantee agrees to defend, save and hold harmless Grantor, its 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 Grantee, its assigns, agents, contractors, licensees, invitees, employees, in its use of or occupancy under this Easement. Provided, however, this obligation does not include such claims, actions, costs, damages or expenses which may be caused by the sole negligence of the Grantor, its successors or assigns, and provided further that if the claims, actions, costs, damages or expenses are caused by the result of the concurrent negligence of (a) the Grantor, its agents or employees and (b) the Grantee, 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 Grantee, its agents or employees. Grantee specifically and expressly waives any immunity that it may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW.

This Easement 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 Easement as of the day and year last signed below.

**GRANTOR:**  
**PORT OF SEATTLE,**  
A Washington municipal corporation

By: \_\_\_\_\_  
Print Name: Tay Yoshitani  
Title: CEO, Port of Seattle  
Dated: \_\_\_\_\_

**GRANTEE:**  
**KING COUNTY,**  
A county of the State of Washington

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_



STATE OF WASHINGTON )

COUNTY OF KING )

) ss.

I certify that I know or have satisfactory evidence that Tay Yoshitani is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Chief Executive Officer of the PORT OF SEATTLE, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )

COUNTY OF KING )

) ss.

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 was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of KING COUNTY, a county of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

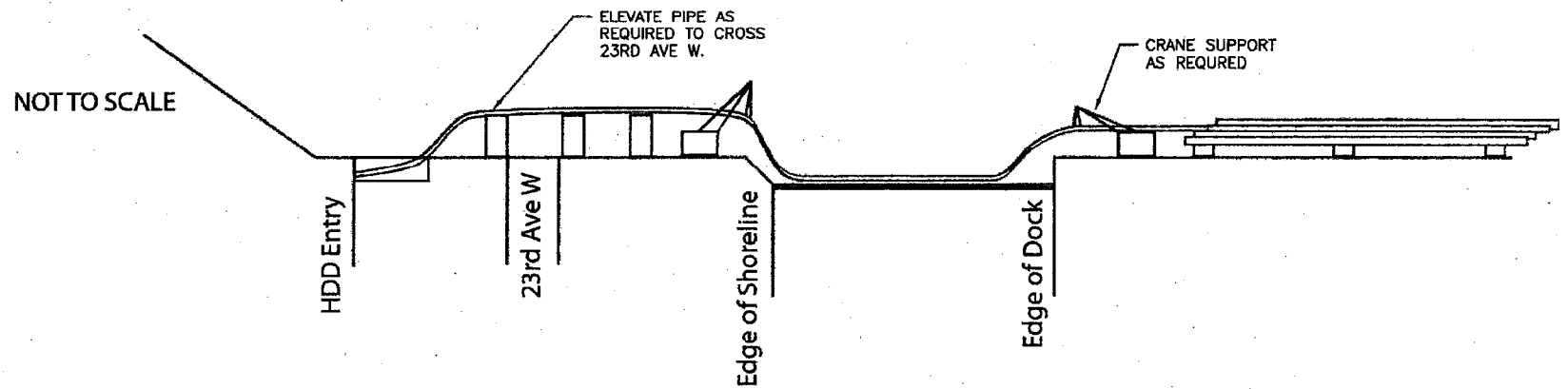
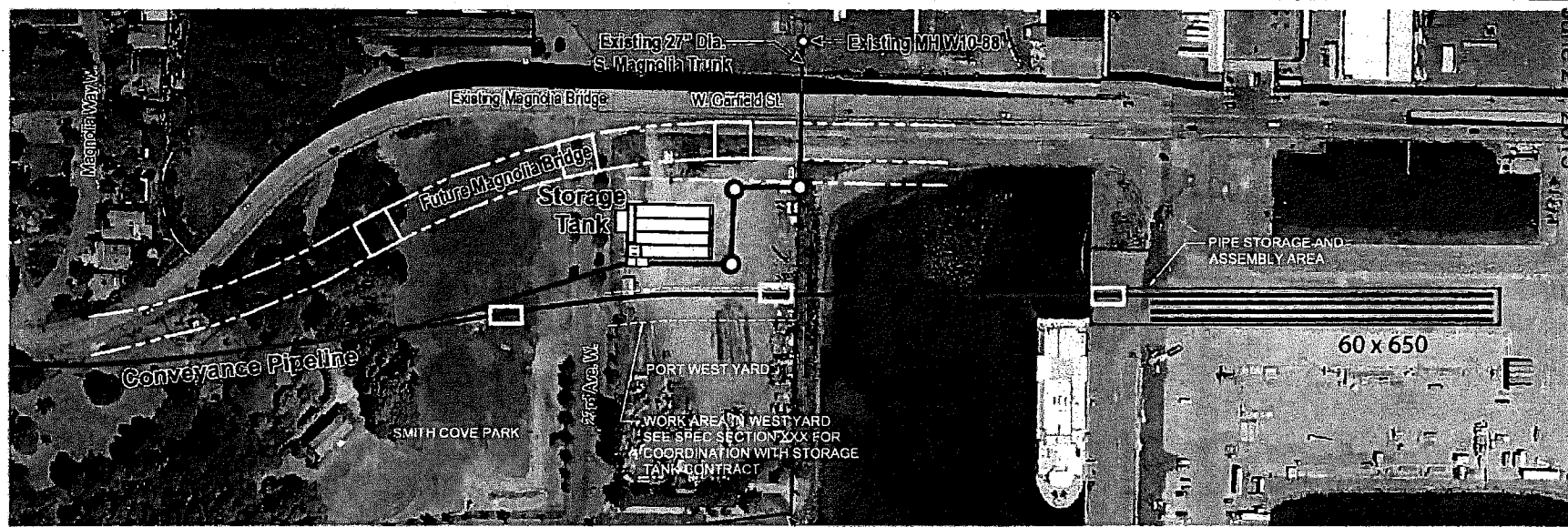
**EXHIBIT A**

**T-91 PIPELINE ASSEMBLY TCE AREA DEPICTED**





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 21, 2013



Att 1 to DPR Smith Cove West Yard Acquisition ORD

No.	REVISION	BY	APP'D	DATE

**TETRA TECH**  
www.tetra-tech.com  
 1420 Pike Avenue, Suite 600  
 Seattle, Washington 98101  
 Phone: 206-465-6288 Fax: 206-465-4551

PRELIMINARY  
60% DESIGN DRAWINGS

DESIGNED BY:	DATE:
CHECKED BY:	DATE:
APPROVED BY:	DATE:
PROJECT NO.:	CONTRACT NO.:



DEPARTMENT OF NATURAL RESOURCES & PARKS  
 WASTEWATER TREATMENT DIVISION  
 SOUTH MAGNOLIA CSO CONTROL PROJECT  
 CONVEYANCE PIPELINE HDD OPTION  
**HDD ASSEMBLY, STAGING, AND  
 PULLBACK - EAST**

DATE	FEB 2013
FILE NO.	
DRAWING NO.	<b>C014</b>
SHEET NO.	OF

ONE INCH  
AT FULL SIZE, IF NOT ONE  
INCH SHALL ACCORDANCE

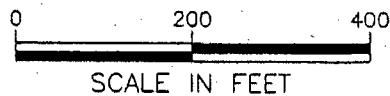
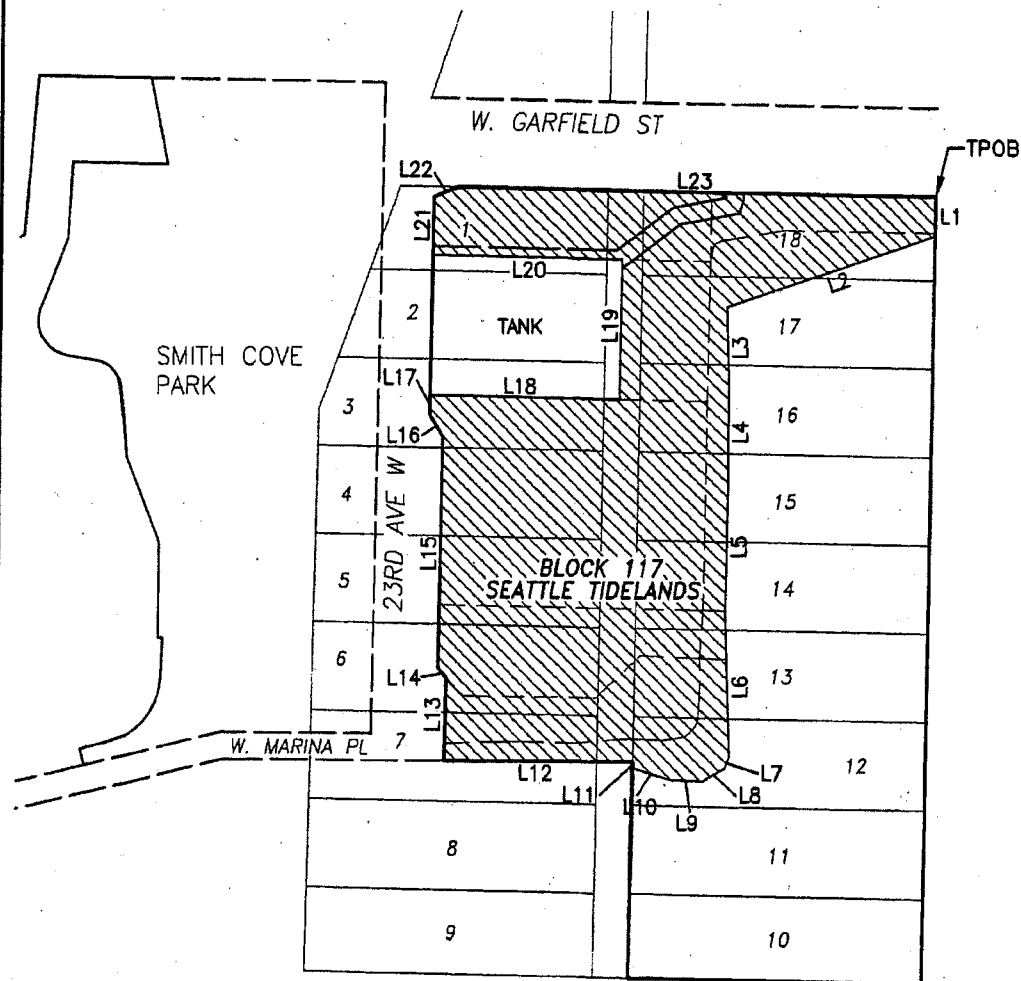
Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# EXHIBIT I



**SE 1/4 SEC 23, T 25 N, R 3 E, W.M.  
NE 1/4 SEC 26, T 25 N, R 3 E, W.M.  
CITY OF SEATTLE, KING COUNTY, WA**

A PORTION OF PARCEL "A"  
MAGNOLIA BASIN—PORT OF SEATTLE PROPERTY  
TAX LOTS #766620-1516 AND #766620-1146  
WEST YARD PURCHASE AREA=  
= 200,275 SQ. FT. (4.60 ACRES)



MAGNOLIA CSO—WEST YARD PURCHASE AREA EXHIBIT  
**Port of Seattle West Yard Property**  
**Seattle, WA**

PAGE 1  
OF 3  
4/18/13



A PORTION OF PARCEL "A"  
MAGNOLIA BASIN—PORT OF SEATTLE PROPERTY  
TAX LOTS #766620-1516 AND #766620-1146  
WEST YARD PURCHASE AREA=  
= 200,275 SQ. FT. (4.60 ACRES)

LINE TABLE

L1:	S 00°59'17" W	44.47'
L2:	S 71°00'58" W	248.76'
L3:	S 01°33'29" E	74.99'
L4:	S 00°12'30" W	120.99'
L5:	S 01°04'32" W	150.97'
L6:	S 01°36'09" E	162.34'
L7:	S 19°43'20" W	13.67'
L8:	S 59°00'29" W	28.49'
L9:	N 87°52'59" W	36.39'
L10:	N 72°34'50" W	45.20'
L11:	N 00°59'17" E	6.80'
L12:	N 89°52'21" W	212.82'
L13:	N 00°57'50" E	94.40'
L14:	N 44°02'38" W	14.14'
L15:	N 00°57'50" E	262.00'
L16:	N 32°09'42" W	29.28'
L17:	N 00°57'50" E	22.47'
L18:	S 88°56'14" E	215.96'
L19:	N 01°04'19" E	158.50'
L20:	N 88°56'14" W	216.26'
L21:	N 00°57'50" E	66.21'
L22:	N 69°01'01" E	30.21'
L23:	S 89°00'43" E	541.05'



MAGNOLIA CSO—WEST YARD PURCHASE AREA EXHIBIT  
**Port of Seattle West Yard Property**  
**Seattle, WA**

PAGE 2  
OF 3  
4/18/13



### 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 S00°59'17"W ALONG THE EAST LINE OF SAID BLOCK 117 A DISTANCE OF 44.47 FEET; THENCE DEPARTING FROM SAID EAST LINE S71°00'58"W A DISTANCE OF 248.76 FEET; THENCE S01°33'29"E A DISTANCE OF 74.99 FEET; THENCE S00°12'30"W A DISTANCE OF 120.99 FEET; THENCE S01°04'32"W A DISTANCE OF 150.97 FEET; THENCE S01°36'09"E A DISTANCE OF 162.34 FEET; THENCE S19°43'20"W A DISTANCE OF 13.67 FEET; THENCE S59°00'29"W A DISTANCE OF 28.49 FEET; THENCE N87°52'59"W A DISTANCE OF 36.39 FEET; THENCE N72°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°59'17"E ALONG SAID WEST LINE OF LOT 12 A DISTANCE OF 6.80 FEET; THENCE DEPARTING SAID WEST LINE N89°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°57'50"E ALONG SAID EAST MARGIN A DISTANCE OF 94.40 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N44°02'38"W A DISTANCE OF 14.14 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N00°57'50"E A DISTANCE OF 262.00 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N32°09'42"W A DISTANCE OF 29.28 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N00°57'50"E A DISTANCE OF 22.47 FEET; THENCE DEPARTING SAID EAST MARGIN S88°56'14"E A DISTANCE OF 215.96 FEET; THENCE N01°04'19"E A DISTANCE OF 158.50 FEET; THENCE N88°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°57'50"E A DISTANCE OF 66.21 FEET; THENCE N69°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°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.



MAGNOLIA CSO—WEST YARD PURCHASE AREA EXHIBIT  
**Port of Seattle West Yard Property**  
**Seattle, WA**

PAGE 3  
OF 3  
4/18/13



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# EXHIBIT J



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**FILED**

KING COUNTY WASHINGTON

MAY 14 2013

SUPERIOR COURT CLERK  
BY DAWN TUBBS  
DEPUTY

RECEIVED  
JUDGES MAIL ROOM

2013 MAY 13 PM 12:54

KING COUNTY  
SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

KING COUNTY, a county of the state of  
Washington,

Petitioner,

v.

PORT OF SEATTLE, a municipal  
corporation; AMERICAN SEAFOODS  
COMPANY LLC, a Delaware limited  
liability company; and LINDA  
PATTERSON, an individual,

Respondents.

No. 12-2-19667-2 SEA

STIPULATION AND AGREED  
ORDER FOR IMMEDIATE  
POSSESSION AND USE AS TO THE  
INTERESTS OF THE PORT OF  
SEATTLE  
AND ORDER OF DISBURSEMENT

[CLERK'S ACTION REQUIRED]

STIPULATION

Petitioner, King County (the "County") and Respondent Port of Seattle (the "Port"), by  
and through their respective counsel, hereby stipulate and agree to this Stipulation and Agreed  
Order for Immediate Use and Possession as to the Interests of the Port of Seattle, as follows.

1. With this condemnation action, the County seeks to appropriate from the Port of  
Seattle certain real property interests.

2. Previously, the County and the Port agreed to an Agreed Order Adjudicating  
Public Use and Necessity which was entered by the Court on September 27, 2012.

3. The County and the Port have entered into a Settlement Agreement which  
provides that the Port and County will enter into a purchase and sale agreement (the "Purchase  
and Sale Agreement") concerning the property described herein.

STIPULATION AND AGREED ORDER  
FOR IMMEDIATE POSSESSION AND  
USE AS TO THE INTERESTS OF THE  
PORT OF SEATTLE- 1

Daniel T. Satterberg, Prosecuting Attorney  
CIVIL DIVISION, Nat'l Resources Section  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9015 Fax (206) 296-0191

**ORIGINAL**



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

4. It is anticipated that the sale contemplated by the Purchase and Sale Agreement in substantially the form submitted by the Port to the County and the city by email dated April 18, 2013 at 12:23 p.m. (v.7) which was thereafter approved as to form by the attorneys for the City and the County, (the "Purchase and Sale Agreement"), will close on or before October 31, 2013. Between now and then, the County needs to acquire possession and use of the following property interests that are the subject of this condemnation action in order to maintain its Project timeline:

- (a) the Tank Area Property area, as to that property legally described in Exhibit A and as depicted on Exhibit B, to this Stipulation and Agreed Order (the "Tank Area Property"); and
- (b) the permanent pipeline/access easement, as to that property legally described and depicted in, and in substantially the form of, Exhibit C to this Stipulation and Agreed Order (the "West Yard Pipeline/Access Easement").

5. In the event that the sale contemplated by the PSA may not close on or before October 31, 2013, the County may also need to acquire possession and use of the following property interest that is the subject of this condemnation action in order to maintain its Project timeline: the temporary construction easement as to that property legally described and depicted in, and in substantially the form of Exhibit D, to this Stipulation and Agreed Order (the "West Yard TCE").

6. Exhibits A, B, C and D to this Stipulation and Agreed Order are incorporated here by this reference.

7. King County shall deposit into the registry of the Court the amount of Two Million One Hundred Fifteen Thousand One Hundred and Forty Six and No/100 Dollars (\$2,115,146.00) as its offer of just compensation for, and in exchange for possession and use of, (a) the Tank Area Property and (b) the West Yard Pipeline/Access Easement (the "Tank Area Property and West Yard Pipeline/Access Easement Possession and Use Payment").

STIPULATION AND AGREED ORDER  
FOR IMMEDIATE POSSESSION AND  
USE AS TO THE INTERESTS OF THE  
PORT OF SEATTLE- 2

Daniel T. Satterberg, Prosecuting Attorney  
CIVIL DIVISION, Nat'l Resources Section  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9015 Fax (206) 296-0191



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

8. In consideration for immediate possession and use of the Tank Area Property, the County agrees that the Port, its officers, 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 Tank Area Property or occurrence (including failure or interruption of utility service) whatsoever related in any way to the Tank Area Property, or related in any way to such person's use or occupancy of the Tank Area Property, or related in any way to the County's exercise or failure to exercise its rights under this Easement.

8.1. King County agrees to defend, save and hold harmless the Port, its 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, licensees, invitees, employees, in its use of or occupancy of the Tank Area Property. Provided, however, this obligation does not include such claims, actions, costs, damages or expenses which may be caused by the sole negligence of the Port, 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 Port, its 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. The County specifically and expressly waives any immunity that it may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW.

STIPULATION AND AGREED ORDER  
FOR IMMEDIATE POSSESSION AND  
USE AS TO THE INTERESTS OF THE  
PORT OF SEATTLE-3

Daniel T. Satterberg, Prosecuting Attorney  
CIVIL DIVISION, Nat'l Resources Section  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9015 Fax (206) 296-0191



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

1           8.2. The County also agrees to release and forever discharge the Port from claims  
2 under Four Hundred Thousand Dollars (\$400,000), arising from the presence of Hazardous  
3 Substances on the Property as identified in the Phase II Environmental Site Assessment on the  
4 West Yard prepared by Shannon and Wilson Inc. dated May 11, 2012 and the technical  
5 memorandum prepared by Landau & Associates dated November 9, 2012 (the "Environmental  
6 Reports"). Except for the waiver, release and discharge of claims set forth above, nothing in this  
7 Stipulation and Agreed Order shall be construed to waive or discharge any other rights or claims  
8 that Grantee may have or assert under any Environmental Law. The term "Environmental Law"  
9 means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment,  
10 decree, injunction or common law pertaining in any way to the protection of human health or the  
11 environment, including without limitation, the Resource Conservation and Recovery Act, the  
12 Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances  
13 Control Act, the Model Toxics Control Act, the Water Pollution Control Act, laws concerning  
14 above ground or underground storage tanks, and any similar or comparable state or local law.  
15 The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious  
16 substance, material or waste as defined, listed or regulated under any Environmental Law, and  
17 includes without limitation petroleum oil and any of its fractions.

18           9. In the event the County abandons its possessory rights to the Tank Area Property  
19 before taking title pursuant to the Purchase and Sale Agreement, the County shall restore the  
20 Tank Area Property to the same or similar condition as it was immediately before the County  
21 took possession of the Tank Area Property. Prior to the date the County takes title to the Tank  
22 Area Property pursuant to the Purchase and Sale Agreement the County shall maintain the Tank  
23 Area Property in a reasonably safe condition.

          10. In the event that the County exercises its option to take early possession and use  
of the West Yard TCE on or before October 31, 2013 as provided for herein, the County shall, in

STIPULATION AND AGREED ORDER  
FOR IMMEDIATE POSSESSION AND  
USE AS TO THE INTERESTS OF THE  
PORT OF SEATTLE- 4

Daniel T. Satterberg, Prosecuting Attorney  
CIVIL DIVISION, Nat'l Resources Section  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9015 Fax (206) 296-0191



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

1 addition to the amount set forth in paragraph 7 of this Stipulation and Agreed Order, deposit into  
2 the registry of the Court the amount of Six Hundred Sixty Eight Thousand Three Hundred Fifty  
3 Eight and No/100 Dollars (\$668,358.00) as its offer of just compensation for, and in exchange  
4 for possession and use of the West Yard TCE, (the "West Yard TCE Possession and Use  
5 Payment").

6 11. In the event that the City approves the transactions contemplated in the Purchase  
7 and Sale Agreement, then the Tank Area Property and the West Yard Pipeline/Access Easement  
8 Possession and Use Payment and/or the West Yard TCE Possession and use Payment, to the  
9 extent either or both have been deposited, shall be a credit toward the County West Yard  
10 Purchase Price of \$3,183,504 as set forth in the Purchase and Sale Agreement at Part A ¶2.

11 12. If, however, the City does not approve the transactions contemplated in the  
12 Purchase and Sale Agreement, then the Tank Area Property and the West Yard Pipeline/Access  
13 Easement Possession and Use Payment and/or the West Yard TCE Possession and use Payment,  
14 to the extent either or both have been deposited, shall be a credit toward the County Only  
15 Purchase Price of \$3,203,614 set forth in the Purchase and Sale Agreement at Part A ¶4.

16 13. In further consideration of the entry of this Stipulation and Agreed Order, the  
17 Parties shall jointly request that the Court continue the trial date of the above-captioned matter to  
18 December 31, 2013 so that the Parties can close escrow on the Purchase and Sale Agreement. No  
19 later than seven (7) business days after the closing of the transactions contemplated by the  
20 Purchase and Sale Agreement, the County shall dismiss this action against the Port, with each  
21 party to bear its own costs and attorney's fees.

22 14. In exchange for the agreements set forth in this Stipulation, the Parties agree to  
23 entry of an Order of Possession and Use in the form below.

STIPULATION AND AGREED ORDER  
FOR IMMEDIATE POSSESSION AND  
USE AS TO THE INTERESTS OF THE  
PORT OF SEATTLE- 5

Daniel T. Satterberg, Prosecuting Attorney  
CIVIL DIVISION, Nat'l Resources Section  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9015 Fax (206) 296-0191

Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

Stipulated and Agreed to this 30th day of  
April, 2013, by:

DANIEL T. SATTERBERG  
PROSECUTING ATTORNEY  
King County Prosecuting Attorney's Office

Stipulated and Agreed to this 30th day of  
April, 2013, by:

GRAHAM & DUNN

By Verna P. Bromley  
Verna P. Bromley, WSBA# 24703  
Attorneys for Petitioner  
516 Third Avenue, W 400  
Seattle, WA 98104  
P: 206-296-9015  
F: 206-296-0191  
Email: [verna.bromley@kingcounty.gov](mailto:verna.bromley@kingcounty.gov)

By Marisa Velling Lindell  
Marisa Velling Lindell, WSBA# 18201  
Attorneys for Respondent Port of Seattle

#### ORDER

This matter having come before the undersigned Judge of the above-entitled Court, the Court having considered the stipulation of King County and the Port of Seattle above, and the records and files herein, NOW THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The parties' stipulation above is incorporated here by this reference and made a part of this Order.
2. That on or before May 1, 2013, or as soon thereafter as is practicable King County shall deposit the sum of Two Million One Hundred Fifteen Thousand One Hundred and Forty Six and No/100 Dollars (\$2,115,146.00), (the "Tank Area Property and West Yard Pipeline/Access Easement Possession and Use Payment"), into the registry of the Court, as its offer of just compensation for, and in exchange for possession and use of: (a) the Tank Area Property; and (b) the West Yard Pipeline/Access Easement for the purpose of constructing and operating the South Magnolia Combined Sewer Overflow Project (the "Project") in the South

STIPULATION AND AGREED ORDER  
FOR IMMEDIATE POSSESSION AND  
USE AS TO THE INTERESTS OF THE  
PORT OF SEATTLE- 6

Daniel T. Satterberg, Prosecuting Attorney  
CIVIL DIVISION, Nat'l Resources Section  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9015 Fax (206) 296-0191



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

1 Magnolia basin in the City of Seattle. Effective as of the date King County actually makes the  
2 Tank Area Property and the West Yard Pipeline/Access Easement Possession and Use Payment,  
3 King County shall have and will be awarded and granted possession and use of the Tank Area  
4 Property as legally described in Exhibit A and as depicted on Exhibit B hereto and of the West  
5 Yard Pipeline/Access Easement Area as to that property legally described and depicted in, and in  
6 the form of, Exhibit C hereto.

7 3. Upon King County making the Tank Area Property and West Yard Pipeline/Access  
8 Easement Possession and Use Payment, King County shall file with the Clerk of the Court a  
9 Notice of Tank Area Property and West Yard Pipeline/Access Easement Possession and Use  
10 Payment in substantially the form attached hereto as Exhibit E, notifying the Clerk of the Court  
11 and the Port of the date of deposit. Upon receipt by the Clerk of the Court of the Notice of Tank  
12 Area Property and West Yard Pipeline/Access Easement Possession and Use Payment, the King  
13 County Superior Court Clerk shall disburse without further order from this court the sum of Two  
14 Million One Hundred Fifteen Thousand One Hundred and Forty Six and No/100 Dollars  
15 (\$2,115,146.00) by check payable to Port of Seattle, in the amount of Two Million One Hundred  
16 Fifteen Thousand One Hundred and Forty Six and No/100 Dollars (\$2,115,146.00) and by  
17 mailing the check to Port of Seattle Legal Department, c/o Isabel Safora, P.O. Box 1209, Seattle,  
18 WA 98111.

19 4. In the event that the County elects to exercise its right to take early possession and  
20 use of the West Yard TCE, as provided for herein, then upon providing the Port with thirty (30)  
21 days advance notice of its intent to take possession and use of the West Yard TCE and thereby  
22 activate the West Yard TCE, the County shall also deposit into the registry of the Court, in  
23 addition to the Tank Area Property and West Yard Pipeline/Access Possession and Use Payment,  
the amount of Six Hundred Sixty Eight Thousand Three Hundred Fifty Eight and No/100 Dollars  
(\$668,358.00), (the "West Yard TCE Possession and Use Payment"), as its offer of just

STIPULATION AND AGREED ORDER  
FOR IMMEDIATE POSSESSION AND  
USE AS TO THE INTERESTS OF THE  
PORT OF SEATTLE- 7

Daniel T. Satterberg, Prosecuting Attorney  
CIVIL DIVISION, Nat'l Resources Section  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9015 Fax (206) 296-0191



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

1 compensation for, and in exchange for possession and use of: the West Yard TCE, for the  
2 purpose of constructing and operating the South Magnolia Combined Sewer Overflow Project  
3 (the "Project") in the South Magnolia basin in the City of Seattle. Effective as of the date the  
4 County actually makes the West Yard TCE Possession and Use Payment, the County shall have  
5 and will be awarded and granted possession and use of the West Yard TCE as to that property  
6 legally described and depicted in, and in the form of, Exhibit D hereto.

7 5. In the event that the County elects to take early possession and use of the West  
8 Yard TCE, then upon making the West Yard TCE Possession and Use Payment, King County  
9 shall file with the Clerk of the Court a Notice of West Yard TCE Possession and Use Payment in  
10 substantially the form attached hereto as Exhibit F, notifying the Clerk of the Court and the Port  
11 of the date of deposit. Upon receipt by the Clerk of the Court of the Notice of Deposit, the King  
12 County Superior Court Clerk shall disburse without further order from this Court the sum of Six  
13 Hundred Sixty Eight Thousand Three Hundred Fifty Eight and No/100 Dollars (\$668,358.00),  
14 by check payable to Port of Seattle, in the amount of Six Hundred Sixty Eight Thousand Three  
15 Hundred Fifty Eight and No/100 Dollars (\$668,358.00), and by mailing the check to Port of  
16 Seattle Legal Department, c/o Isabel Safora, P.O. Box 1209, Seattle, WA 98111.

17 6. King County shall pay any clerk's fee associated with the deposit and/or  
18 disbursement of the Tank Area Property and West Yard Pipeline/Access Easement Possession  
19 and Use Payment and West Yard TCE Possession and Use Payment.

20 DONE IN OPEN COURT this 14 day of May 2013.

*Nunc Pro Tunc*  
*May 7, 2013*  
*BL*

21 *Barbara Linde*  
JUDGE/COURT COMMISSIONER  
Barbara Linde

22 // // //  
23 // // //

STIPULATION AND AGREED ORDER  
FOR IMMEDIATE POSSESSION AND  
USE AS TO THE INTERESTS OF THE  
PORT OF SEATTLE- 8

Daniel T. Satterberg, Prosecuting Attorney  
CIVIL DIVISION, Nat'l Resources Section  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9015 Fax (206) 296-0191



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

1 Stipulated to and Presented by:  
2 DANIEL T. SATTERBERG  
3 PROSECUTING ATTORNEY  
4 King County Prosecuting Attorney's Office

Stipulated to; Copy received; Notice of  
Presentation Waived; Approved as to Form:

GRAHAM & DUNN

5 By Verna P. Bromley  
6 Verna P. Bromley, WSBA# 24703  
7 Attorneys for Petitioner  
8 516 Third Avenue, W 400  
9 Seattle, WA 98104  
10 P: 206-296-9015  
11 F: 206-296-0191  
12 Email: verna.bromley@kingcounty.gov

By Marisa Velling Lindell  
Marisa Velling Lindell, WSBA# 18201  
Attorneys for Respondent Port of Seattle

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
STIPULATION AND AGREED ORDER  
FOR IMMEDIATE POSSESSION AND  
USE AS TO THE INTERESTS OF THE  
PORT OF SEATTLE-9

Daniel T. Satterberg, Prosecuting Attorney  
CIVIL DIVISION, Nat'l Resources Section  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9015 Fax (206) 296-0191



23330830

Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# Exhibit A





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

### 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 ALLEYS 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. 9201060805, 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 18.76 FEET; THENCE S79°09'47"W A DISTANCE OF 66.98 FEET; THENCE S52°49'35"W A DISTANCE OF 82.82 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 215.98 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 215.26 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.



MAGNOLIA CSO-TANK AREA PROPERTY  
Port of Seattle West Yard Property  
Seattle, WA

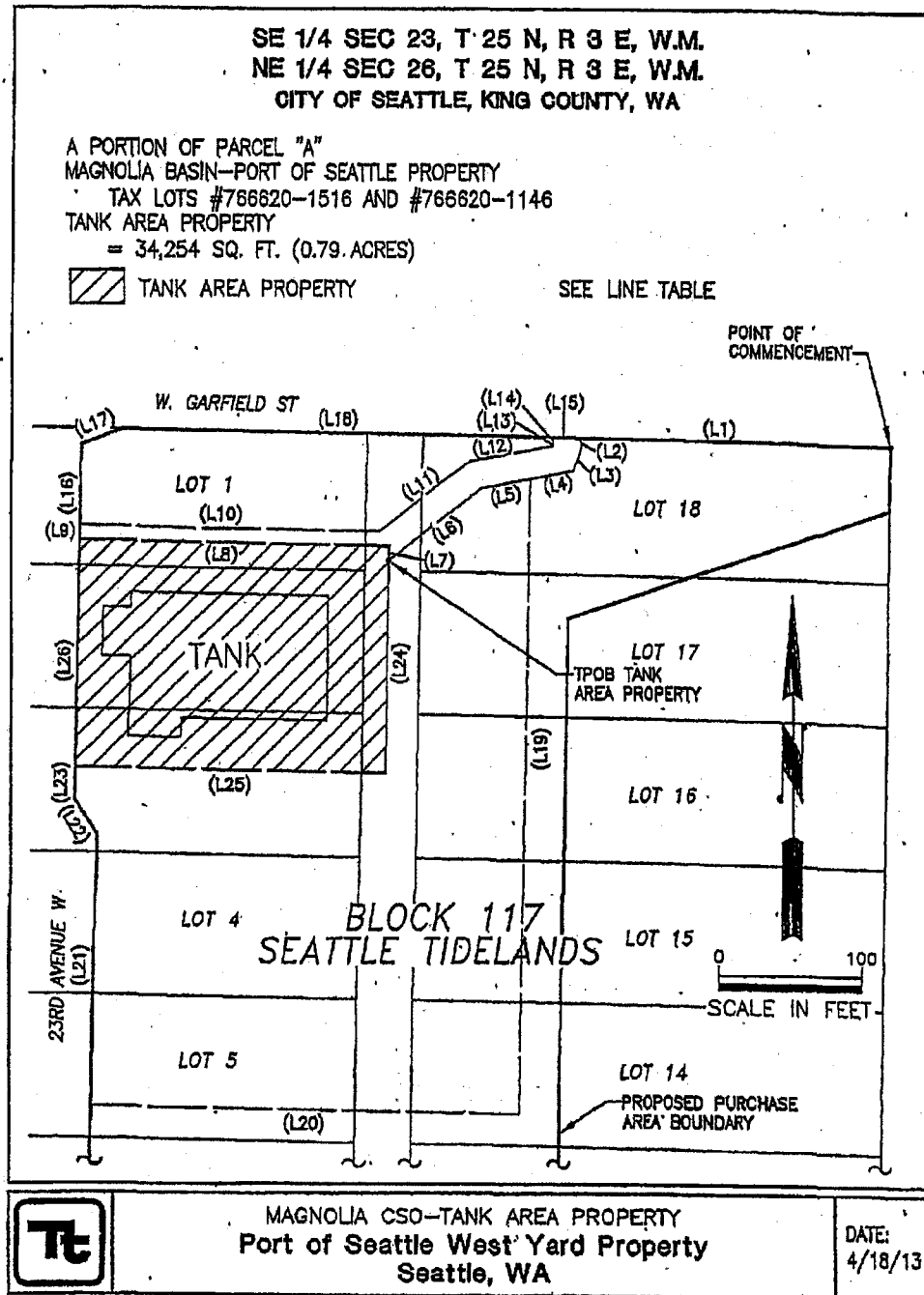
DATE:  
4/18/13

Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# Exhibit B



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

A PORTION OF PARCEL "A"  
MAGNOLIA BASIN—PORT OF SEATTLE PROPERTY  
TAX LOTS #766620-1516 AND #766620-1146

LINE TABLE

L1:	N 89°00'43" W	218.52'
L2:	S 05°45'51" E	6.83'
L3:	S 16°44'09" W	16.76'
L4:	S 79°09'47" W	31.95'
L5:	S 79°09'47" W	35.04'
L6:	S 52°49'35" W	82.82'
L7:	S 01°04'22" W	9.90'
L8:	S 88°56'14" E	216.28'
L9:	N 00°57'50" E	10.00'
L10:	S 88°56'14" E	209.21'
L11:	N 52°49'35" E	80.53'
L12:	N 79°09'47" E	59.55'
L13:	N 16°44'09" E	0.66'
L14:	N 05°45'51" W	5.22'
L15:	S 89°00'43" E	20.14'
L16:	N 00°57'50" E	56.21'
L17:	N 69°01'01" E	30.21'
L18:	S 89°00'43" E	302.40'
L19:	N 00°57'50" E	443.69'
L20:	N 89°00'43" W	299.34'
L21:	N 00°57'50" E	190.15'
L22:	N 32°09'42" W	29.28'
L23:	N 00°57'50" E	22.47'
L24:	S 01°04'22" W	148.60'
L25:	N 88°56'14" W	215.96'
L26:	N 00°57'50" E	158.50'



MAGNOLIA CSO—TANK PROPERTY AND EASEMENT LINE TABLE  
Port of Seattle West Yard Property-Easements  
Seattle, WA

DATE:  
4/18/13



23330830

Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# Exhibit C



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

After recording return document to:

Port of Seattle  
Pier 69 PO Box 1209  
Seattle WA 98111  
Attn: Isabel R. Safora  
Deputy General Counsel

#### WEST YARD PIPELINE/ACCESS EASEMENT

Grantor:	Port of Seattle
Grantee:	King County
Abbrev. Legal Description:	
Full Legal Description:	See Exhibit A to this Easement
Assessor's TPNos.:	766620-1516-01 and 766620-1146-09
Ref. No. of Related Document:	N/A

The PORT OF SEATTLE, ("Grantor"), for and in consideration of Ten Dollars (\$10.00) and other valuable consideration including mutual benefits for public use, does hereby grant to KING COUNTY, a county of the State of Washington, and its successors and assigns, (hereinafter collectively "Grantee"), under the imminent threat of the King County's exercise of its rights of Eminent Domain, a permanent exclusive easement in, on, over, across and through that portion of the real property commonly known as the West Yard (the "Property"), which portion is legally described as the "Permanent Pipeline/Access Easement Area" on Exhibit A and depicted on Exhibit B hereto, which Exhibits are incorporated herein by this reference.

This Easement is granted for the benefit of all property now owned or hereafter acquired by Grantee which constitutes a portion of the South Magnolia CSO Project and is for the purpose of installation, construction, ownership, use, operation, maintenance, repair, replacement and improvement of, and access to, a subsurface pipeline serving as part of the South Magnolia CSO Project, including but not limited to all connections, manholes, valves, metering equipment, electric and communication cables, the installation of additional conduits for cathodic protection and any other necessary and convenient appurtenances (collectively, the



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

"Pipeline Easement Improvements") and providing ingress and egress for personnel, vehicles and equipment related to the uses described above. No improvements that might interfere with the use, operation, maintenance, repair or replacement of the Pipeline Easement Improvements 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 or Pipeline Easement Improvements or unearth, puncture, obstruct or interfere with the use and operation of, or endanger the lateral support for, the pipeline and Pipeline Easement Improvements, by the Grantor within the Pipeline/Access Easement Area without the prior written approval of Grantee, which approval shall not be unreasonably withheld; provided, however, that the Grantor may use the surface of the Pipeline/Access Easement Area for landscaping and parking of vehicles so long as such use will not exceed 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) in the Pipeline Easement Area. 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 Grantee.

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

The Easement granted hereby is solely for the benefit of Grantee, and is personal to Grantee. Grantee shall have the right to permit third parties ("Grantee's invitees") to enter upon the Permanent Pipeline/Access Easement Area to accomplish the purposes described herein, provided that such invitees shall abide by the terms of this Easement.

The Easement granted hereby, and the duties, restrictions, limitations and obligations herein created, shall run with the land, shall burden the Permanent Pipeline/Access Easement Area and shall be binding upon the parties and their respective successors and assigns.

The Grantor, its officers, 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 Grantee or by others, including, but not limited to, all persons directly or indirectly employed by Grantee, or any agents, contractors, subcontractors, licensees, or invitees of Grantee, 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 Grantee's exercise or failure to exercise its rights under this Easement.



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

Grantee agrees to defend, save and hold harmless Grantor, its 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 Grantee, its assigns, agents, contractors, licensees, invitees, employees, in its use of or occupancy under this Easement. Provided, however, this obligation does not include such claims, actions, costs, damages or expenses which may be caused by the sole negligence of the Grantor, 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 Grantor, its successors or assigns and/or their agents or employees and (b) the Grantee, 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 Grantee, its agents or employees. Grantee specifically and expressly waives any immunity that it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW.

Grantee shall release and forever discharge the Port from claims under Four Hundred Thousand Dollars (\$400,000), arising from the presence of Hazardous Substances on the Property 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 Easement shall be construed to waive or discharge any other rights or claims that Grantee 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.

If in the course of the exercise of its rights under this Easement, or otherwise, Grantee damages or disturbs the Permanent Pipeline/Access Easement Area and/or adjacent property Grantee shall restore the surface of the damaged or disturbed property to the same or similar condition as it was immediately before Grantee's actions.

In the event Grantee abandons this Easement, Grantee shall restore the Permanent Pipeline/Access Easement Area to the same or similar condition as it was immediately before Grantee entered the Permanent Pipeline/Access Easement Area. Grantee shall maintain the Permanent Pipeline/Access Easement Area in a reasonably safe condition.





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

This Easement 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 Easement as of the day and year last signed below.

**GRANTOR:**  
**PORT OF SEATTLE,**  
A Washington municipal corporation

By: \_\_\_\_\_  
Print Name: Tay Yoshitani  
Title: CEO, Port of Seattle  
Dated: \_\_\_\_\_

**GRANTEE:**  
**KING COUNTY,**  
A county of the State of Washington

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Tay Yoshitani is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Chief Executive Officer of the PORT OF SEATTLE, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission 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/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of KING COUNTY, a county of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_



23330830

Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**EXHIBIT A**  
**WEST YARD PIPELINE/ACCESS EASEMENT AREA**  
**LEGAL DESCRIPTION**



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# 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 ALLEYS 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 N88°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 8.83 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 52.62 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.



MAGNOLIA CSO-PERMANENT PIPELINE EASEMENT  
Port of Seattle West Yard Property  
Seattle, WA

DATE:  
2/22/13

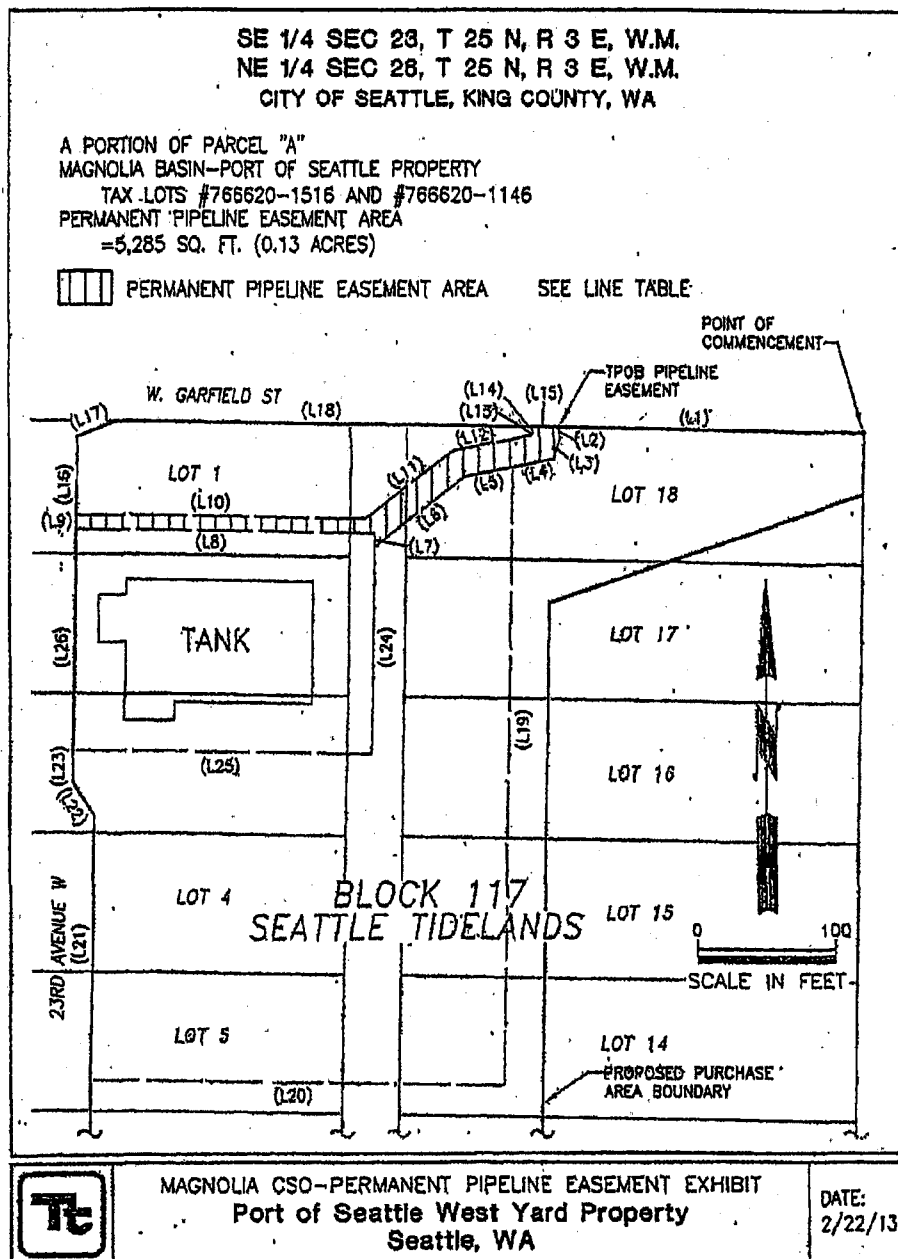
23330830

Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**EXHIBIT B**  
**WEST YARD PIPELINE/ACCESS EASEMENT AREA**



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013



23330830

Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# Exhibit D



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

After recording return document to:

Port of Seattle  
Pier 69 PO Box 1209  
Seattle WA 98111  
Attn: Isabel R. Safora  
Deputy General Counsel

### WEST YARD TEMPORARY CONSTRUCTION EASEMENT

<b>Grantor:</b>	Port of Seattle
<b>Grantee:</b>	King County
<b>Abbrev. Legal Description:</b>	
<b>Full Legal Description:</b>	See Exhibit A to this Easement
<b>Assessor's TPNos.:</b>	766620-1516-01 and 766620-1146-09
<b>Ref. No. of Related Document:</b>	N/A

The PORT OF SEATTLE, ("Grantor"), for and in consideration of Ten Dollars (\$10.00) and other valuable consideration including mutual benefits for public use, does hereby grant to KING COUNTY, a county of the State of Washington, and its successors and assigns, (hereinafter collectively "Grantee"), under the imminent threat of the King County's exercise of its rights of Eminent Domain, a temporary construction easement for access on, over, across and through that portion of the real property commonly known as the West Yard (the "Property"), which portion is legally described as the "West Yard TCE Area" on Exhibit A and depicted on Exhibit B hereto, which Exhibits are incorporated herein by this reference.

This Easement is granted for the purpose of permitting the following construction activity within the West Yard TCE Area in connection with construction of the South Magnolia CSO Project: mobilization, site preparation, grading, excavation and construction which includes, but is not limited to, lighting, ventilation, removal of excavated material, equipment maintenance, storage of equipment and construction materials, stockpiling materials, storm water handling facilities (such as baker tanks), loading and unloading of trucks and/or conveyors, maintenance of trailers and utilities, construction activities for tank, building and pipeline construction, instrumentation, monitoring wells as needed to monitor stormwater quality and quantity (which wells shall be abandoned pursuant to Department of Ecology standards), roadwork, landscaping, and final site cleanup, together with the right for access by





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

pedestrians, vehicles and equipment and utility services required for purposes of this Easement.

Grantee shall not install, construct or place any permanent structures or items, or leave any permanent structures or items, in the West Yard TCE Area. At the termination of this Easement, Grantee shall restore the West Yard TCE Area and any other impacted property to the same or similar condition as it was immediately before Grantee entered the West Yard TCE Area. Grantee shall also backfill any excavated areas with clean fill as necessary to restore the disturbed property to the level surface grade (approximately 130').

Stockpiling entails stockpiling materials and equipment necessary for construction of the Magnolia CSO facility, landscaping and ancillary buildings in the Permanent Tank Fee Area and/or the Permanent Pipeline/Access Easement Area and could also entail any excavated clean material, which will be covered and controlled pursuant to City code, or clean fill material delivered to the West Yard TCE Area. All equipment will be removed from the West Yard TCE Area after conclusion of construction and restoration of the Property. Any material remaining will be removed from the West Yard TCE Area at the termination of the term of the Easement.

During the term of the Easement, Grantee shall accomplish its construction in such a manner that any improvements existing in said West Yard TCE Area shall not be disturbed or destroyed, or in the event that they are disturbed or destroyed, Grantee shall restore them as nearly as possible to the conditions existing immediately before the West Yard TCE Area was entered upon by the Grantee and will do so in such a manner so as to ensure that the current uses can be resumed by or on behalf of Grantor without cost or expense to Grantor.

The West Yard TCE Area contains an area of approximately 142,853 square feet (3.28 acres), more or less.

The term of this Easement shall commence upon the date Grantee makes payment to Grantor in the amount of Six Hundred Sixty Eight Thousand Three Hundred Fifty Eight Dollars (\$668,358.00) and thereby takes possession and use of the West Yard TCE Area, and shall remain in force until completion of the Project construction and restoration, estimated to be approximately 24 months in duration. Grantee shall provide 30 days written notice to Grantor prior to making the payment and taking possession and use of the West Yard TCE Area which will activate the initial 24 month term of the Easement.

Grantee may extend the term of this Easement and use the Easement for additional time for a period not to exceed 24 months. In order to exercise the right to additional time, Grantee shall give Grantor 30 day's written notice prior to the expiration of the original term of this Easement that Grantee intends to use the Easement for additional time along with a statement



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

as to the amount of additional time for which Grantee shall use the Easement. Nothing herein shall prevent Grantee from submitting serial notices of extended use; provided, however, that in no event shall the term of this Easement be extended to a date more than five years from the date activated. If Grantee requires additional time beyond the initial 24-month term for this Easement, Grantee shall pay Grantor Twenty Seven Thousand Eight Hundred Forty Eight and 25/100 Dollars (\$27,848.25) which is one/twenty-fourth of the agreed value of Six Hundred Sixty Eight Thousand Three Hundred Fifty Eight Dollars (\$668,358.00) to be paid for the initial 24-month term of this Easement for each such month of additional use. Any partial months of additional use shall be paid on a pro rata basis.

The Easement granted hereby is solely for the benefit of Grantee, and is personal to Grantee. Grantee shall have the right to permit third parties ("Grantee's invitees") to enter upon the West Yard TCE Area to accomplish the purposes described herein, provided that such invitees shall abide by the terms of this Easement.

The Easement granted hereby, and the duties, restrictions, limitations and obligations herein created, shall run with the land, shall burden the West Yard TCE Area and shall be binding upon and the parties and their respective successors and assigns.

The Grantor, its officers, 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 Grantee or by others, including, but not limited to, all persons directly or indirectly employed by Grantee, or any agents, contractors, subcontractors, licensees, or invitees of Grantee, as a result of any existing or future defects in the West Yard TCE Area or occurrence (including failure or interruption of utility service) whatsoever related in any way to the West Yard TCE Area and the areas adjacent thereto, or related in any way to such person's use or occupancy of the West Yard TCE Area and the areas adjacent thereto, or related in any way to Grantee's exercise or failure to exercise its rights under this Easement.

Grantee agrees to defend, save and hold harmless Grantor, its 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 Grantee, its assigns, agents, contractors, licensees, invitees, employees, in its use of or occupancy under this Easement. Provided, however, this obligation does not include such claims, actions, costs, damages or expenses which may be caused by the sole negligence of the Grantor, 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 Grantor, its successors or assigns and/or their agents or employees and (b) the Grantee, its agents or employees, or involves those actions covered by RCW 4.24.115 (construction/road improvements), this indemnity provision shall be valid and



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

enforceable only to the extent of the negligence of the Grantee, its agents or employees. Grantee specifically and expressly waives any immunity that it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW.

Grantee shall release and forever discharge the Port from claims under Four Hundred Thousand Dollars (\$400,000), arising from the presence of Hazardous Substances on the Property 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 Easement 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.

This Easement shall be of no further force or effect upon the later of the date the Project is constructed or upon the expiration of five (5) years.

This Easement 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 Easement as of the day and year last signed below.

**GRANTOR:**  
**PORT OF SEATTLE,**  
A Washington municipal corporation

By: \_\_\_\_\_  
Print Name: Tay Yoshitani  
Title: CEO, Port of Seattle  
Dated: \_\_\_\_\_



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**GRANTEE:**  
**KING COUNTY,**  
A county of the State of Washington

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

STATE OF WASHINGTON     )  
                                  ) ss.  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that Tay Yoshitani is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Chief Executive Officer of the PORT OF SEATTLE, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission 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/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of KING COUNTY, a county of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_



23330830

Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**EXHIBIT A  
WEST YARD TCE AREA  
LEGAL DESCRIPTION**



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

### TEMPORARY CONSTRUCTION EASEMENT

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 ALLEYS 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 (ALSO THE SOUTH MARGIN OF W. GARFIELD STREET) A DISTANCE OF 238.66 FEET TO THE TRUE POINT OF BEGINNING; THENCE DEPARTING FROM SAID NORTH LINE S05°45'51"E A DISTANCE OF 5.22 FEET; THENCE S16°44'09"W A DISTANCE OF 0.66 FEET; THENCE S79°09'47"W A DISTANCE OF 69.55 FEET; THENCE S52°49'35"W A DISTANCE OF 80.53 FEET; THENCE N88°56'14"W A DISTANCE OF 209.21 FEET, MORE OR LESS, TO A POINT ON THE EAST MARGIN OF 23RD AVENUE W.; THENCE N00°57'50"E ALONG SAID EAST MARGIN A DISTANCE OF 58.21 FEET; THENCE N69°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°00'43"E ALONG SAID NORTH LINE A DISTANCE OF 302.40 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING, AND THE TERMINUS OF THIS LINE;

TOGETHER WITH ALL THAT LAND LYING WITHIN THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK 117; THENCE S00°59'17"W ALONG THE EAST LINE OF SAID BLOCK 117 A DISTANCE OF 41.17 FEET; THENCE DEPARTING FROM SAID EAST LINE N89°05'19"W A DISTANCE OF 170.52 FEET; THENCE S80°36'32"W A DISTANCE OF 73.14 FEET; THENCE S59°36'00"W A DISTANCE OF 8.44 FEET; THENCE S12°32'13"W A DISTANCE OF 19.34 FEET; THENCE S00°59'17"W A DISTANCE OF 395.22 FEET; THENCE S03°13'35"W A DISTANCE OF 54.46 FEET; THENCE N87°20'54"W A DISTANCE OF 67.55 FEET; THENCE S46°12'43"W A DISTANCE OF 69.16 FEET; THENCE N89°30'15"W A DISTANCE OF 149.94 FEET; THENCE N44°02'38"W A DISTANCE OF 29.16 FEET TO A POINT ON THE EAST MARGIN OF 23RD AVENUE W.; THENCE CONTINUING ALONG SAID EAST MARGIN

(CONTINUED...)



MAGNOLIA CSO-TEMP CONSTRUCTION EASEMENT EXHIBIT  
Port of Seattle West Yard Property  
Seattle, WA

PAGE 3  
OF 4  
3-28-13



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

TEMPORARY CONSTRUCTION EASEMENT (CONT.)

N44°02'38"W A DISTANCE OF 14.14 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN  
N00°57'50"E A DISTANCE OF 262.00 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN  
N32°09'42"W A DISTANCE OF 29.28 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN  
N00°57'50"E A DISTANCE OF 22.47 FEET; THENCE DEPARTING FROM SAID EAST MARGIN  
S88°56'14"E A DISTANCE OF 215.96 FEET; THENCE N01°04'22"E A DISTANCE OF 148.60  
FEET; THENCE N52°49'35"E A DISTANCE OF 82.62 FEET; THENCE N79°09'47"E A DISTANCE  
OF 66.99 FEET; THENCE N16°44'09"E A DISTANCE OF 18.76 FEET; THENCE N05°45'51"W  
A DISTANCE OF 6.83 FEET, MORE OR LESS, TO A POINT ON THE NORTH LINE OF SAID  
BLOCK 117 (ALSO THE SOUTH MARGIN OF W. GARFIELD STREET); THENCE S 89°00'43"E  
ALONG SAID NORTH LINE A DISTANCE OF 218.52 FEET, MORE OR LESS, TO THE TRUE  
POINT OF BEGINNING, AND THE TERMINUS OF THIS LINE.

CONTAINING 142,853 SQUARE FEET (3.28 ACRES),  
MORE OR LESS.



MAGNOLIA CSO-TEMP CONSTRUCTION EASEMENT EXHIBIT  
Port of Seattle West Yard Property  
Seattle, WA

PAGE 4  
OF 4  
8-26-13





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

A PORTION OF PARCEL "A"  
MAGNOLIA BASIN-PORT OF SEATTLE PROPERTY  
TAX LOTS #766620-1516 AND #766620-1146  
TEMPORARY CONSTRUCTION EASEMENT AREA=  
= 142,853 SQ. FT. (3.28 ACRES)

LINE TABLE (NORTH AREA)

L1: N 89°00'43" W 238.66'  
L2: S 05°45'51" E 5.22'  
L3: S 16°44'09" W 0.66'  
L4: S 79°09'47" W 59.55'  
L5: S 52°49'35" W 80.53'  
L6: N 88°56'14" W 209.21'  
L7: N 00°57'50" E 58.21'  
L8: N 69°01'01" E 30.21'  
L9: S 89°00'43" E 302.40'

LINE TABLE (SOUTH AREA)

L10: S 00°59'17" W 41.17'  
L11: N 89°05'19" W 170.52'  
L12: S 80°36'32" W 73.14'  
L13: S 59°36'00" W 8.44'  
L14: S 12°32'13" W 19.34'  
L15: S 00°59'17" W 395.22'  
L16: S 03°13'35" W 54.46'  
L17: N 87°20'54" W 67.55'  
L18: S 46°12'43" W 69.16'  
L19: N 89°30'15" W 149.94'  
L20: N 44°02'38" W 29.16'  
L21: N 44°02'38" W 14.14'  
L22: N 00°57'50" E 262.00'  
L23: N 32°09'42" W 29.28'  
L24: N 00°57'50" E 22.47'  
L25: S 88°56'14" E 215.96'  
L26: N 01°04'22" E 148.60'  
L27: N 52°49'35" E 82.62'  
L28: N 79°09'47" E 66.99'  
L29: N 16°44'09" E 16.76'  
L30: N 05°45'51" W 6.83'  
L31: S 89°00'43" E 218.52'



MAGNOLIA CSO-TEMP CONSTRUCTION EASEMENT EXHIBIT  
Port of Seattle West Yard Property  
Seattle, WA

PAGE 2  
OF 4  
3-26-13



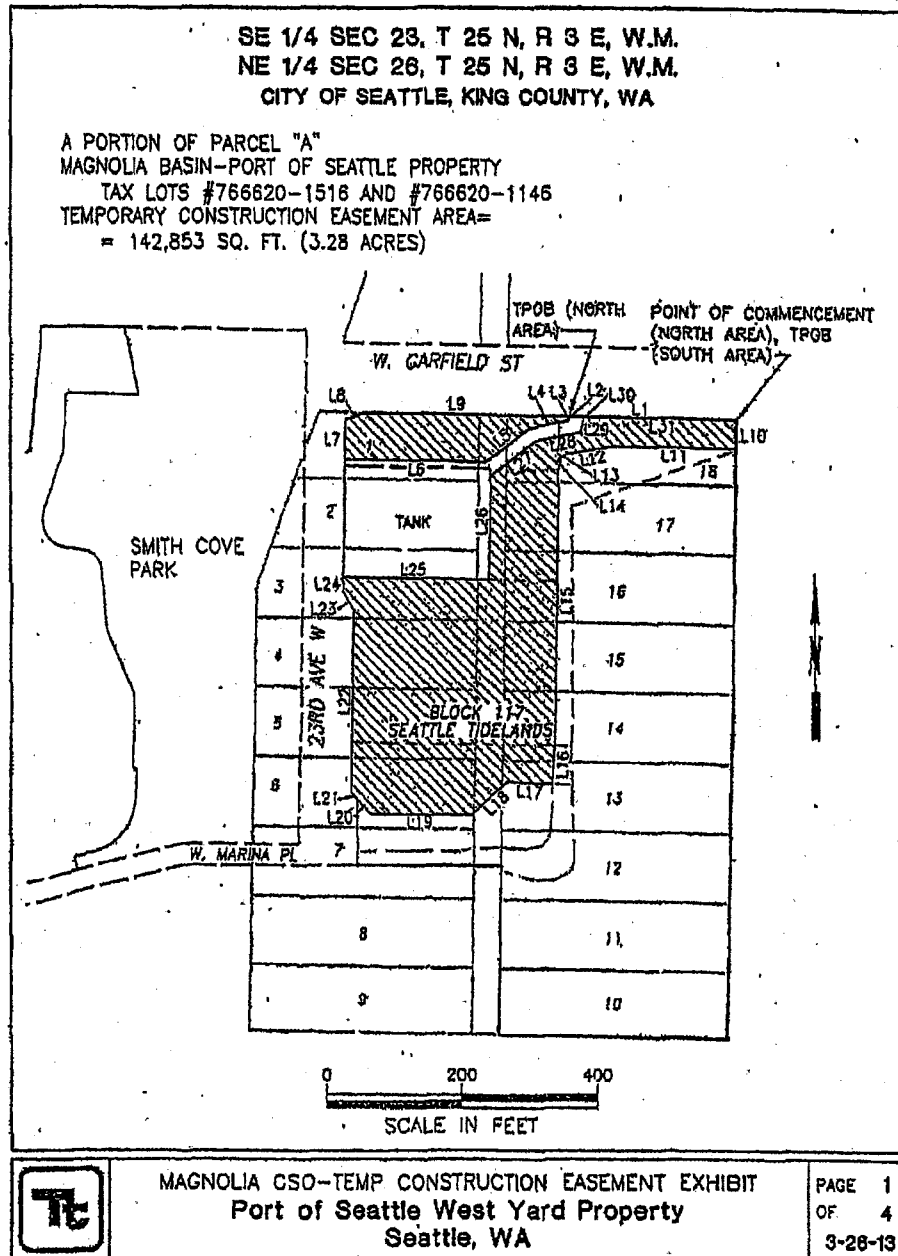
23330830

Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**EXHIBIT B**  
**WEST YARD TCE AREA**



Donald Harris  
 DPR Smith Cove West Yard Acquisition ORD ATT1  
 June 27, 2013



23330830

Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# Exhibit E



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

The Honorable Barbara Linde

SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

KING COUNTY,

Petitioner,

vs.

PORT OF SEATTLE, a municipal corporation;  
AMERICAN SEAFOODS COMPANY, LLC, a  
Delaware limited liability company; and LINDA  
PATTERSON, an individual,

Respondents.

No. 12-2-19667-2 SEA

NOTICE OF TANK AREA PROPERTY  
AND WEST YARD PIPELINE/ACCESS  
EASEMENT POSSESSION AND USE  
PAYMENT

(CLERK'S ACTION REQUIRED)

To: All parties  
And To: Their attorneys of record

NOTICE IS HEREBY GIVEN that the Tank Area Property and West Yard Pipeline/Access Easement Possession and Use Payment in the amount of Two Million One Hundred Fifteen Thousand One Hundred and Forty Six and No/100 Dollars (\$2,115,146.00) has been paid into the above-entitled court by Petitioner. Pursuant to the Stipulation and Agreed Order for Immediate Possession and Use as to the Interests of the Port of Seattle ("Possession and Use Order"), on file herein, the Clerk of the Court is to disburse, without further order from this Court, the sum of Two Million One Hundred Fifteen Thousand One Hundred and Forty Six and No/100 Dollars (\$2,115,146.00) by check payable to Port of Seattle, in the amount of Two Million One Hundred Fifteen Thousand One Hundred and Forty Six and No/100 Dollars

NOTICE OF TANK AREA PROPERTY  
AND WEST YARD PIPELINE/ACCESS  
EASEMENT POSSESSION AND USE  
PAYMENT -- 1

m45141-1854560.doc

**GRAHAM & DUNN PC**  
Pier 70, 2801 Alaskan Way ~ Suite 300  
Seattle, Washington 98121-1128  
(206) 624-8300/Fax (206) 340-9599

Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

1 (\$2,115,146.00) and by mailing the check to Port of Seattle Legal Department, c/o Isabel Safora,  
2 P.O. Box 1209, Seattle, WA 98111.

3 Petitioner is responsible for paying any clerk's fee associated with deposit and/or  
4 disbursement of this sum.

5

6 DATED this \_\_\_\_ day of May, 2013.

7

8

DANIEL T. SATTERBERG  
PROSECUTING ATTORNEY  
King County Prosecuting Attorney's Office

9

10

11

By \_\_\_\_\_  
Verna P. Bromley, WSBA # 24703  
Attorneys for Petitioner King County

12

13

14 Copy received; Agreed and Approved  
For Entry:

15

GRAHAM & DUNN PC

16

17

By: \_\_\_\_\_  
Marisa Velling Lindell, WSBA No. 18201  
Attorney for Respondent Port of Seattle

18

19

20

21

22

23

24

25

26

NOTICE OF TANK AREA PROPERTY  
AND WEST YARD PIPELINE/ACCESS  
EASEMENT POSSESSION AND USE  
PAYMENT -- 2

m45141-1854560.doc

GRAHAM & DUNN PC  
Pier 70, 2801 Alaskan Way ~ Suite 300  
Seattle, Washington 98121-1128  
(206) 624-8300/Fax: (206) 340-9599



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# Exhibit F



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

The Honorable Barbara Linde

SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

KING COUNTY,

Petitioner,

vs.

PORT OF SEATTLE, a municipal corporation;  
AMERICAN SEAFOODS COMPANY, LLC, a  
Delaware limited liability company; and LINDA  
PATTERSON, an individual,

Respondents.

No. 12-2-19667-2 SEA

NOTICE OF WEST YARD TCE  
POSSESSION AND USE PAYMENT

(CLERK'S ACTION REQUIRED)

To: All parties  
And To: Their attorneys of record

NOTICE IS HEREBY GIVEN that the West Yard TCE Possession and Use Payment in the amount of Six Hundred Sixty Eight Thousand Three Hundred Fifty Eight and No/100 Dollars (\$668,358.00) has been paid into the above-entitled Court by Petitioner. Pursuant to the Stipulation and Agreed Order for Immediate Possession and Use as to the Interests of the Port of Seattle ("Possession and Use Order"), on file herein, the Clerk of the Court is to disburse, without further order from this Court, the sum of Six Hundred Sixty Eight Thousand Three Hundred Fifty Eight and No/100 Dollars (\$668,358.00) by check payable to the Port of Seattle, in the amount of Six Hundred Sixty Eight Thousand Three Hundred Fifty Eight and No/100 Dollars (\$668,358.00) and by mailing the check to Port of Seattle Legal Department, c/o Isabel Safora, P.O. Box 1209, Seattle, WA 98111.

NOTICE OF WEST YARD TCE  
POSSESSION AND USE PAYMENT - 1

m45141-1854373.doc

GRAHAM & DUNN PC  
Pier 70, 2801 Alaskan Way ~ Suite 300  
Seattle, Washington 98121-1128  
(206) 624-8300/Fax: (206) 340-9599





Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

1       Petitioner is responsible for paying any clerk's fee associated with deposit and/or  
2       disbursement of this sum.

3  
4       DATED this \_\_\_\_\_ day of May, 2013.

5  
6  
7       DANIEL T. SATTERBERG  
8       PROSECUTING ATTORNEY  
9       King County Prosecuting Attorney's Office

10       By \_\_\_\_\_  
11       Verna P. Bromley, WSBA # 24703  
12       Attorneys for Petitioner King County

13       Copy received; Agreed and Approved  
14       For Entry:

15       GRAHAM & DUNN PC

16       By: \_\_\_\_\_  
17       Marisa Velling Lindell, WSBA No. 18201  
18       Attorney for Respondent Port of Seattle

19  
20  
21  
22  
23  
24  
25  
26  
NOTICE OF WEST YARD TCE  
POSSESSION AND USE PAYMENT -- 2

m45141-1854373.doc

GRAHAM & DUNN PC  
Pier 70, 2801 Alaskan Way ~ Suite 300  
Seattle, Washington 98121-1128  
(206) 624-8300/Fax: (206) 340-9599

Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

# EXHIBIT K



**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

The Port of Seattle

MINOR CHANGE TO AGREED ORDER

No. DE 8938

TO: Port of Seattle  
Attention Mr. Tay Yoshitani  
P.O. Box 1209  
Seattle, Washington 98111

**I. INTRODUCTION**

The State of Washington, Department of Ecology (Ecology) and Port of Seattle (the Port) entered into Agreed Order No. DE 8938 (Order) on April 10, 2012. The Order applies to the "Terminal 91 Facility," defined in relevant part by the Order as "the real property owned by the Port of Seattle encompassing approximately 216 acres and located at 2001 West Garfield Street, Seattle, Washington, as depicted in Exhibit B." Agreed Order No. DE 8938 at 5, § IV, ¶ 14.

Ecology's Water Quality Program is requiring King County, Washington (King County) to take actions to address combined sewer overflow issues in the Seattle area. In response to part of Ecology's requirements, King County has designed a sewer improvement project, which includes the construction of an underground storage tank to control sewer overflows (South Magnolia CSO Facility). This underground storage tank will be located in the area of the Terminal 91 Facility known as the "West Yard." To accomplish the construction of the underground storage tank, King County will acquire real property rights to the West Yard portion of the Terminal 91 Facility. Such rights could take the form of outright ownership of a fee interest, or of a leasehold or easement interest granted to the County by a local government



entity which takes fee ownership of the West Yard from the Port, such as the City of Seattle, which could use other portions of the West Yard for park and recreation purposes. King County's development of the South Magnolia CSO Facility at the West Yard was determined to be subject to the procedural requirements of the State Environmental Policy Act (SEPA). The threshold analysis under SEPA resulted in a determination of nonsignificance issued by King County, dated May 23, 2011.

Pursuant to Section VIII.L of the Order, the Port on November 16, 2012, requested that Ecology approve a minor change to the Order, which will consist of the removal of the West Yard from the definition/description of the Terminal 91 Facility. Ecology has determined that the removal of the West Yard from the Terminal 91 Facility will not result in a change to the work to be performed by the Order. Based on this determination, Ecology agrees to the Port's requested minor change to the Order. With the removal of the West Yard from the Terminal 91 Facility, the West Yard is no longer subject to the Order.

## **II. MINOR CHANGE**

This minor change to the Order does not attempt to recite all of the provisions found in the Order. Provisions of the Order not specifically changed in this modification remain in full force and effect. The minor change to the Order described below shall take effect upon the conveyance by the Port of a fee simple interest in the West Yard (substantially as depicted by Exhibit 1) either directly to King County or to any local governmental transferee that takes ownership to facilitate the County's construction of the South Magnolia CSO Facility, provided such conveyance occurs on or before December 31, 2014 (Conveyance). If the Conveyance does not occur by that time, this minor change shall be void and have no effect.



Upon occurrence of the Conveyance, the following provision of and exhibits to the Order shall be deemed modified, without further action by Ecology or the Port, to reflect the removal of the West Yard from the Terminal 91 Facility:

**A. DEFINITIONS**

9. Terminal 91 Facility means the real property owned by the Port of Seattle encompassing approximately 210.6 acres and located at 2001 West Garfield Street, Seattle, Washington as depicted on Exhibit B.

**B. EXHIBITS**

EXHIBIT A	Cleanup Action Plan's Figure 2 (Port of Seattle Terminal 91 Facility and Tank Farm Lease Parcel) (modified in accordance with Exhibit 2)
EXHIBIT B	Diagram of Port of Seattle Terminal 91 Facility (modified in accordance with Exhibit 2)
EXHIBIT E	Contamination Contingency Work Plan's Figure 2 (Site Plan) (modified in accordance with Exhibit 2)

Execution date of this minor change: 3/28/2013

PORT OF SEATTLE

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

By T. Yoshitani  
Tay Yoshitani  
Chief Executive Officer

By Dennis B. Johnson  
Dennis B. Johnson  
Section Manager  
Hazardous Waste and Toxics Reduction  
Northwest Regional Office

**Exhibits**

Exhibit 1: Depiction of West Yard  
Exhibit 2: Depiction of Terminal 91 Facility without the West Yard

Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

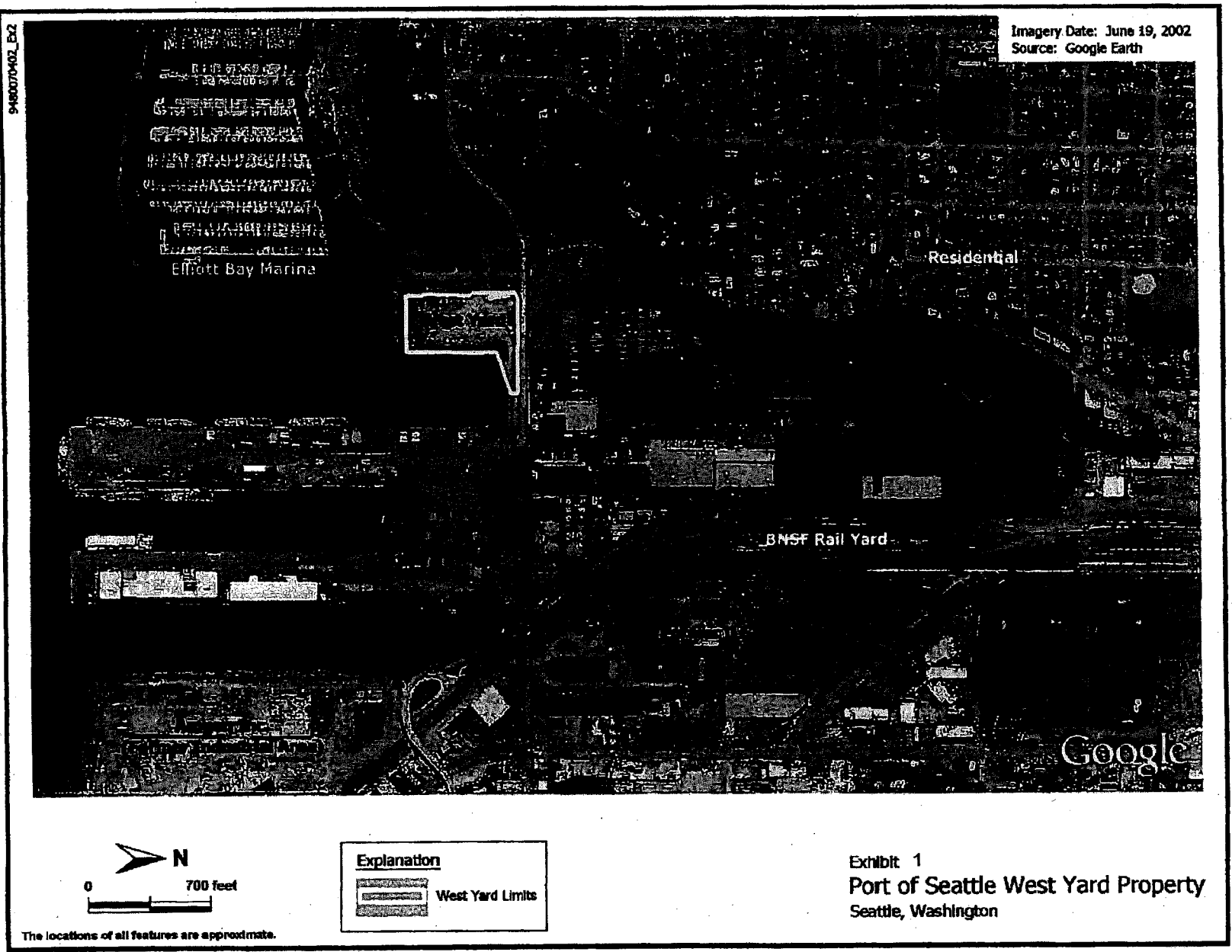


Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**Exhibit 1**  
**(Depiction of West Yard)**



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013



Att 1 to DPR Smith Cove West Yard Acquisition ORD

9480070402\_82

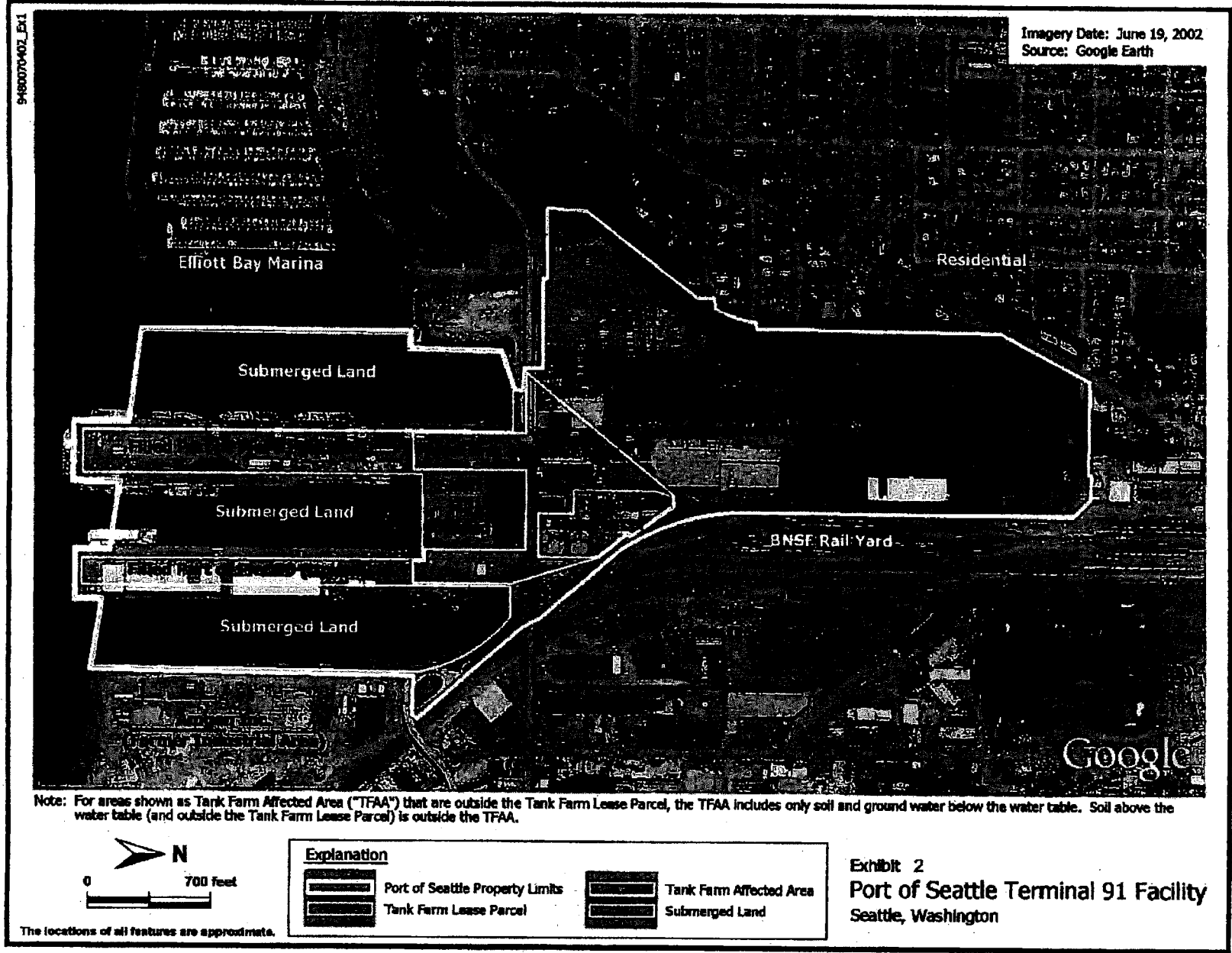




Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT1  
June 27, 2013

**Exhibit 2**  
**(Depiction of Terminal 91 Facility**  
**without the West Yard)**





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**

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

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").



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

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 unearth, 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  
4<sup>th</sup> 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.





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

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: \_\_\_\_\_



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

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_



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

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 \_\_\_\_\_ signed this instrument, on oath stated that \_\_\_\_\_ was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of the CITY OF SEATTLE, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission 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/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of KING COUNTY, a county of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of



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

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 ALLEYS 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.



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

**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 S00°59'17"W ALONG THE EAST LINE OF SAID BLOCK 117 A DISTANCE OF 44.47 FEET; THENCE DEPARTING FROM SAID EAST LINE S71°00'58"W A DISTANCE OF 248.76 FEET; THENCE S01°33'29"E A DISTANCE OF 74.99 FEET; THENCE S00°12'30"W A DISTANCE OF 120.99 FEET; THENCE S01°04'32"W A DISTANCE OF 150.97 FEET; THENCE S01°38'09"E A DISTANCE OF 162.34 FEET; THENCE S19°43'20"W A DISTANCE OF 13.67 FEET; THENCE S59°00'29"W A DISTANCE OF 28.49 FEET; THENCE N87°52'59"W A DISTANCE OF 36.39 FEET; THENCE N72°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°59'17"E ALONG SAID WEST LINE OF LOT 12 A DISTANCE OF 6.80 FEET; THENCE DEPARTING SAID WEST LINE N89°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°57'50"E ALONG SAID EAST MARGIN A DISTANCE OF 94.40 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N44°02'38"W A DISTANCE OF 14.14 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N00°57'50"E A DISTANCE OF 282.00 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N32°09'42"W A DISTANCE OF 29.26 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N00°57'50"E A DISTANCE OF 22.47 FEET; THENCE DEPARTING SAID EAST MARGIN S88°56'14"E A DISTANCE OF 215.98 FEET; THENCE N01°04'19"E A DISTANCE OF 156.50 FEET; THENCE N88°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°57'50"E A DISTANCE OF 66.21 FEET; THENCE N69°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°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:

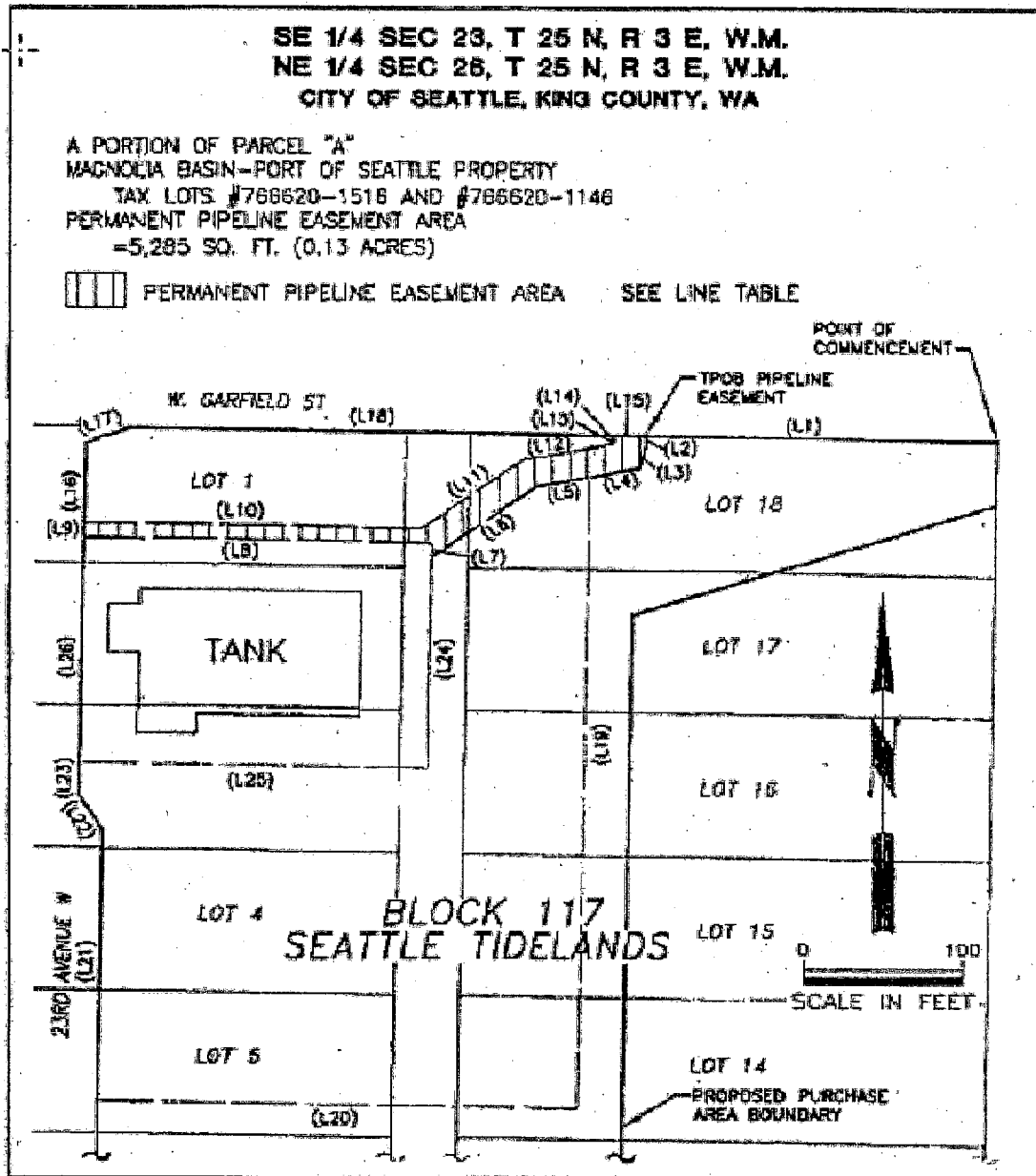
COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK 117, ALSO BEING A POINT ON THE SOUTH MARGIN OF W. GARFIELD STREET; THENCE N89°00'43"W ALONG THE NORTH LINE OF SAID BLOCK 117 (AND SAID SOUTH MARGIN OF W. GARFIELD STREET) A DISTANCE OF 218.52 FEET TO THE TRUE POINT OF BEGINNING; THENCE DEPARTING FROM SAID SOUTH MARGIN OF W. GARFIELD STREET S05°45'51"E A DISTANCE OF 6.83 FEET; THENCE S16°44'09"W A DISTANCE OF 16.78 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 216.25 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 69.55 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.





## DEPICTION OF PERMANENT PIPELINE/ACCESS EASEMENT AREA



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT 3  
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 SURFACE/AERIAL EASEMENT AGREEMENT**

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

This Substitute Surface /Aerial 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 Surface/Aerial Easement that was recorded under King County recording number \_\_\_\_\_ ("Port/County Surface/Aerial 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 Surface/Aerial 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 protect, maintain, repair and reconstruct the CSO Project infrastructure, which serves both the CITY and the COUNTY.

F. Pursuant to the PSA the COUNTY paid the Port \$400,000 for the Port/County Surface/Aerial Easement and the COUNTY and the CITY acknowledge that the value of the COUNTY's rights and interests under this Substitute Easement Agreement is \$400,000.

G. The COUNTY is willing to replace the Port/County Surface/Aerial 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 surface and aerial easement ("Easement") in, on, over, across and through that portion of the City Property legally described as the "Surface/Aerial 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 A**, and the Permanent Pipeline/Access Easement Area, legally described in **Exhibit E** 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 for personnel, vehicles and equipment to the Tank Area Property, legally described in **Exhibit A**, and the Permanent Pipeline/Access Easement Area, legally described in **Exhibit E**, to install, construct, use, operate, inspect, maintain, repair, replace,



enhance and improve the CSO Project infrastructure, and for necessary parking, storage and staging of equipment, vehicles and construction materials, loading and unloading of trucks and/or conveyors, related to the CSO Project infrastructure in the Tank Area Property, the Permanent Pipeline/Access Easement Area and other property now owned or hereafter acquired that constitutes a portion of the CSO Project.

The Surface/Aerial Easement Area contains an area of 20,026 square feet (0.46 acres), more or less.

**2. Limitations on COUNTY Use.** The Surface/Aerial Easement Area covers a large segment of the northerly portion of the City Property. The CITY anticipates that upon development as an extension of Smith Cove Park, the City Property will be heavily used. Therefore, 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 exercising any of the rights granted in Section 1 above except access across and through the Surface/Aerial Easement Area by personnel and small vehicles, or parking of up to two automobiles or maintenance trucks in the Surface/Aerial Easement Area.

All COUNTY occupation of the Surface/Aerial Easement Area must be necessary or convenient for the CSO Project infrastructure and shall be as short term as possible. All personnel exercising the rights in Section 1 shall be COUNTY employees or the COUNTY's contractors, consultants or other invitees. The COUNTY is responsible, at its sole expense, for repair, restoration or replacement of all topography, vegetation, landscape features and improvements (including paving) in the Surface/Aerial Easement Area that is damaged or disturbed or destroyed by the COUNTY or its contractors to their condition immediately prior to such damage, disturbance or destruction, unless otherwise mutually agreed in writing.

If the COUNTY requires any use or occupation of the City Property outside of the Surface/Aerial 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 Surface/Aerial Easement Area with the following limitations: (a) The CITY shall not grant easement rights to third parties in the Surface/Aerial Easement Area without the prior written consent of the COUNTY, which shall not be unreasonably withheld. (b) No improvements that might interfere with the rights granted to the COUNTY under this Substitute Easement Agreement may be installed, no permanent structures shall be installed, and no construction activity shall be permitted that might obstruct endanger the usefulness of or interfere with the rights granted to the COUNTY under this Substitute Easement Agreement without the prior written approval of the COUNTY, which shall not be



unreasonably withheld; provided, however, that the CITY may use the surface of the Surface/Aerial Easement Area for a paved parking lot and for parking of vehicles.

**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 Surface/Aerial Easement Area or occurrence (including failure or interruption of utility service) whatsoever related in any way to the Surface/Aerial Easement Area or related in any way to such person's use or occupancy of the Surface/Aerial 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, and 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 Surface/Aerial 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), then 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  
   4<sup>th</sup> Floor  
   Seattle, WA 98134-1336

**6. Termination and Survival.** Upon its effective date, this Substitute Easement Agreement is intended to supersede the Surface/Aerial Easement that was recorded under King County recording number \_\_\_\_\_ ("Port/County Surface/Aerial Easement"), which shall terminate on the effective date of this Substitute Easement Agreement. Notwithstanding the termination of the Port/County Surface/Aerial Easement, the provisions in the Port/County Surface/Aerial 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 Surface/Aerial Easement. The COUNTY's release of claims from the Port/County Surface/Aerial 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 Surface/Aerial 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,

THIS  
CITY  
CLERK

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, if requested by the CITY, restore the Surface/Aerial Easement Area to the same or similar condition as it was immediately before the COUNTY entered the Surface/Aerial Easement Area. In addition, the COUNTY shall cooperate with the CITY to execute a written release and termination of this Substitute Easement Agreement, except for the indemnity and release provisions in Sections 4 and 6, which shall survive abandonment and termination.

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.

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 Easement 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: \_\_\_\_\_



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT 3  
June 27, 2013  
Version #7

**GRANTEE:**  
**KING COUNTY,**  
A political subdivision of the State of Washington

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_





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 \_\_\_\_\_ signed this instrument, on oath stated that \_\_\_\_\_ was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ Superintendent of Parks and Recreation of the CITY OF SEATTLE, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission 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/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of 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 the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
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 28 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 8.83 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.



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT 3  
June 27, 2013  
Version #7

**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 VAGATED 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 S00°59'17"W ALONG THE EAST LINE OF SAID BLOCK 117 A DISTANCE OF 44.47 FEET; THENCE DEPARTING FROM SAID EAST LINE S71°00'58"W A DISTANCE OF 248.76 FEET; THENCE S01°33'29"E A DISTANCE OF 74.99 FEET; THENCE S00°12'30"W A DISTANCE OF 120.99 FEET; THENCE S01°04'32"W A DISTANCE OF 150.97 FEET; THENCE S01°38'09"E A DISTANCE OF 162.34 FEET; THENCE S19°43'20"W A DISTANCE OF 13.67 FEET; THENCE S59°00'29"W A DISTANCE OF 28.49 FEET; THENCE N87°52'59"W A DISTANCE OF 36.39 FEET; THENCE N72°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°59'17"E ALONG SAID WEST LINE OF LOT 12 A DISTANCE OF 6.80 FEET; THENCE DEPARTING SAID WEST LINE N89°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°57'50"E ALONG SAID EAST MARGIN A DISTANCE OF 94.40 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N44°02'38"W A DISTANCE OF 14.14 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N00°57'50"E A DISTANCE OF 262.00 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N32°09'42"W A DISTANCE OF 29.28 FEET; THENCE CONTINUING ALONG SAID EAST MARGIN N00°57'50"E A DISTANCE OF 22.47 FEET; THENCE DEPARTING SAID EAST MARGIN S88°55'14"E A DISTANCE OF 215.98 FEET; THENCE N01°04'19"E A DISTANCE OF 156.50 FEET; THENCE N88°55'14"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°57'50"E A DISTANCE OF 66.21 FEET; THENCE N69°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°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**  
**SURFACE/AERIAL EASEMENT AREA LEGAL DESCRIPTION**

**PERMANENT SURFACE EASEMENT**

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 28 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 ALLEYS 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, ALLOTOR'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 (ALSO THE SOUTH MARGIN OF W. GARFIELD STREET) A DISTANCE OF 238.66 FEET TO THE TRUE POINT OF BEGINNING; THENCE DEPARTING FROM SAID NORTH LINE S05°45'51"E A DISTANCE OF 5.22 FEET; THENCE S16°44'09"W A DISTANCE OF 0.56 FEET; THENCE S79°09'47"W A DISTANCE OF 59.55 FEET; THENCE S82°49'35"W A DISTANCE OF 80.53 FEET; THENCE N88°58'14"W A DISTANCE OF 209.21 FEET, MORE OR LESS, TO A POINT ON THE EAST MARGIN OF 23RD AVENUE W.; THENCE N00°57'50"E ALONG SAID EAST MARGIN A DISTANCE OF 58.21 FEET; THENCE N89°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°00'43"E ALONG SAID NORTH LINE A DISTANCE OF 302.40 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING, AND THE TERMINUS OF THIS LINE;

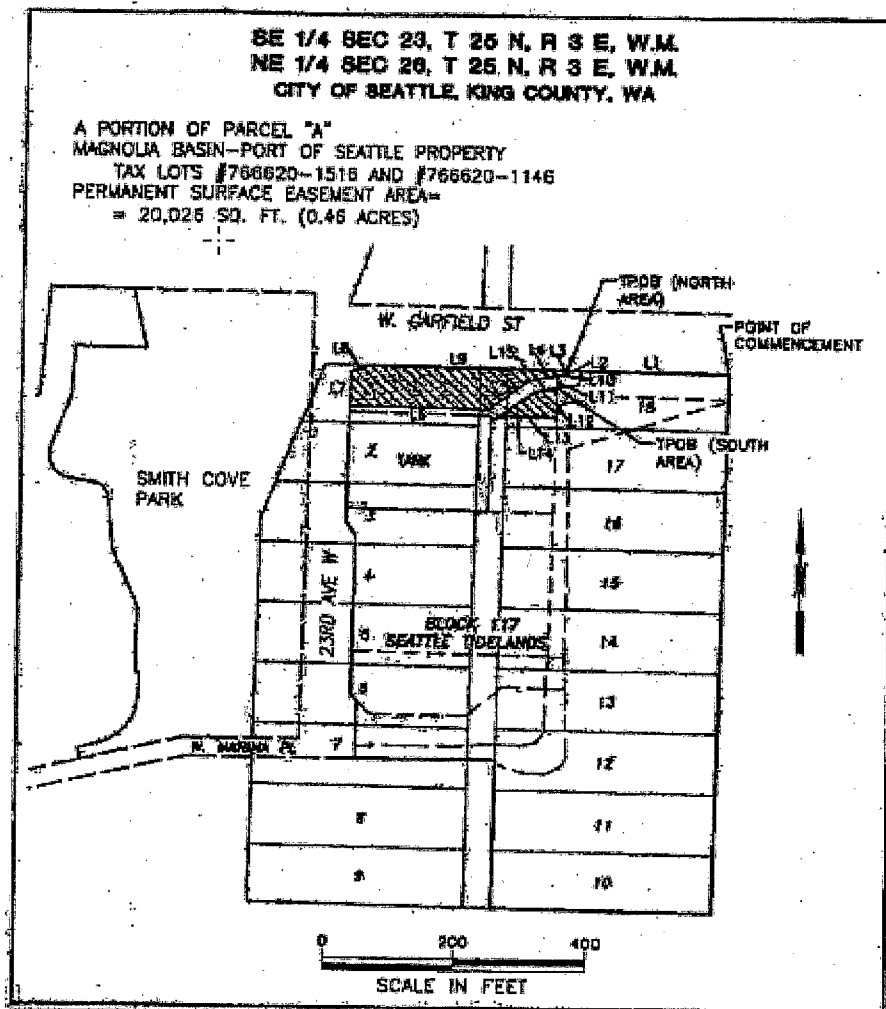
TOGETHER WITH ALL THAT LAND LYING WITHIN THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK 117; THENCE N89°00'43"W ALONG THE NORTH LINE OF SAID BLOCK 117 (ALSO THE SOUTH MARGIN OF W. GARFIELD STREET) A DISTANCE OF 238.66 FEET; THENCE DEPARTING FROM SAID NORTH LINE S05°45'51"E A DISTANCE OF 5.22 FEET; THENCE S16°44'09"W A DISTANCE OF 0.56 FEET; THENCE S79°09'47"W A DISTANCE OF 15.54 FEET; THENCE S00°59'17"W A DISTANCE OF 20.43 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING S00°59'17"W A DISTANCE OF 48.46 FEET; THENCE N88°58'14"W A DISTANCE OF 88.89 FEET; THENCE N82°49'35"E A DISTANCE OF 65.63 FEET; THENCE N79°08'47"E A DISTANCE OF 35.04 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING, AND THE TERMINUS OF THIS LINE.

CONTAINING 20,025 SQUARE FEET (0.46 ACRES),  
MORE OR LESS.



**EXHIBIT D**  
**DEPICTION OF SURFACE/AERIAL EASEMENT AREA**



**EXHIBIT E**  
**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 16.78 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.



Donald Harris  
DPR Smith Cove West Yard Acquisition ORD ATT 3  
June 27, 2013  
Version #7



**FISCAL NOTE FOR CAPITAL PROJECTS ONLY**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Parks and Recreation	Donald Harris 684-8018	Jeff Muhm 684-8049

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the acquisition of a portion of the real property commonly known as the Port of Seattle's West Yard; authorizing the acceptance and recording of the deed for open space, park and recreation purposes; authorizing the 2008 Parks and Green Spaces Levy Oversight Committee to perform all functions of the 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy; deleting a project from the Acquisition Category and a project from the Development Category of the 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy; reallocating funds to the Opportunity Fund categories of the 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy and the 2008 Parks Levy; abandoning certain appropriations to the Department of Parks and Recreation effective as of January 1, 2013; increasing the appropriations to the Department of Parks and Recreation in the 2013 Adopted Budget; amending the 2013-2018 Adopted Capital Improvement Program; and ratifying and confirming certain prior acts; all by three-fourths vote of the City Council.

**Summary and background of the Legislation:**

The proposed ordinance authorizes the Department of Parks and Recreation (Parks) to acquire 4.6 acres of property referred to as a portion of the Port of Seattle's West Yard, declared surplus by the Port of Seattle, for expansion of Smith Cove Park. It authorizes increased appropriation from the 2000 Pro Parks Levy and the 2008 Parks and Green Spaces Levy for the acquisition. Parks expects that the 2008 Levy Fund will be partially reimbursed by proceeds from an easement to be granted to King County for a pipeline serving King County's combined sewer overflow (CSO) facility and from King County Conservation Futures Tax grants. The legislation also authorizes the Parks and Green Spaces Levy Oversight Committee established by Ordinance 122749 ("2008 Parks Levy Oversight Committee") to perform all functions of the Parks and Green Spaces Levy Oversight Committee established in Ordinance 120024 ("2000 Parks Levy Oversight Committee").

**Background:**

The U.S. Navy acquired property in Magnolia during World War II. The Port acquired the West Yard and Piers 90 & 91 from the Navy following the war. In 2003 the City acquired the properties referred to as Ursula Judkins Viewpoint (1.72 acres) and Smith Cove Park (5.61 acres) from the Navy, using Shoreline Park Improvement, 2000 Parks Levy and King County funding.

Recently King County determined that it needed to site a CSO facility in this area. The original concept was that the City and Port would exchange Smith Cove Park for the West Yard property, because the Port was unwilling to have their property encumbered by a CSO tank, and it was

believed that a park would be better suited on the remainder of the West Yard with its water access.

The community objected and advocated for all the property to be park land and that the CSO facility be accommodated therein. With community and political support, Parks negotiated that acquisition with the Port. King County, facing a State Department of Ecology imposed deadline and therefore needing schedule certainty, filed a condemnation action to acquire only the property interests they needed. As a result of mediation in advance of the legal process, a deal has emerged.

A major issue in reaching the deal was the provision of environmental indemnities. A compromise was reached between the Port and the City. The City will acquire the property and take responsibility for the ON-PROPERTY contamination that was identified during the environmental site assessment process and reported in the consultants' written reports. All other claims, if any, will be handled under existing law (e.g. MTCA, CERCLA, etc.).

While this acquisition was driven by King County's need to site the Magnolia CSO facility, and the County was a helpful partner in these negotiations with the Port, what the City and the public will gain is a long desired 4.6 acre waterfront park on Elliott Bay. It can be viewed as the terminus of what will be a great new public amenity at the completion of the Central Waterfront project.

☒ **This legislation creates, funds, or anticipates a new CIP Project.**  
The current CIP is being amended through this legislation.

☐ **This legislation does not have any financial implications.**

☒ **This legislation has financial implications.**

**Appropriations:**

<b>Fund Name and Number</b>	<b>Department</b>	<b>Budget Control Level*</b>	<b>Existing 2013 Appropriation</b>	<b>New 2013 Appropriation (if any)</b>	<b>2014 Anticipated Appropriation</b>
2000 Parks Levy Fund #33850	Parks & Recreation	2008 Parks Levy-Opportunity Fund (K720041)		2,000,000	
2008 Parks Levy Fund #33860	Parks & Recreation	2008 Parks Levy-Opportunity Fund (K720041)		3,261,000	
<b>TOTAL</b>			<b>0</b>	<b>5,261,000</b>	<b>0</b>

**Appropriations Notes:** This legislation appropriates funds for the Smith Cove West Yard Acquisition in the 2008 Parks Levy Opportunity Fund BCL with funding from both the 2000 Pro Parks Levy and the 2008 Parks and Green Spaces Levy. The appropriation will be increased in the existing Opportunity Fund Acquisitions - 2008 Parks Levy Project (K730040).

### Spending Plan and Future Appropriations for Capital Projects:

Spending Plan and Budget	2013	2014	2015	2016	2017	2018	Total
Spending Plan	5,261,000						5,261,000
Current Year Appropriation	5,261,000						
Future Appropriations							0

### Spending Plan and Budget Notes:

### Funding Source:

Funding Source (Fund Name and Number, if applicable)	2013	2014	2015	2016	2017	2018	Total
2000 Parks Levy Fund #33850	2,000,000						2,000,000
2008 Parks Levy Fund #33860	500,000						500,000
2008 Parks Levy Fund #33860- CFT Grants	1,000,000	1,500,000					2,500,000
2008 Parks Levy Fund #33860- - Sale of Easement	261,000						261,000
<b>TOTAL</b>	<b>3,761,000</b>	<b>1,500,000</b>					<b>5,261,000</b>

Funding Source Notes: At its June 24, 2013 meeting, the members of the 2008 Parks Levy Oversight Committee recommended the Smith Cove West Yard acquisition be funded as follows:

The acquisition cost to the City to acquire the Port of Seattle land as an addition to Smith Cove is expected to be \$5,261,000. Parks is proposing to allocate up to \$2 million of 2000 Pro Parks Funds and up to \$3,261,000 of 2008 Parks and Green Spaces funds for this Acquisition. All except \$500,000 of the 2008 Levy funds are expected to be reimbursed by CFT grants (\$2.5 million) and the sale of an easement to King County (\$261,000).

- To make the \$2 million available in the 2000 Pro Parks Levy, abandon the First Hill Park Acquisition and Development Projects and reallocate funds from First Hill Development project and the remaining uncommitted fund balance of the Acquisition Category to the Opportunity Fund for this Smith Cove Acquisition. The First Hill Park Acquisition project was the last remaining acquisition project and abandoning it closes the Acquisition Category.
- For the 2008 Parks and Green Spaces Levy, reallocate \$3,261,000 from the Acquisition Category Inflation Adjustment to the Opportunity Fund for this acquisition. Appropriate

\$3,261,000 in the 2008 Levy Opportunity Fund, with the expectation that \$2,761,000 will be reimbursed from grants and the sale of an easement and returned to the Acquisition Category.

**Bond Financing Required:** N/A

**Uses and Sources for Operation and Maintenance Costs for the Project:**

O&M	2013	2014	2015	2016	2017	2018	Total
<b>Uses</b>							
Start Up							
On-going	2,973	5,399	5,507	5,617	5,729	5,844	31,069
<b>Sources (itemize)</b>							
<b>Park &amp; Recreation Fund (10200)</b>	2,973	5,399	5,507	5,617	5,729	5,844	31,069

Operation and Maintenance Notes:

O&M estimates assume maintenance of only the 1.12 parcel at the south end of the site. The Park maintenance work will include cleaning/maintaining the walkway, picnic tables, fence, sundial, salmon plaque, anchor statue and benches, mowing, irrigation maintenance, hedging of invasive ivy, litter and garbage pick-up, noxious weed control, shoreline maintenance, and graffiti removal. The O&M numbers listed above assume a 2% inflation rate in each successive year.

The rest of the site (to the north of the waterfront acreage) is currently fenced and contains fishing nets and a storage shipping container. Through at least 2015 it will be used by King County for staging for the construction of the Magnolia Combined Sewer Overflow facility. After that it will be "land banked" until funding for an initial phase of development can be identified.

**Periodic Major Maintenance Costs for the Project:** Not calculated (NC)

The Port has informed the city that because the site is exposed to southwest winds there has been an occasion where repair and maintenance of shoreline erosion was required (however not since 1997) including top-of-bank replenishment of the rip-rap bank-line.

Major Maintenance Item	Frequency	Cost	Likely Funding Source
<b>TOTAL</b>	<b>NC</b>	<b>NC</b>	<b>NC</b>

**Funding sources for replacement of project:**

A revenue source for periodic major maintenance has not been identified.

**Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:** N/A

Position Title and Department*	Position # for Existing Positions	Fund Name & #	PT/FT	2013 Positions	2013 FTE	2014 Positions **	2014 FTE **
<b>TOTAL</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>

Position Notes:

**Do positions sunset in the future?** N/A

**Other Implications:**

- a) **Does the legislation have indirect financial implications, or long-term implications?**  
Yes, the acquisition of this property will eventually lead to the development of a new waterfront park. However King County will be using the property for several years for staging as a part of their combined sewer overflow project.
- b) **What is the financial cost of not implementing the legislation?**  
Possibly a forgone opportunity to acquire this 4.6 acre waterfront property or higher cost if acquired in the future.
- c) **Does this legislation affect any departments besides the originating department?**  
SDOT may be affected depending on the future siting of a rebuilt Magnolia Bridge.
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** There are none.
- e) **Is a public hearing required for this legislation?** No.
- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No.
- g) **Does this legislation affect a piece of property?** Yes- see attachments.
- h) **Other Issues:** There are none.

**List attachments to the fiscal note below:**

Attachment A: DPR Smith Cove- West Yard Acquisition Map

# Attachment A





Donald Harris  
DPR Smith Cove- West Yard Acq ATT A  
June 25, 2013  
Version #1

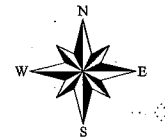


**SEATTLE PARKS  
AND RECREATION**

**Smith Cove  
- West Yard  
Acquisition**

## Legend

-  Acquisition Area
-  Park Boundary
-  Parcel Boundary
-  Water



50 0 50  
Feet

1 inch = 104 feet

©2013 CITY OF SEATTLE  
All rights reserved.

No warranties of any sort, including  
accuracy, fitness or merchantability  
accompany this product.

Map date: June 25, 2013

Document Path: \\proj\proj\CENTRAL\Smith Cove\West Yard Acq - local (1-canal-a).mxd



City of Seattle  
Office of the Mayor

July 9, 2013  
Honorable Sally J. Clark  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Clark:

I am pleased to transmit the proposed Council Bill that authorizes the acquisition of 4.6 acres of the Port of Seattle's West Yard/Smith Cove property for park purposes.

This proposed acquisition is the result of a lengthy negotiation involving King County's need to acquire land for a combined sewer overflow facility, the Port of Seattle's reluctance to have the facility located on its land, and the City's desire, supported by strong advocacy from the Magnolia and Queen Anne communities, to acquire waterfront property to expand the existing Smith Cove Park. Numerous alternatives were considered and rejected. The final proposal has been embraced by the County and the Port and will provide the City, when combined with the 2003 acquisition from the Navy of the 1.72 acre Ursula Judkins Overlook and the 5.61 acre Smith Cove Park, nearly 12 acres of contiguous park land.

Funding for the acquisition is coming from the 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy and the 2008 Parks and Green Spaces Levy, with the expectation that the 2008 Parks Levy Fund will be partially reimbursed by King County Conservation Futures allocations and revenue from the sale of an underground pipeline easement to King County.

The acquisition of this waterfront property that can be viewed as the northern terminus of what will be a great new public amenity at the completion of the Central Waterfront project, in conjunction with King County's project to improve the water quality of Elliott Bay, will be a significant accomplishment. Thank you for your consideration of this legislation. Should you have questions, please contact Donald Harris at 684 8018.

Sincerely,

Michael McGinn  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council