

#5

CITY OF SEATTLE
ORDINANCE _____

COUNCIL BILL 118196

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3
4 AN ORDINANCE authorizing Seattle Public Utilities to enter into an Easement Agreement with
5 the Port of Seattle for the construction, operation, maintenance and monitoring of City-
6 owned stormwater drainage facilities including an outfall pipeline at the Terminal-117
7 cleanup site on the Lower Duwamish Waterway.

8 WHEREAS, the Terminal-117 (T117) Early Action Area (EAA) is a 15.2-acre cleanup site in
9 Seattle's South Park neighborhood on the west bank of the Lower Duwamish Waterway
10 (LDW) between River Miles 3.5 and 3.7, within the LDW Superfund site; and

11 WHEREAS, the T117 EAA was one of seven sites identified by the US Environmental
12 Protection Agency (EPA) in 2003 as being contaminated by polychlorinated biphenyls
13 (PCBs); and

14 WHEREAS, the T117 EAA removal (cleanup) action is being performed by the Port of Seattle
15 (Port) and the City of Seattle (City) under the oversight of EPA via an Agreed Order; and

16 WHEREAS, the removal action includes the cleanup of contaminated soil and sediment in the
17 T117 Sediment Study Area, the T117 Upland Study Area, and the T117 Adjacent Streets
18 and Yards; and

19 WHEREAS, the cleanup activities at T117 require construction of a permanent storm drain
20 infrastructure in the adjacent streets consisting of a stormwater collection system, a
21 system for treatment of the stormwater, and an associated discharge structure (outfall)
22 and the City, specifically SPU, is responsible financially and technically for that
23 construction; and

24 WHEREAS, SPU analyzed multiple options for the storm drain all of which, including the
25 selected option, require constructing an outfall to the LDW on Port T117 property; and

26 WHEREAS, the Port is planning to construct approximately 10 acres of restored fish and
27 wildlife habitat on and around its T117 property and this restoration project includes the
28 area where SPU proposes to construct the storm drain components and outfall; and

WHEREAS, constructional and operational property easements are necessary for the City to
construct the stormwater drainage components and outfall on the Port's T117 property;
NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:



1 Section 1. SPU is hereby authorized to enter into an Easement Agreement with the Port
2 substantially in the form of Attachment 1 attached hereto for construction, operation,
3 maintenance, and monitoring of the stormwater drainage facilities and outfall at T117.

4 Section 2. This ordinance shall take effect and be in force 30 days after its approval by
5 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
6 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

7 Passed by the City Council the ____ day of _____, 2014, and
8 signed by me in open session in authentication of its passage this
9 ____ day of _____, 2014.

10 _____
11 _____
12 President _____ of the City Council

13
14 Approved by me this ____ day of _____, 2014.

15 _____
16 _____
17 Edward B. Murray, Mayor

18
19 Filed by me this ____ day of _____, 2014.

20 _____
21 _____
22 Monica Martinez Simmons, City Clerk

23 (Seal)

24
25
26 Attachment 1 – Stormwater Easement Agreement



Pete Rude
SPU T-117 Easement ORD ATT 1
July 30, 2014
Version #1

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

Port of Seattle
Real Estate Division
Post Office Box 1209
Seattle WA 98111-1209

STORMWATER EASEMENT AGREEMENT

Reference Nos. of Document Released:	None
Grantor:	Port of Seattle
Grantee:	City of Seattle
Legal Description (abbreviated):	Portion of Buckley Donation Claim in Donation Claim No. 42 in Section 33, Township 24 N, Range 4 E, Willamette Meridian in King County, WA (complete legal description in Exhibit B).
Assessor's Tax Account Number	000160004404

This Easement for the construction, operation, maintenance and monitoring of City-owned stormwater drainage facilities and outfall is made effective as of the ____ day of _____, 2014 (the "Effective Date") by and between the Port of Seattle ("Port"), a Washington municipal corporation ("Grantor"), and the City of Seattle ("City"), a Washington municipal corporation, acting by and through Seattle Public Utilities ("Grantee") (jointly "the Parties").

RECITALS

WHEREAS, the Washington Supreme Court, in *Commercial Waterway District No. 1 of King County v. Permanente Cement Company*, 61 Wn. 2d 509 (1963), ruled that the Commercial Waterway District No. 1 of King County ("CWD") was able to control only those uses in the Duwamish Waterway that would obstruct public navigation or interfere with any right of the general public; and



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WHEREAS, the Port is the successor to the interests of the CWD in certain real property located in King County, Washington, including the shoreline and submerged lands between River Miles 3.5 and 3.7 on the Lower Duwamish Waterway which constitute a portion of the area now known as Terminal 117 ("T117"), and more particularly as noted on EXHIBIT A-1 (the "CWD Property"); and

WHEREAS, in 2000 the Port purchased in fee certain real property adjacent to the CWD Property, in the area now known as Terminal 117, and more particularly as noted and described on EXHIBIT A-1 (the "Fee Property"); and

WHEREAS, on June 9, 2011, the City, the Port and the U.S. Environmental Protection Agency entered into an Administrative Settlement Agreement and Order on Consent for Removal Action Implementation (the "Implementation Settlement Agreement") (CERCLA Docket no. 10-2011-0089) for the performance of a non-time-critical removal action at an area including Terminal 117 known as the Terminal 117 Early Action Area ("T117 EAA"); and

WHEREAS, the T117 EAA is a 15.2-acre site within the Lower Duwamish Waterway ("LDW") Superfund site consisting of the several sub-areas, denominated as the "T117 Sediment Study Area", the "T117 Upland Study Area", the "Adjacent Streets" and the "Residential Yards", as depicted in Exhibit A-2 (which document is referenced in the Implementation Settlement Agreement as Appendix B); and

WHEREAS, pursuant to the Statement of Work of the Implementation Settlement Agreement, the City is responsible for the project management of the Adjacent Streets and Residential Yards of the T117 EAA, while the Port is responsible for the project management on the T117 Sediment Study Area and the T117 Upland Study Area; and

WHEREAS, on November 3, 2008, the City and the Port (and other parties) entered into a Settlement, Indemnity and Release Agreement (the "2008 Indemnity Agreement") under which the City agreed to pay 100% of the costs for the cleanup remedy of the Adjacent Streets and Residential Yards, and 40% of the "T117 costs" as that term is defined in the 2008 Indemnity Agreement; and

WHEREAS, part of the Adjacent Streets and Residential Yards cleanup remedy consists of the installation of a stormwater collection and treatment system; and

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WHEREAS, the City, specifically Seattle Public Utilities ("SPU") has analyzed multiple options for drainage of the rights-of-way, all of which would require an outfall to the LDW, and has decided to discharge collected treated and untreated stormwater via a stormwater conveyance system, consisting, in part, of a 18" diameter L.F. HDPE pipeline located in, on and under the Fee Property, to a new outfall located in, on and under the CWD Property; and

WHEREAS, it is possible that stormwater discharged from the City's drainage system could re-contaminate the CWD Property and/or Fee Property that will have recently undergone cleanup pursuant to the Implementation Settlement Agreement;

WHEREAS, in the future the Port may construct a habitat mitigation or restoration project at and adjacent to T117 (the "T117 Habitat Project"), either as a component of a final resolution of claims brought by the Federal Natural Resource Trustees or for other reasons, and the City's construction and operation of stormwater facilities at Terminal 117 has the potential to decrease the environmental resource value of the T117 Habitat Project; and

WHEREAS, the Parties now desire to enter into an agreement to grant to the City an easement for the construction, maintenance, monitoring, and replacement of the stormwater facilities, subject to the terms and conditions set forth in this Easement. The Parties agree the Port can only grant to the City those rights concerning the CWD Property that the Port is legally entitled to exercise over the CWD Property. The Parties agree that the City's consent to the terms and conditions of this Easement, including the terms and conditions of the Exhibits to this Easement, is provided as consideration solely for the use of the Fee Property;

NOW, THEREFORE, the Parties agree as follows:

EASEMENTS

Based on foregoing recitals, which are incorporated herein, the Parties enter into the following easement.

SECTION 1 GRANT OF EASEMENT

1.1 Easement Defined.

- (a) The Port grants, conveys and quitclaims to the City a nonexclusive, temporary easement, subject to the relevant terms and conditions of this agreement, for

Attachment 1 to SPU T-117 Easement ORD



access over, upon and under the real property described in Exhibit B-1, for the purpose of construction staging, access and queuing (the "Construction Easement") for the purpose of constructing and installing a stormwater drainage pipe and outfall.

- (b) The Port grants, conveys and quitclaims to the City a nonexclusive easement, subject to the terms and conditions of this agreement, for access over, upon, and under the real property described in Exhibit B-2 for the siting, operation, maintenance, monitoring and replacement of the stormwater drainage pipe and outfall (the "Operation Easement"). Exhibit B-3 provides the legal description for the Operation Easement Property.
- (c) In this agreement, the term "Easement" means this agreement and the rights granted, including both the Construction Easement and the Operation Easement; the term "Easement Property" means the real property subject to the Easement.
- (d) This Easement is subject to all valid interests of third parties; rights of the public; and treaty rights of Indian Tribes. The City and the Port agree that this Easement does not authorize the City to exclude third parties or control uses of the Easement Property to any greater extent than the Port is authorized to do so under law.
- (e) The Parties expressly agree that there is no intent to convey any rights other than those that are granted in this Easement.

1.2 Survey and Easement Property Descriptions.

- (a) The City has prepared Exhibits B-1, B-2 and B-3 (collectively, "Exhibit B"), which describe the Easement Property. The City warrants that the documents in Exhibit B are true and accurate descriptions of the Easement Property boundaries and the improvements to be constructed or already existing on the Easement Property.
- (b) The City shall not rely on any written legal descriptions, surveys, plats, or diagrams ("property description") provided by the Port. The City shall not rely on the Port's approval or acceptance of Exhibit B, or any other Port-provided property description, as affirmation or agreement that the Exhibits or other property descriptions are true and accurate.
- (c) The Port accepts preliminary Exhibit B upon the Commencement Date of this Easement (as defined below). If, after construction, the final boundaries and improvements of the Easement Property differ from the preliminary Exhibit B, the City shall submit a final Exhibit B for the Port's approval within sixty (60) days



of the end of the term of the Construction Easement (as defined below). Upon the Port's written approval, the final Exhibit B supersedes the preliminary Exhibit B. Until superseded, the preliminary Exhibit B has full legal effect.

1.3 Condition of Easement Property. The Port makes no representation regarding the condition of the Easement Property, improvements located on the Easement Property, the suitability of the Easement Property for the City's Permitted Use (as defined below), compliance with governmental laws and regulations, availability of utility rights, access to the Easement Property, or the existence of hazardous substances on the Easement Property.

SECTION 2 USE

2.1 Permitted Use. The City shall use the Easement Property for the construction, operation and maintenance of a stormwater conveyance system and stormwater outfall (the "Permitted Use"), and for no other purpose. Exhibit C describes the Permitted Use in detail. The Permitted Use is subject to additional obligations described in Exhibit C.

2.2 Restrictions on Permitted Use and Operations. The following limitations apply to the Easement Property. The City's compliance with the following does not limit the City's liability under any other provision of this Easement. The City's use of the Easement Property shall not cause any of the following, either on the Easement Property itself, or on Affected Aquatic Lands (as defined below):

- (a) Damage to natural resources;
- (b) Waste; or
- (c) Deposit of material, including deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter. There are two exceptions to this prohibition: deposits incidental to construction of Improvements (as defined below) necessary for the Permitted Use; and outfall discharges authorized by and in compliance with a valid NPDES Permit.

2.3 Conformance with Laws. The City shall keep current and comply with all conditions and terms of any orders, permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its use of the Easement Property.

2.4 Liens and Encumbrances. The City shall keep the Easement Property free and clear of any liens and encumbrances arising out of or relating to its use of the Easement Property, unless expressly authorized by the Port in writing.

2.5 Interference with Other Uses.



- (a) The City shall exercise the City's rights under this Easement in a manner that minimizes or avoids interference with the rights of the Port, and the rights of the public or others with valid rights to use or occupy the Easement Property or surrounding lands and water. Without limiting the foregoing, the City must ensure that the Port shall retain at least one access route on to the Easement Property at all times, which route shall be of sufficient width and dimension to enable the entry and exit of a construction dump truck and trailer from the City right of way to the Easement Property.
- (b) To the fullest extent reasonably possible, the City shall place and construct Improvements in a manner that allows unobstructed movement in and on the waters above and around the Easement Property.
- (c) The City shall mark the location of any hazards associated with the Permitted Use and any Improvements (as defined below) in a manner that ensures reasonable notice to the public.
- (d) The City shall not interfere with access by:
 - (1) Employees and authorized agents of the Environmental Protection Agency (EPA) and other federal natural resource agencies, the Washington State Department of Ecology and other state natural resource agencies, local or state health departments, or other similar environmental agencies; and
 - (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Easement Property.

2.6 Amendment Upon Change of Permit Status. The Port reserves the right to amend the terms and conditions of this Easement whenever any regulatory authority modifies a permit in a manner affecting the provisions of this Easement or requires a change in the Permitted Use, including, but not limited to, a change in the type, quality, or quantity of discharge.

2.7 Amendment in Response to Agency Action. The Port reserves the right to amend the terms and conditions of this Easement whenever a regulatory authority requires that the Port perform any investigation or conduct any remedial actions on or adjacent to the Easement Property (except those required by the Implementation Settlement Agreement as of the date of execution of this Easement Agreement) arising from or related to the Permitted Use, the Construction Easement or the Operation Easement. In addition, the Port has negotiated the terms of this Easement Agreement based on its review of the City's 90% Removal Action Design Report, the City's proposed Removal Action Work Plan, and the City's Long Term Monitoring and Maintenance Plan as those documents existed on June 5, 2014. The foregoing documents will be submitted to EPA for approval as indicated in Exhibit C. The Port reserves the right to amend the terms and conditions of this Easement Agreement based on changes, if any, between



the proposed versions of the foregoing documents reviewed by the Port and the final versions that are approved by EPA.

SECTION 3 TERM

3.1 Term Defined.

- (a) The term of the Construction Easement shall be from the 1st day of March, 2015 and ending on the 1st day of September, 2015, unless extended or modified in writing by the Port. Any requests for time extension or modification must be provided to the Port in writing a minimum of one week prior to the end of the term. The request should include, among other relevant factors, information regarding the nature and location of the proposed activities and the amount of time requested. The Port shall not unreasonably deny City requests for extension or modification of the Term; provided however, that it shall not be unreasonable for the Port to deny a request on the basis that it will interfere with or increase the cost of constructing the T117 Habitat Project.
- (b) The term of the Operation Easement is Thirty (30) years, beginning on the 1st day of September, 2015 (the "Commencement Date"), and ending on the 1st day of September, 2045 (the "Termination Date"), unless terminated sooner under the terms of this Easement.

3.2 Renewal of the Easement.

- (a) The City may renew this Easement for two (2) additional terms of thirty (30) years, *i.e.* the aggregate shall be no more than ninety (90) years.
- (b) The City must file with the Port a written request to renew at least one (1) year prior to the Termination Date of this Easement or any subsequent renewal of this Easement, and the Port will respond with denial or consent within ninety (90) days. Renewal will be effective upon the Port's written agreement. The Port may deny the renewal request only if the City is in breach of any material term of this Easement. The terms and conditions of any renewal term will be the same as this Easement, except that the Port may charge fees for the renewal term if authorized by law; require financial security if authorized by law; or modify or add reasonable terms as provided in this Agreement.

3.3 End of Term. Upon the expiration, cancellation or termination of this Easement ("End of Term"), the City shall remove Improvements in accordance with Section 5, Improvements, and surrender the Easement Property to the Port restored to a condition substantially like the land use at T117 as a whole at the time of surrender. If the City fails to restore the Easement



Property, the Port may perform the restoration, and the City shall pay all costs of the Port's remedy, including reasonable administrative costs.

SECTION 4 EXPENSES AND PAYMENTS

4.1 Construction and Operation Expenses. The City shall pay all costs related to the construction, alteration, replacement, operation, maintenance, repair, modification, alteration, demolition and deconstruction of Improvements (as defined below), including any costs required pursuant to Section 9.3 and 9.5, and costs related to monitoring of system performance and monitoring the quality or quantity of stormwater and stormwater solids discharges from the Improvements.

4.2 Utilities. The City shall pay all fees charged for utilities, if any, in connection with the Permitted Use.

4.3 Taxes and Assessments. The City shall pay all taxes, assessments, and other governmental charges, of any kind whatsoever, applicable or attributable to the Easement and the Permitted Use.

4.4 Failure to Pay. If the City fails to pay any of the amounts due under this Easement, the Port may pay the amount due, and the City will reimburse the Port within thirty (30) days after written notice from the Port concerning the amount due. If the City fails to pay within 30 days, the Port will charge 1% per month simple interest on the past due amount.

4.5 Habitat Damage Payment. If the Port constructs a Habitat Project at T117, and at any time the City's use of the Easement Property results in damage to the T117 Habitat Project, or diminution of its mitigation or restoration value, the City shall provide notice to the Port of such damages. If a regulatory authority requires that the City provide mitigation on Affected Aquatic Lands, the City shall provide notice to the Port. Unless the Port determines that the damage is *de minimis*, the City must compensate the Port for such damage or diminution in habitat value within six (6) months of either Party receiving notice, or at such time that the diminution is reasonably quantified as described below in Sections 4.5(a) or (b), whichever is later. There are two options available for quantifying the value of the habitat damage, as described in Sections 4.5 (a) and (b) below. Regardless of which option is used, the City is responsible for paying all costs (including reasonable administrative costs) incurred by the Port to remedy the damage to or diminution in value of the T117 Habitat Project caused by the City's use of the Easement Property.

- (a) Option 1. If the Port is seeking to evaluate lost habitat value for the purposes of natural resource damage settlement with the Federal Natural Resource Trustees ("Trustees"), the Port will request that the Trustees calculate and certify the lost



value in Discount Service Acre-years or "DSAYs" attributable to the presence of the Permitted Use on the Easement Property. If the Trustees communicate that they are willing and able to perform this action within the allotted time frame, the Parties shall use the Trustees' certification. The City shall compensate the Port at a value of \$125,000 per DSAY lost because of the Permitted Use, with any portion of a DSAY being valued at pro rata.

- (b) Option 2. If the Trustees are unwilling or unable to perform this action within the allotted time frame, or if Port is seeking to evaluate lost habitat value for purposes unrelated to natural resource damages, then the value shall be determined by a three-member panel of experts who are qualified to determine the diminution of value of the habitat attributable to the Permitted Use. Within sixty (60) days of receiving notice, the City and the Port each shall appoint one member of the panel. By consensus, the two appointed members shall select the third member. The written decision of the majority of the panel shall bind the Parties.

SECTION 5 IMPROVEMENTS

5.1 Improvements Defined.

- (a) "Improvements" are additions within, upon, or attached to the Easement Property, including, but not limited to, habitat features, structures and fixtures.
- (b) "Port-Owned Improvements" are Improvements made or owned by the Port, including any construction, alteration, or addition to Port-Owned Improvements made by the City.
- (c) "City-Owned Improvements" are Improvements made by the City with the Port's consent.
- (d) "Unauthorized Improvements" are Improvements made by the City on the Easement Property without the Port's prior consent, or Improvements made by the City that do not conform with plans submitted to and approved by the Port.
- (e) "Improvements Owned by Others" are Improvements made by Others with a right to occupy or use the Easement Property or adjacent Port-owned lands.

5.2 Existing Improvements. The Port-Owned Improvements located on the Easement Property as of the Commencement Date are depicted in Exhibit D. Other than as described in Exhibit C, all improvements and associated structures at T117 depicted in Exhibit D must be protected and maintained throughout the term of the Easement.



5.3 Construction, Major Repair, Modification, and Demolition.

- (a) This Section 5.3 governs construction, alteration, replacement, major repair, modification, alteration, demolition and deconstruction of Improvements (“Work”). Section 6 governs routine maintenance and minor repair of Improvements and Easement Property.
- (b) Except in an emergency, the City shall provide the Port with written notice of future construction on Easement Property, or other Significant Activity on any part of the City-owned stormwater system that discharges to the Easement Property, at least thirty (30) days in advance. “Significant Activity” means any activity that could reasonably be anticipated to result in a claim being brought against the Port. The Port has already received written notice of the construction described in the Construction Documents in Exhibit C.
- (c) Except in an emergency, the City shall not conduct any Work on Easement Property without the Port’s prior written consent, as follows:
 - (1) The Port hereby consents to the Work described in the Construction Documents in Exhibit C.
 - (2) The Port may deny consent if the Port reasonably determines that denial is in the best interests of the Port. The Port may impose additional reasonable conditions intended to protect specific, identifiable Port interests to protect and preserve the Easement Property, Port-Owned Improvements or Affected Aquatic Land, or to maintain access to the Easement Property.
 - (3) Except in an emergency, the City shall submit to the Port plans and specifications describing the proposed Work at least ninety (90) days before commencement of Work. The City shall notify the Port of emergency Work within five (5) business days of the start of such Work.
 - (4) The Port waives the requirement for consent if the Port does not notify the City of its grant or denial of consent within sixty (60) days of submittal.
- (d) Before completing Work, the City shall remove all debris and restore the Easement Property, as nearly as possible, to a condition substantially like the land use at T117 before the Work began.
- (e) If Work is intended for removal of Improvements at End of Term, the City shall restore the Easement Property in accordance with Section 3.3, End of Term.
- (f) Upon completion of Work by the City or City’s contractor(s), the City shall provide the Port with as-built plans and specifications within ninety (90) days of completion.



5.4 City-Owned Improvements at End of Term.

- (a) Disposition
- (1) The City shall remove the City-Owned Improvements in accordance with Section 5.3 at the End of Term, unless the Port waives the requirement for removal, or the Port determines that abandonment of Improvements is in the best interests of the Port.
 - (2) City-Owned Improvements remaining on the Easement Property after the End of Term become Port-Owned Improvements without payment by the Port, unless the Port elects otherwise. The Port may refuse or waive ownership.
 - (3) If City-Owned Improvements remain on the Easement Property after the End of Term without the Port's consent, the Port may remove all Improvements and the City shall pay the costs of removal and disposal.
 - (4) Unauthorized Improvements belong to the Port, unless the Port elects otherwise.
- (b) Determination of Removal or Abandonment.
- (1) The Port may waive removal of any or all City-Owned Improvements whenever the Port determines that it is in the best interests of the Port
 - (2) If the City renews the Easement or enters into a new Easement, the Port may waive requirement to remove City-Owned Improvements
 - (3) If the City does not renew the Easement or enter into a new Easement, the Port and the City shall coordinate removal or abandonment as follows:
 - (i) The City must notify the Port at least one (1) year before the Termination Date of its proposal to either leave or remove the City-Owned Improvements.
 - (ii) The Port, within ninety (90) days, will notify the City whether the Port (1) does not waive removal or (2) consents to abandonment.
- (c) If the Port consents to abandonment, the City shall conduct Work necessary for abandonment in accordance with Section 5.3.
- (d) If the Port waives removal of any or all the City-Owned Improvements, the City shall not remove Improvements and shall maintain such Improvements in accordance with this Easement until the End of Term.

SECTION 6 ROUTINE MAINTENANCE AND REPAIR

6.1 The Port's Repairs. This Easement does not obligate the Port to make any alterations, maintenance, replacements, or repairs in, on, or about the Easement Property, during the Term, except as set forth in Section 13 below.



6.2 The City's Repairs and Maintenance.

- (a) At the City's sole expense, the City shall keep and maintain all City-Owned Improvements and the Easement Property as it relates to the Permitted Use in good order and repair and in a safe condition. The Port's consent is not required for routine maintenance or repair, unless such work could result in damage to the T117 Habitat Project, thereby triggering Section 4.5.
- (b) At the City's own expense, the City shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Easement Property or to any Improvements on the Easement Property that any public authority requires because of the Permitted Use.
- (c) The City shall follow procedures for the inspection, monitoring, routine maintenance, and emergency plans in Exhibit C. The City shall provide the Port with a copy of any final inspection, monitoring, operations or maintenance manuals.
- (d) Upon completion of maintenance activities, the City shall remove all debris and restore the Easement Property, as nearly as possible, to the condition prior to the commencement of work.

SECTION 7 ASSIGNMENT

The City shall not assign any part of the City's interest in this Easement or the Easement Property or grant any rights or franchises to third parties without the Port's prior written consent, which the Port shall not unreasonably condition or withhold. The Port reserves the right to reasonably change the terms and conditions of this Easement upon the Port's consent to assignment.

SECTION 8 INDEMNITY, FINANCIAL SECURITY, INSURANCE

8.1 Indemnity.

- (a) To the extent allowed by law, the City shall indemnify, defend, and hold the Port, its employees, officers, and agents harmless from any Claims arising out of the Permitted Use or negligent acts or omissions related to the Permitted Use by the City, its contractors, agents, invitees, employees or affiliates.
- (b) "Claim" as used in this Section 8.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments



attributable to bodily injury; sickness; disease; death; damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources; and loss of natural resource values.

- (c) The City is obligated to indemnify under this Section 8.1 regardless of whether any other provision of this Agreement, or NPDES or other permit or license, authorizes the discharge or release of the substance resulting in a claim.
- (d) No damages or fees paid by the City to the Port under other provisions of this Easement are a setoff against the City's obligation to indemnify under this Section 8.1
- (e) The Port shall not require the City to indemnify, defend, and hold the Port harmless for claims that arise out of the willful or negligent act of the Port or the Port's elected officials, employees, agents or affiliates.
- (f) The City waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold the Port and its agencies, officials, agents, or employees harmless.
- (g) Section 9, Environmental Liability/Risk Allocation, exclusively governs the City's liability to the Port for Hazardous Substances and its obligation to indemnify, defend, and hold the Port harmless for Hazardous Substances.

8.2 Insurance Terms.

- (a) The City, at City's expense, shall procure and maintain a program of commercial insurance, self-insurance, or a combination of commercial and self-insurance that is acceptable to the Port. This program of insurance must be maintained continuously throughout the term of this Easement. Any commercial insurance coverage that the City carries shall be on a primary basis, and any insurance that the Port may carry will apply strictly on an excess basis over any applicable insurance the City may carry. The City's insurance program shall provide coverage that is as follows or equivalent in terms of coverage and limits.
 - (1) Commercial General Liability insurance on ISO Form CG 00 01 10 01 (or equivalent) for third party property damage, bodily injury, personal and advertising injury, and medical payments in an amount which is not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. The Port shall be named as an additional insured on any insurance policy purchased by the City for this Work on an endorsement that is approved by the Port.



- (2) Automobile Liability Insurance shall be provided in an amount not less than \$1,000,000 per occurrence on a combined single limit basis for bodily injury and property damage using ISO Form CA 00 01 (or equivalent).
 - (3) City is responsible for complying with the Washington State laws that pertain to industrial insurance (Reference Revised Code of Washington, Title 51 Industrial Insurance) for its employees.
- (b) Waiver.
 - (1) The City and the Port waive all rights against each other for recovery of damages to the extent insurance covers these damages.
 - (2) Except as prohibited by law, the City and Port waive all rights of subrogation against each other for recovery of damages to the extent that they are covered by insurance
- (c) Proof of Insurance.
 - (1) City's insurance program shall be reviewed by the Port at inception of the Easement and annually thereafter for the duration of the term of the Easement. If any deficiencies in the coverage requirements set forth above are found, the Port shall provide written notice to City within fourteen (14) days identifying any deficiencies in coverage. City shall have ten days (10) to correct any of the deficiencies identified.
 - (2) If commercial insurance is used, the City shall submit a Certificate of Insurance along with an additional insured endorsement for the commercial general liability insurance policy identifying the Port as an additional insured.
 - (3) If a program of self-insurance is used, a description of the self-insured program must be provided, along with validation that the program is solvent and funded to pay existing and future liabilities that a program of commercial insurance would otherwise cover.
- (d) The Port must receive written notice before cancellation or non-renewal of any commercial insurance obtained to fulfill the requirements of this Easement.
- (e) Adjustments in Insurance Coverage
 - (1) The Port may impose changes in the type of insurance coverage required, as well as the limits of liability for all types of insurance, as the Port deems necessary as a result of a substantive increase in the risks of the City's Permitted Use, PROVIDED that the Port shall not require changes



in the type of insurance coverage required under this Easement more frequently than every five calendar years.

- (2) The City shall secure new or modified insurance coverage within sixty (60) days after the Port requires changes in the limits of liability.

SECTION 9 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

9.1 Definitions.

- (a) "Hazardous Substances" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
- (b) "Release or threatened release of Hazardous Substances" means a release or threatened release as defined under any law described in Section 9.1(a).
- (c) "Utmost care" means the standard of care applicable under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW, as amended.
- (d) "The City and affiliates" when used in this Section 9 means the City or the City's contractors, agents, employees, and affiliates, or any person on the Easement Property in connection with the Permitted Use.
- (f) "Liabilities" as used in this Section 9 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.
- (g) "Affected Aquatic Lands" means those aquatic lands affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.

9.2 General Conditions.

- (a) The City's obligations under this Section 9 extend to the area in, on, under, or above:
 - (1) The Easement Property and
 - (2) Affected Aquatic Lands
- (b) The City shall exercise the utmost care with respect to Hazardous Substances. In relation to the Permitted Use, the City shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions.



9.3 Current Conditions and Duty to Investigate.

- (a) Hazardous Substances are known to exist in, on, or under the Easement Property.
- (b) This Easement does not impose a duty on the Port to conduct investigations or supply information to the City about Hazardous Substances.
- (c) The City is responsible for conducting all appropriate inquiry and gathering sufficient information concerning the Easement Property and the existence, scope, and location of any Hazardous Substances on the Easement Property necessary for the City to meet the City's obligations under the Easement and utilize the Easement Property for the Permitted Use.

9.4 Use of Hazardous Substances.

- (a) The City and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws and agency orders.
- (b) The City shall not undertake, or allow others to undertake by the City's permission, acquiescence, or failure to act, activities that result in an unauthorized release or threatened release of Hazardous Substances, or otherwise result in Liabilities to the Port.

9.5 Management and Cleanup of Hazardous Substances.

- (a) The City's Permitted Use shall not:
 - (1) Damage or interfere with the operation and maintenance of remedial or restoration activities;
 - (2) Result in human or environmental exposure to contaminated media or sediments at a level exceeding regulatory thresholds;
 - (3) Result in significant mechanical or chemical disturbance of the T117 Habitat Project.
- (b) If during construction or operation of the Permitted Use, the City's act, omission, or breach of obligation under Section 9.4 or 9.5(a) results in the discovery, disturbance or excavation of Hazardous Substances or a release of Hazardous Substances that exceed the threshold limits of any applicable regulatory standard, the City shall, at the City's expense, promptly take any actions necessary, , to properly manage such Hazardous Substances in accordance with applicable law and regulatory agency directives, even if the cost of properly managing such Hazardous Substances could have been deemed to be a Sediment or Upland Cost under the terms of the 2008 Indemnity Agreement.



9.6 Notification and Reporting.

- (a) The City shall immediately notify the Port if the City becomes aware of any of the following with respect to the Easement Property:
 - (1) A release or threatened release of Hazardous Substances;
 - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of any Hazardous Substances;
 - (3) Any lien or action arising from Hazardous Substances;
 - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
 - (5) Any notification from the EPA or Ecology that remediation or removal of Hazardous Substances is or may be required at the Easement Property.
- (b) The City's duty to report under Section 9.6(a) extends to lands described in Section 9.2(a), and to any other property under the City's control in conjunction with the Easement Property where a release or the presence of Hazardous Substances on the other property would affect the Easement Property.
- (c) The City shall provide the Port with copies of all documents the City submits to any federal, state or local authorities concerning environmental impacts or proposals relative to the Easement Property.

9.7 Indemnification.

- (a) The City shall indemnify, defend, and hold the Port harmless from and against Liabilities that arise out of, or relate to:
 - (1) The use, storage, generation, processing, transportation, handling, release or disposal of any Hazardous Substance by the City and affiliates occurring whenever the City occupies or has occupied the Easement Property, including but not limited to costs to identify or manage such Hazardous Substances remaining on the Easement Property at the conclusion of the T117 EAA cleanup;
 - (2) The City's use of the Easement Property.
- (b) The City shall indemnify, defend, and hold the Port harmless for Liabilities that arise out of or relate to the City's breach of obligations under Section 9.5.
- (c) The City is obligated to indemnify under this Section 9.7 regardless of whether a NPDES or other permit or license authorizes the discharge or release of Hazardous Substances.

9.8 Reservation of Rights.

- (a) For Liabilities not covered by the indemnification provisions of Section 9.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes



of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.

- (b) The Parties expressly reserve all rights, claims, immunities, and defenses either Party may have against third parties. Nothing in this Section 9 benefits or creates rights for third parties.
- (c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 9 do not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.

9.9 Sampling, Reimbursement, and Split Samples.

- (a) Each Party may conduct sampling, tests, audits, surveys, or investigations (“Tests”) of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (b) In non-emergencies, each Party is entitled to obtain split samples of Test samples from the other Party. The Party who is requesting the split samples (the “Requesting Party”) must submit a written request to split samples to the Party conducting the sampling (“the Conducting Party”) at least ten (10) calendar days before the Tests are conducted. Upon demand, the Requesting Party shall promptly reimburse the Conducting Party for additional cost, if any, of split samples.
- (c) If either Party conducts Tests on the Easement Property, the Conducting Party shall provide the other with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) calendar days of a written request by the other party, unless the Tests are part of a submittal under Section 9.6(c), in which case the City shall submit data and information to the Port without written request by the Port.

9.10 Closeout Assessment.

- (a) The Port may require the City to conduct a Closeout Environmental Assessment (“Closeout Assessment”) prior to Termination of the Easement.
- (b) The purpose of the Closeout Assessment would be to determine the impacts of the City’s Permitted Use on the Easement Property in relation to the existence and scope of Hazardous Substances on the Easement Property and Affected Aquatic Lands.

- (c) No later than one hundred eighty (180) calendar days prior to the Termination Date, or within ninety (90) days of valid notice to early termination, the Port shall provide the City with written notice if the Port requires a Closeout Assessment.
- (d) Within sixty (60) days of the Port's notice that Closeout Assessment is required and before commencing assessment activities, the City shall submit a proposed plan for conducting the Closeout Assessment in writing for the Port's approval. The City shall coordinate the Closeout Assessment with all applicable regulatory authorities.
- (e) The Port shall not unreasonably disapprove of the City's proposed Closeout Assessment plan. If the Port fails to approve or disapprove of the plan in writing within sixty (60) days of its receipt, the Port waives the requirement for approval.
- (f) The City shall be responsible for all costs required to complete planning, sampling, analyzing, and reporting associated with the Closeout Assessment.
- (g) If the initial results of the Closeout Assessment disclose that Hazardous Substances may have migrated to other property as a result of the Permitted Use, the City will perform additional Closeout Assessment work to reasonably determine the existence, scope, and effect of the City's discharge or release of Hazardous Substances on adjacent property or on natural resources.
- (h) The City shall submit Closeout Assessment to the Port upon completion.
- (i) To the extent required by law, the City shall report to the appropriate regulatory authorities if the Closeout Assessment discloses a release or threatened release of Hazardous Substances related in any way to the City's Permitted Use of the Easement.

SECTION 10 DAMAGE OR DESTRUCTION

10.1 Notice and Repair.

- (a) In the event of material damage to or destruction of the Easement Property or any Improvements, the City shall promptly give written notice to the Port. The Port will not be deemed to have knowledge of the damage or destruction of the Easement Property or any Improvements without the City's written notice.
- (b) In the event of material damage or destruction of Improvements, the City may terminate the Easement, provided the City notifies the Port in writing within thirty (30) days of casualty, of intent to terminate. The City shall terminate in

accordance with Section 3.3 End of Term. If not terminating, the City shall promptly reconstruct, repair, or replace any Improvements in accordance with Section 5.3, Construction, Major Repair, Modification, and Demolition. Where material damage to the Affected Aquatic Lands is attributable to the City's Permitted Use, the City shall take any action required by law to eliminate or mitigate the damage to Affected Aquatic Lands.

10.2 The Port's Waiver of Claim. The Port does not waive any claims for damage or destruction of the Easement Property unless the Port provides written notice to the City of each specific claim waived.

10.3 Insurance Proceeds. The City's duty to reconstruct, repair, or replace under this Section 10 is not conditioned upon the availability of any insurance proceeds.

SECTION 11 CONDEMNATION

In the event of condemnation, the Parties shall allocate the award between the Port and the City based upon the ratio of the fair market value of (1) the City's rights in the Easement Property and City-Owned Improvements and (2) the Port's interest in the Easement Property; the reversionary interest in City-Owned Improvements, if any; and Port-Owned Improvements. In the event of a partial taking, the Parties shall compute the ratio based on the portion of Easement Property or Improvements taken. If the City and the Port are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 12 BREACH, REMEDIES, DISPUTE RESOLUTION AND TERMINATION

12.1 Breach and Right to Cure.

- (a) The Port shall provide prompt written notice of any allegation that the City is in breach of the terms and conditions of this Easement.
- (b) The City shall have sixty (60) days to cure the breach. If the breach arises from the City's failure to comply with Section 2.2, the City shall additionally mitigate environmental damages that are caused by the City's breach in accordance with Section 12.2(b).
- (c) For breaches not capable of cure within sixty days, the Port will not unreasonably withhold approval of a reasonable alternative cure schedule. The City shall



submit a cure schedule within thirty (30) days of notice of breach. The City shall work diligently and in good faith to execute the cure.

12.2 Remedies

- (a) The Port may terminate this Easement upon the City's failure to timely cure a breach.
- (b) If the breach that the City fails to timely cure arises from Section 2.2,
 - (1) The Port may, without terminating the easement, repair the damage proximately caused by the City's breach, and charge the City for the costs and/or damages. Upon demand by the Port, the City shall pay all costs and/or damages proximately caused by the City's breach, or
 - (2) The City shall prepare a written plan, subject to the Port's approval, incorporating measures to (1) eliminate or minimize future environmental impacts that the City's breach may cause, (2) mitigate environmental harm or address damaged natural resources that were proximately caused by the City's breach, and (3) monitor and report on plan implementation. The City shall implement the plan upon the Port's approval
- (c) The remedies specified under this Section 12.2 are not exclusive of other remedies or the sole means of redress to which the Port is lawfully entitled for the City's breach or threatened breach of any provision of this Easement.

12.3 Termination by Nonuse. If the City does not use the Easement Property for a period of three (3) successive years, this Easement terminates without further action by the Port. The City's rights revert to the Port upon Termination by Nonuse. The City's obligations upon Termination remain in effect upon Termination by Nonuse.

12.4 Termination by the City. The City may terminate this Easement upon providing the Port with written notice of intent to terminate. Termination by the City is effective upon completion of all obligations under Section 3.3.

12.5 Dispute Resolution. In the event that the Parties disagree on any material term of this Easement or material decision under this Easement, including but not limited to actions to be conducted by any Party, the disagreement shall be settled as follows, PROVIDED that nothing in this section precludes the Parties from meeting at any time to attempt to resolve the dispute informally. The Parties shall convene a Dispute Resolution Panel ("DRP") by each appointing one impartial member to the DRP. The two appointed members shall then by agreement select an impartial third member. The DRP shall be instructed that the task of the DRP is to (a) resolve the dispute of the Parties based on general principles of law, and (b) to ensure that any required reasonable actions flowing from the DRP decision, if any, are focused on effectively mitigating

or eliminating adverse impacts and liabilities in an efficient and cost-effective manner. The Parties shall each submit a position brief no longer than ten (10) pages long, unless leave to file a longer brief is granted by the DRP. Each Party shall be given the opportunity to respond to the other Party's brief in a five (5) page Response, served no later than 7 days after service of the position brief. Within 30 (thirty) days of the submission of the Response briefs, the DRP shall issue a written decision of the majority resolving the dispute and the DRP's decision shall be binding, PROVIDED that (a) the Panel's decision is not contrary to law, and (b) if a Party is required to perform some action as a result of the DRP's decision, that Party's obligation to act is contingent on having the requisite legal and budgetary authority to carry out the Panel's decision. In the event that either Party believes that the DRP decision is contrary to law, or requires actions by a Party that is not authorized by law to conduct such actions, or requires actions for which requisite funds are not appropriated, then the Parties reserve all rights, defenses and claims, and may seek relief from any competent tribunal.

SECTION 13 PORT'S OBLIGATIONS

13.1 Port's Obligation to Do No Harm to Conveyance System and Outfall on the Easement Property.

- (a) The Port shall take all reasonable precautions to do no harm to the City-Owned Improvements located on the Easement Property. The Port shall provide a copy to the City of its 100% design plans for construction of the T117 Habitat Project when such plans are finalized. The City hereby agrees that construction of the T117 Habitat Project will not harm the City-Owned Improvements, so long as the Port constructs it in accordance with the design plans.
- (b) Except as part of the construction of the T117 Habitat Project or in an emergency, the Port shall consult with the City at least 5 (five) days prior to conducting, or allowing to be conducted, any heavy equipment excavation or grading on the Easement Property.
- (c) In the event that a negligent act or omission by the Port directly results in damage or injury to the City's stormwater drainage pipe or outfall located on the Easement Property, the Port agrees to compensate the City for the costs of repair of the damage or replacement of the damaged elements caused by the Port's acts or omissions.

SECTION 14 NOTICE AND SUBMITTALS

Following are the locations for delivery of notice and submittals required or permitted under this Easement. Any Party may change the place of delivery upon ten (10) days written notice to the other.



Pete Rude
SPU T-117 Easement ORD ATT 1
July 30, 2014
Version #1

City: CITY OF SEATTLE
Jeff Massie
Seattle Public Utilities
PO Box 34018
700 Fifth Avenue, #4900
Seattle, WA 98124-4018
Email: jeff.massie@seattle.gov
Phone: 206-684-0976

Port: PORT OF SEATTLE
Kathy Bahnick
Seaport Division (Environmental)
2711 Alaskan Way
P.O. Box 1209
Seattle WA 98111-1209
Email: Bahnick.k@portseattle.org

The Parties may deliver any notice in person, by email, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a delivery confirmation if delivered by email, or three (3) days after mailing.

SECTION 15 MISCELLANEOUS

14.1 Authority. The City and the person or persons executing this Easement on behalf of the City represent that the City is qualified to do business in the State of Washington, that the City has full right and authority to enter into this Easement, and that each and every person signing on behalf of the City is authorized to do so, PROVIDED THAT the Parties acknowledge that the Seattle City Council and the Port Commission are required to approve this Easement, and the Mayor is required to sign such legislation when passed by the City Council.

14.2 Successors and Assigns. This Easement binds and inures to the benefit of the Parties, their successors, and assigns.

14.3 Headings. The headings used in this Easement are for convenience only and in no way define, limit, or extend the scope of this Easement or the intent of any provision.

14.4 Entire Agreement. This Easement, including the exhibits and addenda, if any, contains the entire agreement of the Parties. This Easement merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the



Easement Property. To the extent that this Easement Agreement is in conflict with the 2008 Indemnity Agreement, this Easement Agreement controls.

14.5 Waiver.

- (a) The waiver of any breach or default of any term, covenant, or condition of this Easement is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Easement. The Port's acceptance of payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.
- (b) The renewal of the Easement, extension of the Easement, or the issuance of a new Easement to the City, does not waive the Port's ability to pursue any rights or remedies under the Easement.

14.6 Cumulative Remedies. The rights and remedies under this Easement are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

14.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Easement.

14.8 Language. The word "Parties" means the Port and the City in the collective. The word "Party" means either or both the Port and the City, depending on context.

14.9 Invalidity. The invalidity, voidness, or illegality of any provision of this Easement does not affect, impair, or invalidate any other provision of this Easement.

14.10 Applicable Law and Venue. This Easement is to be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out of or in connection with this Easement is in the Superior Court for King County, Washington.

14.11 Recordation. At the City's expense and no later than thirty (30) days after receiving the fully-executed Easement, the City shall record this Easement, including its exhibits, with King County. The City shall include the parcel number of the upland property used in conjunction with the Property, if any. Any exhibit previously or separately recorded may be referenced by the recording number. The City shall provide the Port with recording information, including the date of recordation and file number.

14.12 Modification. No modification of this Easement is effective unless in writing and signed by the Parties. Oral representations or statements do not bind either Party.



Pete Rude
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Version #1

COUNTY OF _____)

I certify that I know or have satisfactory evidence that on this ____ day of _____, _____, before me, a notary public in the for the State of Washington, duly commissioned and sworn, came _____, personally known or having presented satisfactory evidence to be the _____ of the Port of Seattle, that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the Port of Seattle for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument on behalf of said limited liability company.

WITNESS MY HAND and official seal the day and year in this certificate first above written

NAME _____

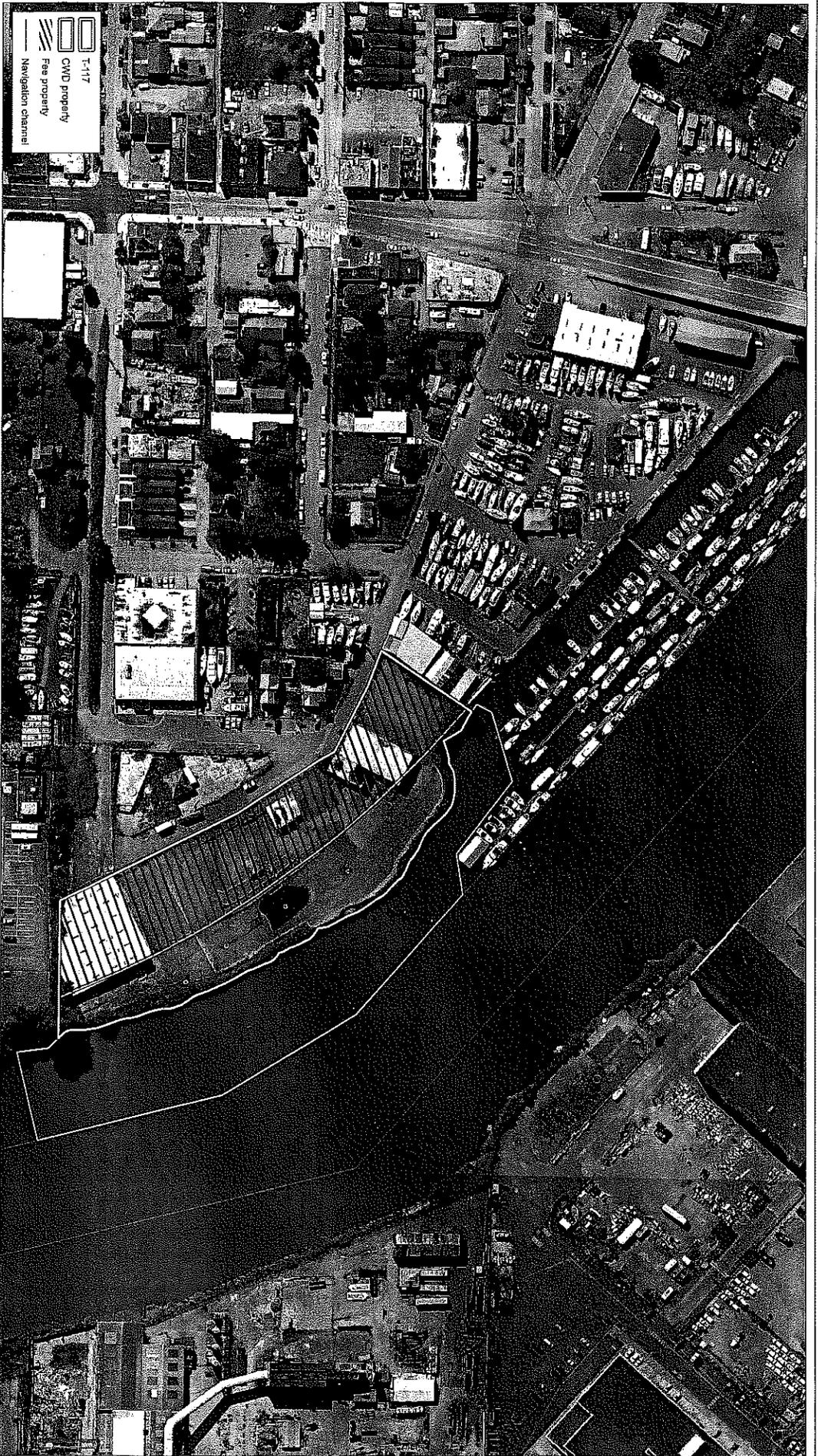
(Print name)

NOTARY PUBLIC in and for the State of Washington

Residing at Seattle _____

My appointment expires: _____, 2_____





Orthophoto source: Seattle Public Utilities (1999)
Zoning designation layer source: City of Seattle (2002)

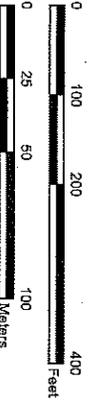


Exhibit A-1

EXHIBIT A-1 to SPU T-117 Assessment ORD ATT1



Prepared by CEH 06/1/07, revised by MTT 11/23/09, Map 42239, T-117 Project 06/03/09-11/23/09

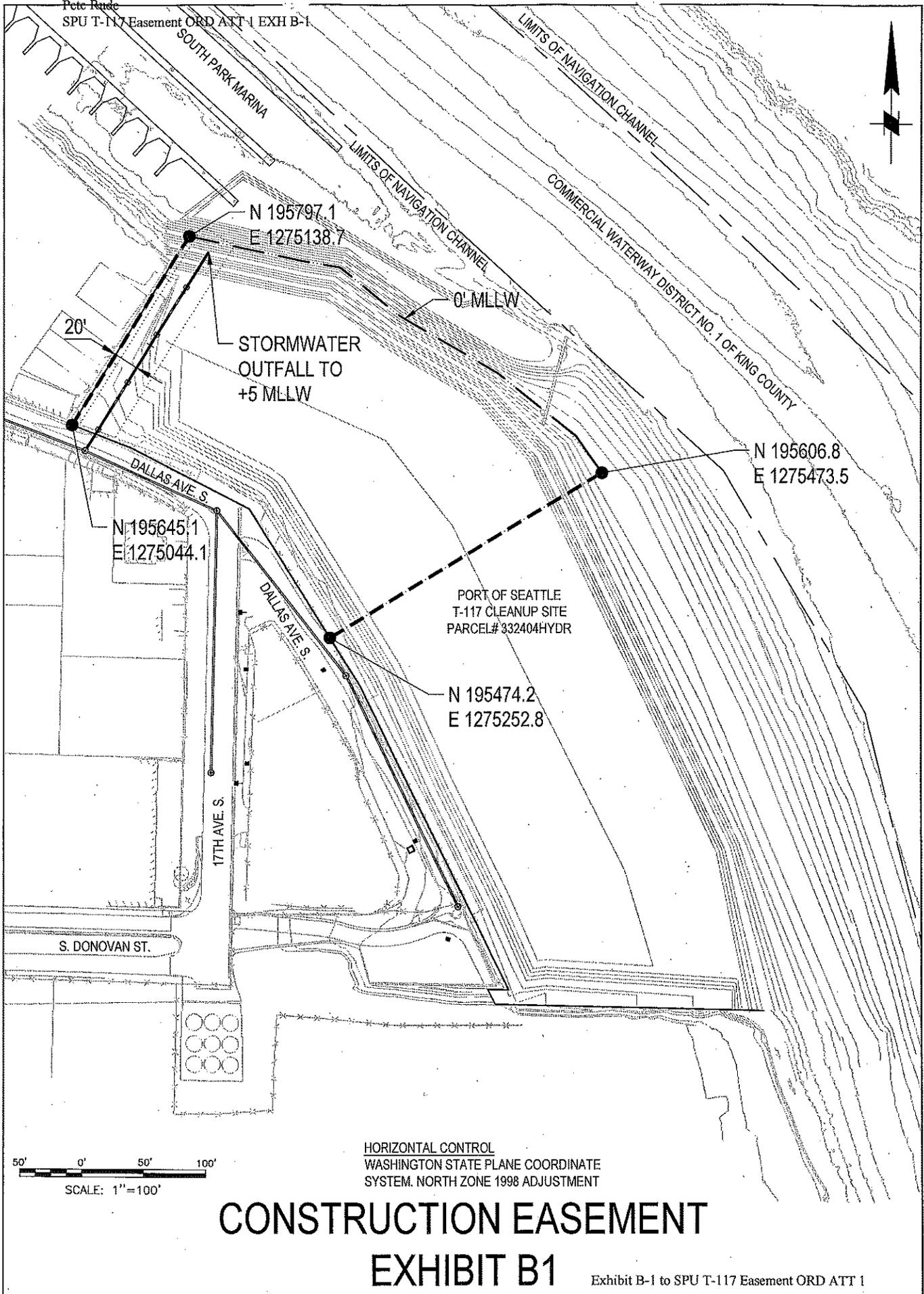


EXHIBIT A-2

Map 1-1, T-117 EAA site overview

EXHIBIT A-2 TO SPU T-117 Assessment ORD ATT 1

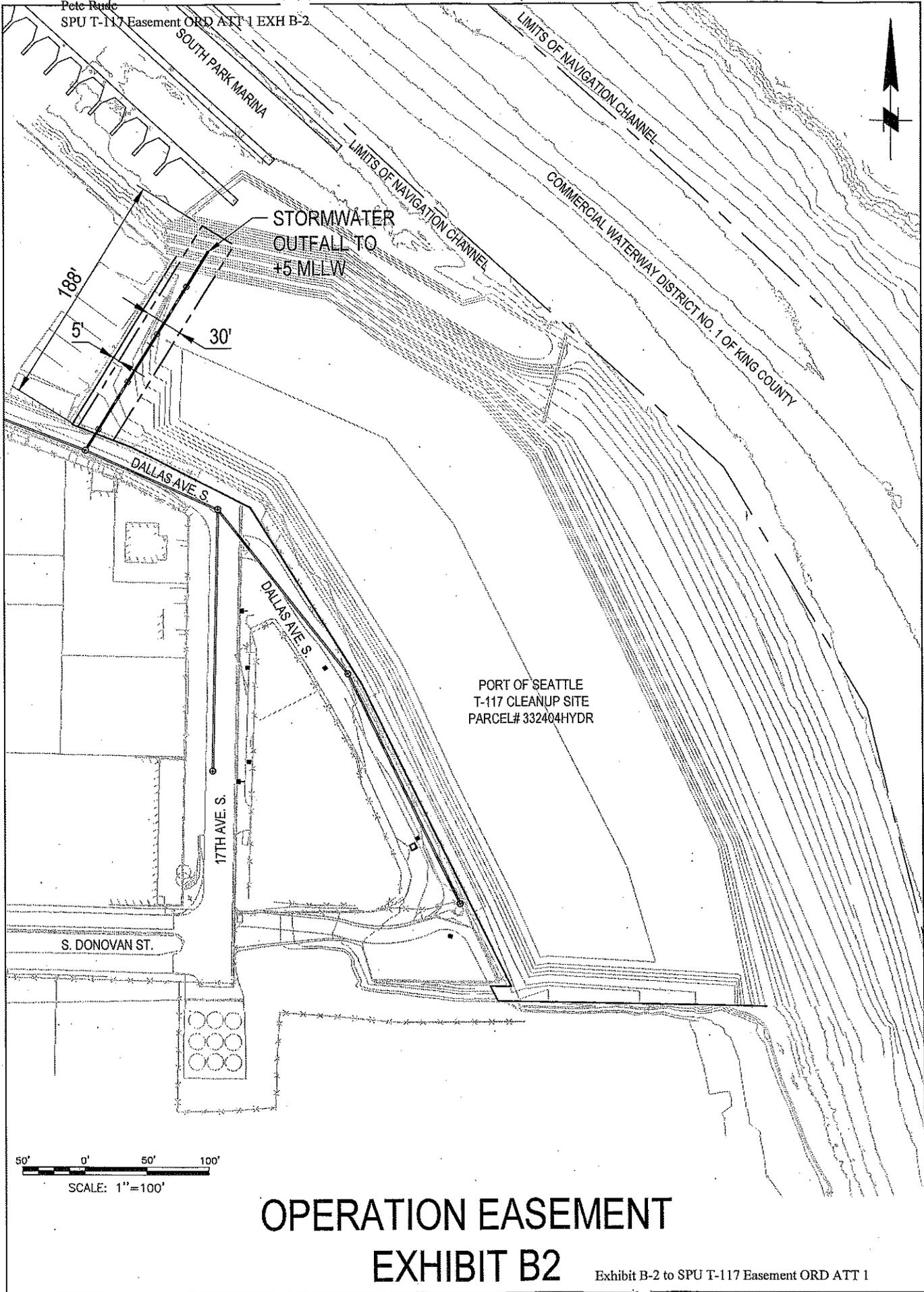




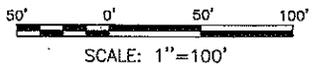
CONSTRUCTION EASEMENT EXHIBIT B1



Pete Rude
SPU T-117 Easement ORD ATT 1 EXH B-2



PORT OF SEATTLE
T-117 CLEANUP SITE
PARCEL# 332404HYDR



OPERATION EASEMENT EXHIBIT B2

Exhibit B-2 to SPU T-117 Easement ORD ATT 1



EXHIBIT B3, EASEMENT LEGAL DESCRIPTION

PARCEL 0001600044

A STRIP OF LAND 30 FEET WIDE BEING 15 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED LINE, LOCATED IN THAT PORTION OF THE JOHN BUCKLEY DONATION CLAIM IN DONATION CLAIM NO 42 IN SECTION 33, TOWNSHIP 24 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING NORTHEASTERLY OF DALLAS AVENUE, NORTHERLY OF THE INTERSECTION OF THE NORTHEASTERLY LINE OF DALLAS AVENUE WITH THE WEST LINE OF COMMERCIAL WATERWAY NO 1, WESTERLY OF THE WESTERLY LINE OF COMMERCIAL WATERWAY NO 1, AND A PORTION OF THE COMMERCIAL WATERWAY NO 1, DESCRIBED AS FOLLOWS.

COMMENCING AT THE MONUMENTED INTERSECTION OF 14TH AVENUE SOUTH AND SOUTH CLOVERDALE STREET, THENCE S 88°37'45" E ALONG THE MONUMENTED STREET CENTER LINE OF SOUTH CLOVERDALE STREET A DISTANCE OF 498.00 FEET TO THE MONUMENTED INTERSECTION OF 16TH AVENUE SOUTH AND SOUTH CLOVERDALE STREET.

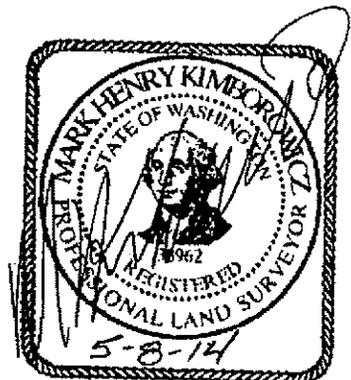
THENCE N 1°13'09" E ALONG THE STREET CENTER LINE OF 16TH AVENUE SOUTH A DISTANCE OF 160.49 FEET TO THE INTERSECTION OF 16TH AVENUE SOUTH AND DALLAS AVENUE SOUTH ALSO BEING THE NORTH MARGIN OF DALLAS AVENUE SOUTH.

THENCE S 69°02'11" E ALONG THE NORTH MARGIN OF DALLAS AVENUE SOUTH A DISTANCE OF 159.46 FEET TO THE SOUTH WEST CORNER OF PARCEL 0001600044.

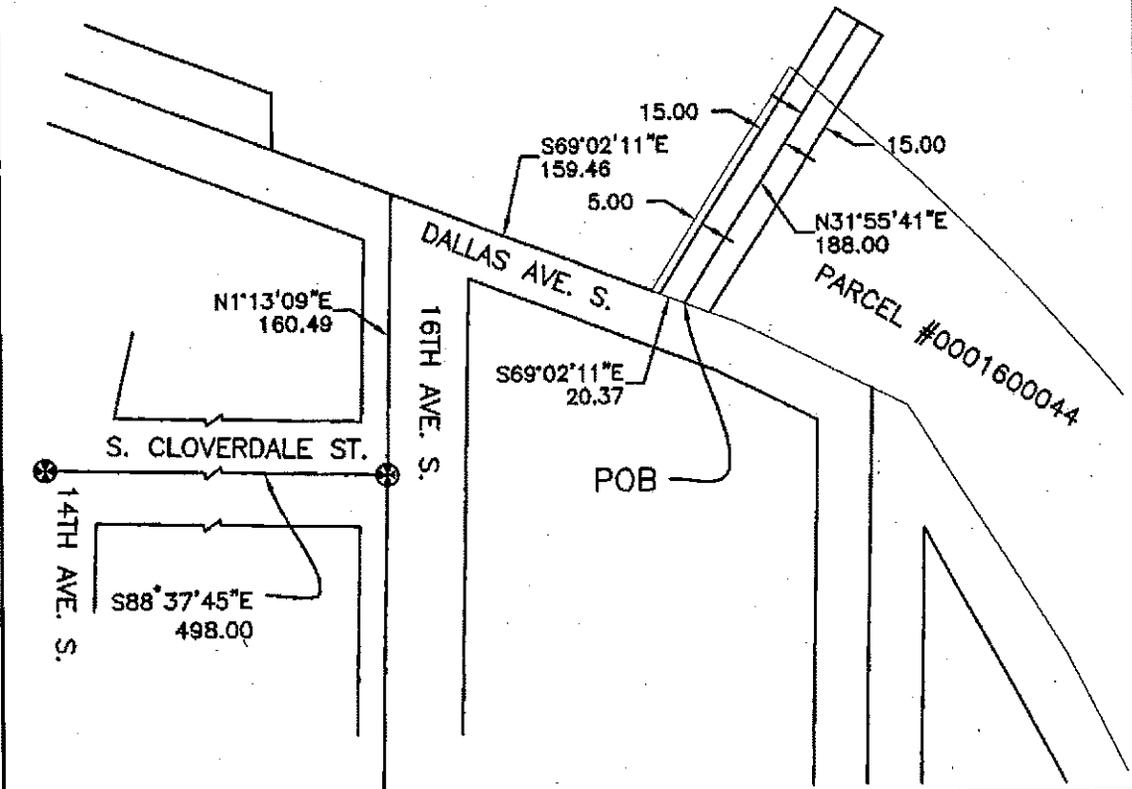
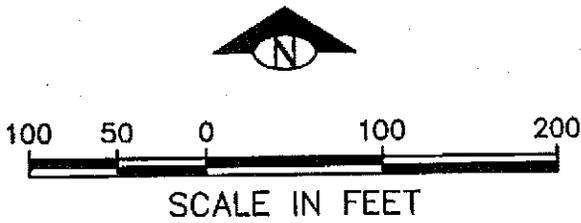
THENCE S 69°02'11" E ALONG THE SOUTHERLY LINE OF PARCEL 0001600044 A DISTANCE OF 20.37 FEET WHICH IS 20 FEET PERPENDICULAR TO THE WEST LINE OF PARCEL 0001600044 TO THE POINT OF BEGINNING.

THENCE N 31°55'41" E AND PARALLEL TO THE WEST LINE OF SAID PARCEL 0001600044 A DISTANCE OF 188.00 FEET TO THE END OF SAID EASEMENT.

CONTAINING 5640 SQ. FT., MORE OR LESS.



PARCEL# 0001600044 A PORTION OF THE
NW 1/4 SEC. 33, TWP. 24 N., RGE. 4 E., W.M.



SPU
DRAWN: RAB
CHECKED: MHK
SCALE: 1"=100'



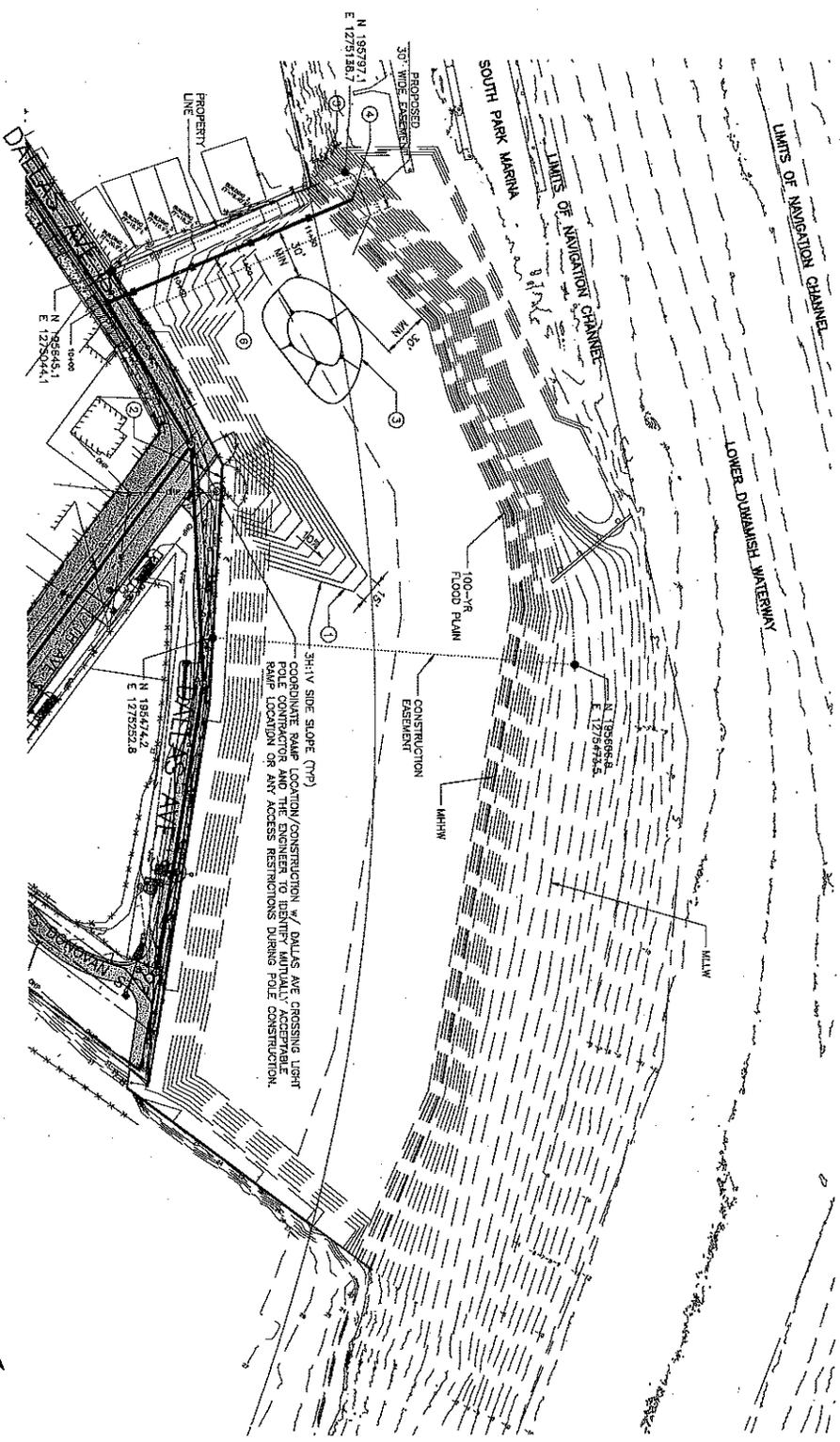
EXHIBIT C

1. See attached 100% Submittal outfall construction Plans Sheets 51, 52, and 53.
2. All requirements that pertain to construction and operation that derive from the remedial action design, including all requirements that are applicable or relevant and appropriate (ARAR) State or local requirement, as submitted by the City to EPA on June 9, 2014, incorporated herein by reference. These requirements are available at Seattle Public Utilities, 700 5th Ave, Suite 4900, Seattle, WA 98124-4018.
3. No stormwater discharges from the vegetated depression are allowed, except through City stormwater conveyance system.
4. After outfall installation, the City shall restore the outfall bank at a 2:1 or shallower slope, not higher than grade prior to City outfall construction, or lower than final T117 Restoration grade.
5. T117 access to 14th Ave S shall be maintained at all times.
6. TESSC for the City's work on T117 shall be installed in accordance with King County code.
7. Only soil generated on T117, and clean imported backfill material for the construction of the outfall on T117 are allowed to be stockpiled within the T117.
8. The final copies of the documents listed below, once approved by EPA, are incorporated by reference into this Basement:
 - o Final Removal Action Design Report as approved by EPA
 - o Final Removal Action Work Plan as approved by EPA
 - o Final Long Term Monitoring and Maintenance Plan



WDE CONDITIONS:

1. PRE-CONSTRUCTION NOTIFICATION REQUIREMENT: NO LESS THAN THREE WORKING DAYS PRIOR TO START OF WORK, THE ENGINEER SHALL NOTIFY THE AREA HABITAT BIOLOGIST (AEB) LISTED BELOW BY EMAIL (LAUREA.ABERNETHY@PW.WA.GOV) OR PHONE (425)379-2306, OF THE PROJECT START DATE. THE NOTIFICATIONS SHALL INCLUDE THE APPLICANT'S NAME, PROJECT LOCATION, AND STARTING DATE OF WORK OR COMPLETION DATE OF WORK AT LEAST TWO PRE-PROJECT WORKING DAYS PRIOR TO THE START DATE OF WORK.
2. POST-CONSTRUCTION NOTIFICATION REQUIREMENT: THE AREA HABITAT BIOLOGIST LISTED BELOW SHALL BE CONTACTED BY THE ENGINEER BY EMAIL (LAUREA.ABERNETHY@PW.WA.GOV), PHONE (425)379-2306, OR FAX (425)379-2323, WITHIN SEVEN DAYS OF PROJECT COMPLETION. THE NOTIFICATION SHALL INCLUDE THE CONTROL NUMBER FOR THIS PERM, APPLICANT'S NAME, PROJECT LOCATION, AND THE COMPLETION DATE OF WORK. AT LEAST TWO PRE-PROJECT WORKING DAYS PRIOR TO THE COMPLETION DATE OF WORK, THE APPLICANT SHALL NOTIFY THE AEB BY EMAIL (LAUREA.ABERNETHY@PW.WA.GOV) OR PHONE (425)379-2306, OF THE PROJECT COMPLETION DATE. THE NOTIFICATION SHALL INCLUDE THE APPLICANT'S NAME, PROJECT LOCATION, AND STARTING DATE OF WORK OR COMPLETION DATE OF WORK AT LEAST TWO PRE-PROJECT WORKING DAYS PRIOR TO THE START DATE OF WORK.
3. APPLICANT'S PROJECT AREA SHALL BE REMOVED AND DEPOSITED AT AN APPROVED UPLAND DISPOSAL SITE. IF AT ANY TIME, AS A RESULT OF PROJECT ACTIVITIES FISH ARE OBSERVED IN DITCHES, DIVERTS, OR WATER QUALITY PROBLEMS DEVELOP (INCLUDING EQUIPMENT LEAKS OR SPILLS), IMMEDIATE NOTIFICATION SHALL BE MADE TO THE WASHINGTON DEPARTMENT OF ECOLOGY AT (800)228-5890, (206)462-5890, SURFACE WATERS. NO FERTILIZER PRODUCTS OR OTHER DEleterious MATERIALS SHALL ENTER SURFACE WATERS.



COORDINATE RAMP LOCATION/CONSTRUCTION W/ DALLAS AVE CROSSING LIGHT POLE LOCATION OR ANY ACCESS RESTRICTIONS DURING POLE CONSTRUCTION.

CALL 48 HOURS BEFORE YOU DIG
1-800-424-5555
100% SUBMITTAL (NOT FOR CONSTRUCTION)

moffatt & nichol
600 UNIVERSITY STREET
SUITE 610
SEATTLE, WA 98101
206-622-0222

REVIEWED BY SPU/WATERS ENGINEERING 20
REVIEWED BY SPU/ANALYSIS 20
APPROVED FOR ADVERTISING
APPROVED BY SPU/STREET IMPROVEMENT PERMITTING 20

APPROVED FOR ADVERTISING
APPROVED BY SPU/STREET IMPROVEMENT PERMITTING 20

STORMWATER OUTFALL SITE PLAN
T-117 ADJACENT STREETS CLEANUP & STORMWATER INFRASTRUCTURE

EXHIBIT C - Sheet 1 of 3

SPU T-117 ORD Exhibit C to Attachment 1



KEY TABLE

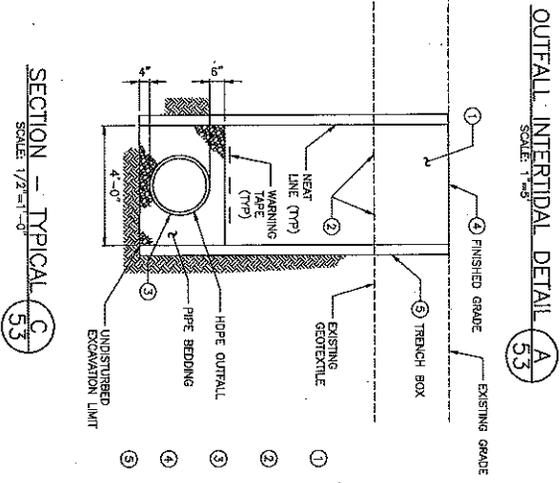
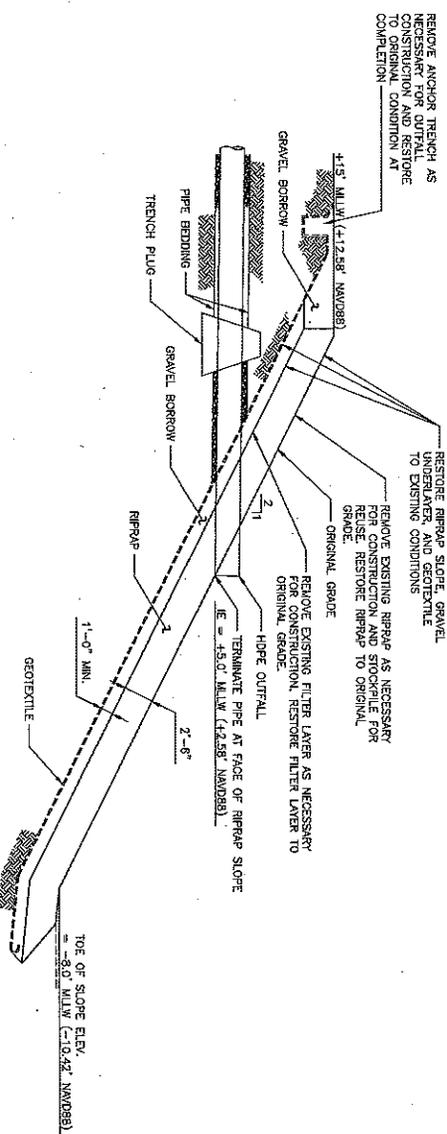
NO.	DESCRIPTION	DETAIL
1	PROVIDE CONSTRUCTION ACCESS FOR CONSTRUCTION FROM SQUARE LEAF SWING GATE, SIZE AND LOCATION TO BE ADVISED BY THE CONTRACTOR AS NECESSARY	
2	CONTRACTOR AS NECESSARY FIELD LOCATE MATERIAL STOCKPILES MAINTAIN A MINIMUM OF 30' FROM TOP EDGE OF TRENCH. PROVIDE EROSION CONTROL MEASURES ON ALL STOCKPILES PER THE SPECIFICATIONS AND THE CONTRACTOR SHALL BE RESPONSIBLE FOR MEETING THE TURBIDITY REQUIREMENTS IN THE SPECIFICATIONS AND GEOTECHNICAL MEMORANDUM PROJECT - GEOTECHNICAL RECORD AND TEST ITEMS FOR EXCAVATION & SOIL INFORMATION.	
3	PROVIDE A FLOATING WHEN CONSTRUCTION BOOM LIFTS ARE EXPOSED TO THE WATERWAY.	
4	18" HOPE PSD (EOP: 7465360 889448)	SEE SHEET 53

- NOTES:**
1. CONTROLS SHOWN ON THIS SHEET ARE RELATIVE TO MEAN LOWER LOW WATER (MLLW).
 2. OUTFALL CONSTRUCTION ON PORT OF SEATTLE REQUIREMENTS OF SHALL BE COMPLETED BETWEEN JUNE 1 AND AUGUST 30 AS SHOWN IN APPENDIX A3.
 3. CONSTRUCTION SHALL BE PHASED TO MINIMIZE THE AMOUNT OF TRENCH EXPOSED TO TIDAL INUNDATION.
 4. ALL PROPOSED SOILS SUBJECT TO TIDAL INUNDATION SHALL BE COVERED DURING CONSTRUCTION. SEE GSEP NOTES SHEET 5.
 5. WORK IN THE INTERFILL ZONE SHALL BE COMPLETED AND THE AREA SHALL BE COMPLETED AT LOW TIDE WHEN THE AREA IS NOT INUNDATED BY RIVER WATER.
 6. DURING CONSTRUCTION IN AREAS SUBJECT TO TIDAL INUNDATION, CONTRACTOR SHALL MAINTAIN AT LEAST 2 FEET OF VERTICAL SEPARATION BETWEEN THE BOTTOM OF THE CONSTRUCTION (GRAVEL/SLOPED) SUCH THAT TRAP WATER IS NOT RETURNED BY THE EXCAVATION (I.E. NO PONDING OR TRAPPING OF FISH IS ACCEPTABLE IN THE EXCAVATION WHEN THE TIDE REVERSES).

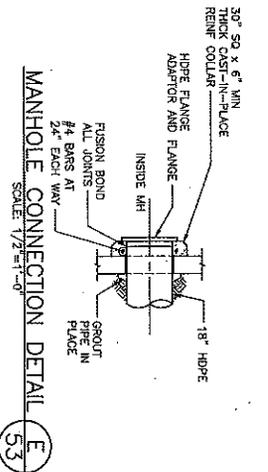
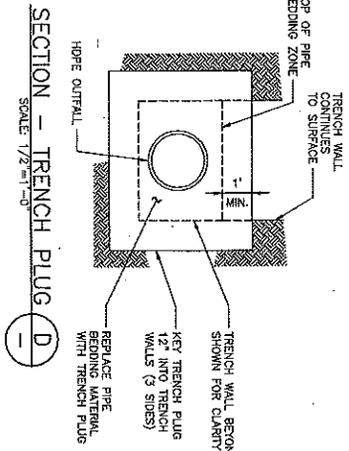
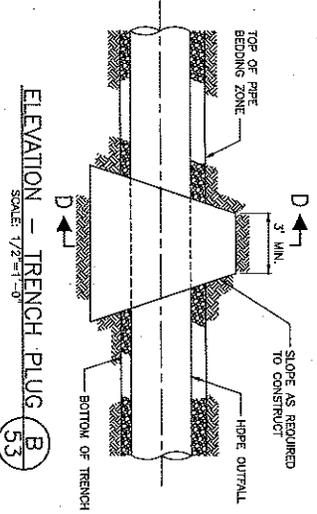
2/17/17 C308046
3/1/17 C308046
7/17/17 777-822
SHEET 52 OF 81



WALL SERIAL NO.	DATE	ISSUE	REVISIONS	WALL SERIAL NO.	DATE	ISSUE	REVISIONS
36180							



- SECTION NOTES:**
- EXCAVATE AND RESTORE EX SOIL. EXCAVATED SOILS SHALL BE DISPOSED PER THE SPECIAL PROVISIONS.
 - CUT AND FOLD BACK GEOTEXTILE DURING TRENCH BACKFILLING.
 - PLACE PIPE TO GRADE AND PLACE PIPE BEDDING TO ORIGINAL GRADE PLAN NO 285 FOR CLASS B BEDDING. w/ BENTONITE-SOIL BACKFILL.
 - BACKFILL TRENCH TO ORIGINAL GRADE.
 - SLOPED TRENCH WALLS NOT ALLOWED FOR OUTFALL CONSTRUCTION; CONTRACTOR SHALL USE TRENCH BOXES WHERE REQUIRED.



CALL 48 HOURS BEFORE YOU DIG
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100% SUBMITTAL (NOT FOR CONSTRUCTION)

moffatt & nichol
600 UNIVERSITY STREET
SUITE # 610
SEATTLE, WA 98101
206-622-0222

REMOVED BY SPV/WATER ENGINEERING 20...
REMOVED BY SPV/REBAR/MADE 20...
APPROVED BY STOT STREET INTERDEPENDENT RESISTING 20...
APPROVED FOR ADVERTISING
REMOVED BY SPV/WATER ENGINEERING 20...
REMOVED BY SPV/REBAR/MADE 20...
APPROVED BY STOT STREET INTERDEPENDENT RESISTING 20...
REMOVED BY SPV/WATER ENGINEERING 20...
REMOVED BY SPV/REBAR/MADE 20...
APPROVED BY STOT STREET INTERDEPENDENT RESISTING 20...

NAME OF INITIALS AND DATE	INITIALS AND DATE
DESIGNED BY	DESIGNED BY
CHECKED BY	CHECKED BY
APPROVED BY	APPROVED BY
DATE	DATE



Seattle Public Utilities
Ray Hoffman, Director
APPROVED
INSPECTOR'S MARK

T-117 ADJACENT STREETS CLEANUP & STORMWATER INFRASTRUCTURE
STORMWATER OUTFALL DETAILS
SHEET 54 OF 81

FISCAL NOTE FOR CAPITAL PROJECTS ONLY

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Public Utilities	Dave Schuchardt/5-1642	Aaron Blumenthal/3-2656

Legislation Title:

AN ORDINANCE authorizing Seattle Public Utilities to enter into an Easement Agreement with the Port of Seattle for the construction, operation, maintenance and monitoring of City-owned stormwater drainage facilities including an outfall at the Terminal-117 cleanup site on the Lower Duwamish Waterway.

Summary and Background of the Legislation:

Part of Seattle's South Park neighborhood is located within the 15.2-acre T117 environmental cleanup area. As part of the site cleanup, the U.S. Environmental Protection Agency (EPA) is requiring the City to construct a storm drain that collects stormwater runoff from 2.8 acres of this area before discharging it to the Lower Duwamish Waterway (LDW). To accomplish this, the City needs to route the stormwater pipe through the Port's T117 property. An easement agreement between the City of Seattle and the Port of Seattle (Port) is required for the construction, operation, maintenance, and monitoring of these stormwater drainage facilities and outfall.

T117 is on the west side of the LDW, about 3.5 miles from the southern tip of Harbor Island. The upland part of the site includes the former Duwamish Manufacturing and Malarkey Asphalt Company location, and other property owned by the Port. Asphalt manufacturing by Duwamish Manufacturing and Malarkey Asphalt left oil and PCBs in the river sediments and on the uplands, streets, and yards.

T117 is one of seven Early Action cleanup sites within the LDW Site identified by EPA in 2003 as being contaminated by polychlorinated biphenyls (PCBs) and requiring cleanup. Cleanup is underway by the Port that will remove soil and river sediment to reduce PCBs to levels that will protect the river environment and reduce health risks to people. The site will be clean enough for many possible future uses, including business and residential development, river habitat, and public access.

The Port plans to construct approximately 10 acres of restored fish and wildlife habitat on and around T117 and including the area of the proposed easement. This restoration, proposed to start in spring 2014, will address several key priorities identified in regional salmon recovery plans and will include public access.

Construction of a permanent storm drain is required that consists of a stormwater collection system, a treatment system and outfall. SPU is responsible for construction. SPU analyzed multiple options for the storm drain, all of which must be constructed on Port T117 property. The proposed outfall is like-kind replacement for two existing stormwater outfalls.

The proposed Easement Agreement includes the following provisions:



Restrictions on Use and Operations – The City’s use of the Easement Property will not cause damage to natural resources or result in deposition of waste or other material including pollutants of any type, except as needed for construction of the drainage and permitted outfall discharges. In the unlikely event a devaluation of the Port’s proposed environmental restoration project is caused by the City outfall pipe installation or operation, the City will reimburse the Port for such devaluation.

Term of Construction Easement – Construction activities on Port property can take place from March 1, 2014 through September 1, 2015, unless extended by the Port.

Term of Operation Easement – The term of operation is thirty years, beginning on September 1, 2014, and may be renewed for two additional, thirty year terms.

Expenses and Payment – The City would pay all costs related to the construction, alteration, replacement, maintenance, repair, modification, demolition, and deconstruction of the stormwater facilities and outfall including all environmental costs. The City will also pay all utility fees, taxes and assessments related to the easement and related uses. If the Port constructs a habitat project at T117, and the City’s use of the Easement Property results in damage to the T117 habitat project, or loss of value, the City must compensate the Port for such damages. The proposed Easement Agreement documents two options for the Port to quantify the value of the habitat damage.

Environmental Liability/Risk Allocation – City would indemnify the Port for Port liabilities arising from construction, operation and maintenance of the City’s drainage system at T117. If City actions result in discovery, disturbance, excavation or release of hazardous substances exceeding regulatory thresholds, the City would have to manage them at its expense.¹

Port Obligations – The Port would take all reasonable precautions to do no harm to the City’s conveyance system and outfall located on the Easement Property.

Project Name:	Project I.D.:	Project Location:	Start Date:	End Date:
Dallas Avenue South Drainage	C308046	Port of Seattle Terminal-117 in South Park	Fall 2014	Fall 2015

Please check any of the following that apply:

This legislation creates, funds, or anticipates a new CIP Project.

This legislation does not have any financial implications.

This legislation has financial implications.

Other Implications:

¹ Existing data and technical analyses indicate that the potential for the City to incur the liabilities described in this section is small.

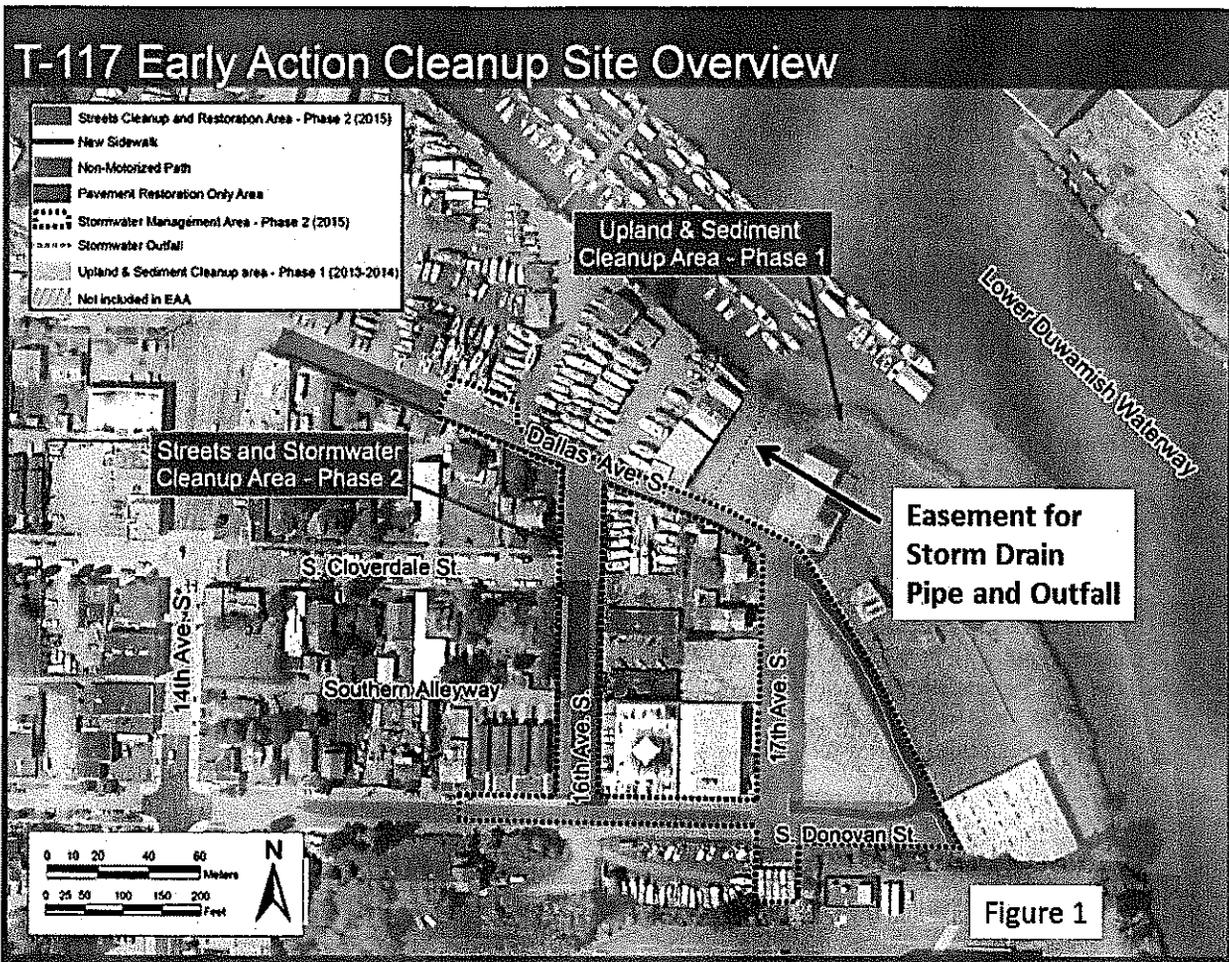


- a) **Does the legislation have indirect financial implications, or long-term implications?**
City cleanup and related drainage improvement activities at the T-117 site are part of SPU's Sediment Remediation – Drainage and Wastewater Fund Program (C3503). The budget and related cost projections for the Dallas Avenue South Drainage project (C308046) take into account the design and construction of the proposed storm drain and outfall that are the subject of this legislation.
- b) **What is the financial cost of not implementing the legislation?**
Constructing the storm drain and outfall related to this legislation is required by the Administrative Settlement Agreement and Order on Consent (ASAOC) the City and Port have with EPA. Drainage in the project area is currently handled by a temporary system with pump stations that costs approximately \$39,000 per year to operate and maintain and is not designed as a permanent system. If the City does not comply with the ASAOC, EPA is likely to impose penalties up to \$7,500 per day.
- c) **Does this legislation affect any departments besides the originating department?**
Yes. SPU and Seattle City Light (SCL) are involved with cleaning up T117 and implementing the proposed Easement Agreement is necessary to meet EPA-mandated schedules. Should liabilities arise as described in the "Environmental Liability/Risk Allocation" above, SPU and SCL will need to evaluate how incurred costs are addressed.
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
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 Exhibit A attached.
- h) **Other Issues:**
No.

List attachments to the fiscal note below:
Exhibit A



Exhibit A





City of Seattle
Edward B. Murray
Mayor

August 12, 2014

Honorable Tim Burgess
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill that would authorize Seattle Public Utilities to enter into an easement agreement with the Port of Seattle to construct, operate, maintain and monitor stormwater drainage facilities at the Terminal-117 site on the Lower Duwamish Waterway (LDW).

The City's activities at the T117 site in South Park are an important component of our overall commitment to clean up of the Duwamish River. Based on a settlement agreement with the Port, the City is responsible for cleaning up streets and residential yards adjacent to T117, which were contaminated with PCBs by past industrial activities at the terminal. Seattle's cleanup activities at T117 will include building a storm drain to collect stormwater runoff from close to three acres of South Park. It is necessary to route the outfall pipe for this stormwater through the Port's T117 property for discharge to the LDW thus requiring an easement agreement between the City and the Port.

Once the City and the Port's cleanup work at the site is complete it will be available for many uses, including business and residential development, river habitat and public access. In addition, the Port will build approximately 10 acres of restored fish and wildlife habitat on and around T117 including the area where the proposed outfall would be located.

This legislation allows the City's cleanup activities at the T117 site and related drainage improvements in South Park to continue in a cost-effective and timely way. Thank you for your consideration of this legislation. Should you have questions, please contact Dave Schuchardt at 615-1642.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward B. Murray".

Edward B. Murray
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

