

**INTERLOCAL AGREEMENT BY AND BETWEEN  
THE CITY OF BURIEN  
and  
THE PORT OF SEATTLE**

**THIS INTERLOCAL AGREEMENT**, hereinafter referred to as the “Agreement”, is entered into pursuant to Chapters 39.33 and 39.34 RCW by and between the **CITY OF BURIEN**, a Washington municipal corporation (hereinafter referred to as the “City”) and the **PORT OF SEATTLE**, a Washington municipal corporation (hereinafter referred to as the “Port”).

**RECITALS**

- A. The City is a non-charter code city organized pursuant to Chapter 35A.13 RCW of the laws of the State of Washington having authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens, and thereby control the use and development of property within its jurisdiction.
- B. The Port is a municipal corporation, with authority under the Revised Airports Act, Chapter 14.08 RCW; the Airport Zoning Act, Chapter 14.12 RCW, the State Environmental Policy Act (SEPA), Chapter 43.21C RCW; certain port district enabling statutes; and other state and local laws, to exercise discretionary land use jurisdiction over real property located within its boundaries.
- C. The City has designated an approximately 158-acre area located northwest of Sea-Tac Airport as its Northeast Redevelopment Area (“NERA”).
- D. The NERA includes about 55 acres of Port-owned property, most of which is “noise property” acquired under the Federal Aviation Administration’s (“FAA”) Part 150 regulations. Consequently, the FAA must review and approve the use, lease, disposal and payment of any Port funds related to this property.
- E. The City and the Port share the goal of transitioning the NERA into a mix of airport-compatible commercial, retail and/or light industrial uses. More specifically, the City envisions development of an auto mall on the southern portion of the NERA and the Port envisions development of light industrial facilities that will support air cargo growth at SeaTac Airport on the northern portion of the NERA.
- F. The City and the Port jointly prepared a redevelopment strategy for the NERA in April, 2010. The City and the Port now desire to further implement that strategy through collaborative planning and other mutual actions to facilitate private sector investment in redevelopment of the NERA.
- G. 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 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 and pursuant to the authority granted in Chapter 39.34 Revised Code of Washington, (Interlocal Cooperation Act).

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants of the parties contained herein, and pursuant to Chapters 39.33 and 39.34 RCW, the parties hereto agree as follows:

## **AGREEMENT**

### **SECTION 1. DEFINED TERMS**

- 1.1 Agreement.** This Interlocal Agreement between the City and the Port.
- 1.2 Appraisal.** The fair market value appraisal obtained by the Port prepared by CIC Valuation Group, Inc. dated August 15, 2013 to determine the value of the Stormwater Facilities Easements, the Shared Use Path Easement, and the 12<sup>th</sup> Place South street vacation.
- 1.3 BMC.** The Burien Municipal Code.
- 1.4 City.** The City of Burien, a municipality of the State of Washington, which exercises governmental functions and powers pursuant to the laws of the State of Washington and the BMC. The principal office of the City is located at 400 152<sup>nd</sup> Street, Suite 300, Burien, Washington 98166.
- 1.5 Master Drainage Plan.** The comprehensive plan for managing stormwater throughout the NERA, including flow control and runoff treatment, prepared by Otak and dated December, 2013.
- 1.6 MOA.** The Memorandum of Agreement entered into between the City and the Port dated January 31, 2013.
- 1.7 NERA.** The Northeast Redevelopment Area, an approximately 158-acre area bounded by South 138<sup>th</sup> Street on the north, Des Moines Memorial Drive to the east and south, and 8<sup>th</sup> Avenue South to the west, as depicted on **Exhibit 1**.
- 1.8 Port.** The Port of Seattle, a municipal corporation, which exercises governmental functions and powers pursuant to the laws of the State of Washington. The principal office of the Port is located at 2711 Alaskan Way, Seattle, Washington 98121.
- 1.9 Regional Stormwater Project.** The City's project to design, construct, own, operate and maintain stormwater improvements for the NERA. The first phase covers 55 acres and includes 4 of the 7 required stormwater management facilities (Facilities #3, #4, and #5/6). The project will also include

pre-treatment/water quality components, channel and floodplain improvements, enhancements along Miller Creek, and a 2,736 feet long shared use path for operations and maintenance of the stormwater facilities and for bicycle and pedestrian access.

## SECTION 2. PURPOSE

**2.1 General.** The City and the Port are entering into this Agreement as a means to further facilitate redevelopment of the NERA Plan through additional cooperation and completion of mutual actions.

**2.2 Cooperative Actions.** The City and the Port agree to undertake and complete the following separate, but related, activities:

**2.2.1 Master Drainage Plan.** The City will finalize preparation of the Master Drainage Plan for the NERA. Per the MOA, the Port will contribute to the City a portion of the costs to prepare the plan.

**2.2.2 Regional Stormwater Project.** Per the Master Drainage Plan, the City will design the Regional Stormwater Project. The Port will convey to the City certain easements needed by the City to construct, own and permanently operate and maintain the stormwater facilities. The Port will also contribute to the City a portion of the costs to construct two of the facilities (Facilities #3 and #4) that almost exclusively benefit Port property.

**2.2.3 Shared Use Path.** Per the Master Drainage Plan, the City will design and construct an approximately 2,736 feet long path that will provide vehicular access for operations and maintenance for the Regional Stormwater Project as well as pedestrian and bicycle access through the NERA. The Port will convey to the City an easement needed by the City to construct, own and permanently operate and maintain the path.

**2.2.4 Street Vacation.** The City will initiate and complete a street vacation of 12<sup>th</sup> Place South, which will enable the Port to complete assemblage of its properties in the NERA.

**2.2.5 SR 518 Interchange Improvements.** The City will complete design of an eastbound off-ramp from State Route 518 at Des Moines Memorial Drive to enable better vehicular access to the NERA. After final design, the Port expects to convey to the City or to the Washington State Department of Transportation (“WSDOT”) the Port-owned property needed to construct the eastbound off-ramp.

**2.2.6 Pilot Program.** The Port will prepare and submit, with the City’s assistance, an application to the FAA for additional planning and design funds for NERA infrastructure as part of the FAA’s pilot program for redevelopment of “noise property.”

### **SECTION 3. MASTER DRAINAGE PLAN**

**3.1 General.** The Master Drainage Plan details the comprehensive approach to addressing surface water runoff associated with redeveloping the NERA.

**3.2 Memorandum of Agreement.** The MOA provides for the Port contributing up to One Hundred Thirty-One Thousand Four Hundred Dollars (\$131,400) of the total project budget of Three Hundred Sixty-Five Thousand Dollars (\$365,000) toward completion of the Master Drainage Plan. The Port’s share represents thirty-six percent (36%) of the total budget and is based on the Port’s percentage ownership of the total acreage within the NERA. The Port owns approximately forty-seven percent (47%) of the area studied by the Master Drainage Plan and approximately fifty-three percent (53%) of the area covered by the first phase of the Regional Stormwater Project. The MOA is attached hereto as **Exhibit 2** and incorporated herein by this reference.

### **SECTION 4. REGIONAL STORMWATER PROJECT**

**4.1 General.** The Regional Stormwater Project will be designed, built, owned, operated and maintained by the City based on the Master Drainage Plan.

**4.2 Stormwater Facilities.** Four of the seven required stormwater management facilities are to be constructed as part of the first phase of the Regional Stormwater Project. The four facilities are Facility #3, Facility #4, and Facility #5/6 as shown on **Exhibit 1** attached hereto and incorporated herein.

Although physically separate, Facilities #5 and #6 function as a single facility. Facility #5 will be located on City property. It will collect, treat, and manage storm water runoff from the surrounding area and is designed to infiltrate up through a 50-year storm event. Any water received beyond the infiltration capacity of Facility #5 will be bypassed to Facility #6. Facility #6 will be located on Port property, will serve as an emergency overflow location for Facility #5, and will receive water during severe storm events when Facility #5 is in bypass mode.

**4.3 Easements.** To enable construction and long-term ownership, operation and maintenance of Facilities #3, #4 and #5/6, the City needs to acquire easements from the Port. The Port agrees to convey to the City, and the City agrees to acquire from the Port, a non-exclusive easement for Facility #3 in a form substantially the same as **Exhibit 3**, a non-exclusive easement for Facility #4 in a form substantially the same as **Exhibit 4**, an exclusive easement for Facility #6 in a form substantially the same as **Exhibit 5**, and a Temporary Construction Easement in a form substantially the same as **Exhibit 6** (collectively, the “Stormwater Facilities Easements”).

**4.4 Value of Easements.** The Port agrees to convey to the City, and the City agrees to pay the Port, at Closing as set forth in Section 9, the following amounts for the Stormwater Facilities Easements:

**4.4.1 Facility #3.** The Port agrees to convey the Facility #3 Easement to the City for Thirteen Thousand Eight Hundred Eighty-Nine Dollars (\$13,889). This amount is ten percent (10%) of the property's fair market value as determined by the Appraisal and represents the amount of benefit Facility #3 provides to non-Port properties. The Port agrees to convey the Facility #3 Easement at the discounted amount, because the City's Regional Stormwater Project frees the Port from having to construct separate stormwater management facilities that the Port would otherwise be required to build on its property as a condition of the City's granting permits for development of the property. Facility #3 drains Basin 3, as shown on **Exhibit 1**, in which the Port owns approximately 5.03 of the total 5.6 acres or about ninety percent (90%) of the basin's total acreage. Therefore, Facility #3 almost exclusively benefits redevelopment of Port property.

**4.4.2 Facility #4.** The Port agrees to convey the Facility #4 Easement to the City for Fourteen Thousand Nine Hundred Sixty-One Dollars (\$14,961). This amount is thirteen percent (13%) of the property's fair market value as determined by the Appraisal and represents the amount of benefit Facility #4 provides to non-Port properties. The Port agrees to convey the Facility #4 Easement at the discounted amount, because the City's Regional Stormwater Project frees the Port from having to construct separate stormwater management facilities that the Port would otherwise be required to build on its property as a condition of the City's granting permits for development of the property. Facility #4 drains Basin 4, as shown on **Exhibit 1**, in which the Port owns approximately 10.42 of the total 12 acres or about eight-seven percent (87%) of the basin's total acreage. Therefore, Facility #4 almost exclusively benefits redevelopment of Port property.

**4.4.3 Facility #5/6.** The Port agrees to convey the Facility #6 Easement to the City at no cost. As explained in Section 4.2 above, Facility #5/6 functions as a single facility. Non-Port property comprises approximately sixty percent (60%) of the property in Basin 5/6, as shown on **Exhibit 1**, that will benefit from Facility #6's location on Port-owned land. The fair market value as determined by the Appraisal of the benefit to non-Port property equals \$113,219 (60% of the \$188,698 appraised value of the Facility #6 Easement). Port-owned property comprises approximately forty percent (40%) of the property that will benefit from Facility #5 being located on City-owned land. The fair market value as

determined by the Appraisal of the benefit to Port property equals \$208,440 (40% of the \$521,100 appraised value of the Facility #5 Easement). The Port receives a net benefit from the Facility #6 Easement, and this easement further relieves the Port from having to construct separate and larger stormwater management facilities that the Port would otherwise be required to build solely on its property as a condition of the City's granting permits for development of the property.

**4.4.4 Temporary Construction Easement.** The Port agrees to grant the Temporary Construction Easement to the City for Eight Thousand Seven Hundred Twenty-Four Dollars (\$8,724.00). This amount represents a nine percent (9%) annual return on the fee value of the needed property based on the Appraisal.

**4.5 Port Stormwater Contribution.** The City has requested, and the Port agrees to contribute, a portion of the design and construction costs for the first phase of the Regional Stormwater Project.

**4.5.1 State Grant Funds.** The City has secured grant funding from the Washington State Departments of Commerce and Ecology of approximately \$4,500,000 for the Regional Stormwater Project. However, this grant funding is not sufficient to cover the approximately \$5,700,000 in total design and construction costs for the optimal package of phase one improvements.

**4.5.2 Port Stormwater Contribution.** Because Facilities #3 and #4 primarily benefit Port property, the Port agrees to contribute to the City a total of One Million Two Hundred Thousand Dollars (\$1,200,000) of airport development funds in the non-aeronautical cost center and excluded from the airline rate base (the "Port Stormwater Contribution") toward construction of these two facilities to complete the construction funding the City needs for the Regional Stormwater Project. The Port agrees to deliver the Port Stormwater Contribution to the City at Closing.

**4.5.3 Rationale/Justification.** Stormwater management is required for any redevelopment of Port property. By funding a portion of the construction costs for Facilities #3 and #4, the Port will save substantially compared to the Port planning, designing, permitting and building separate stormwater management facilities that solely service the Port's property. The Port will benefit from approximately \$1,800,000 in improvements to its property that will meet all of the City's stormwater requirements, which is forty-four percent (44%) greater than the Port's Stormwater Contribution. Using City-generated and Port-verified construction estimates, the fully loaded cost if the Port was to plan, design, permit and construct Facilities #3 and #4 is approximately \$3,000,000.

**4.5.4 Port Commission Intent.** In approving the Port Stormwater Contribution to support the redevelopment of Port property in the NERA, the Port Commission:

**4.5.4.1** Affirms the Century Agenda goal of tripling air cargo volume to 750,000 metric tons as part of positioning the Puget Sound region as a premier international logistics hub;

**4.5.4.2** Desires to facilitate development of light industrial uses on the Port's property in the NERA that can support the air cargo growth goal; and

**4.5.4.3** Intends that the Port recoup the Port Stormwater Contribution as part of any disposition of the Port's property in the NERA by sale or long-term lease to a third party.

**4.6 Connection Fees; Surface Water Management Fees.** In return for the Port's Stormwater Contribution and Stormwater Facilities Easements, the City agrees that the Port and its assigns will have the right to connect the on-site stormwater collection system on the Port's property to the Regional Stormwater Project upon payment of a connection fee at the time of connection pursuant to an ordinance to be adopted by the City establishing the connection fee. This connection fee will apply to all property in the NERA that connects to the Regional Stormwater Project for stormwater management. The connection fee will be based on the City's projected costs for the first twenty years of operation and maintenance of the Regional Stormwater Project, initial monitoring of the new facilities, and adaptive management of the new facilities. These connection fee-related costs are particular to the Regional Stormwater Project and are separate from and in excess of the City's adopted surface water management service charges, which will also apply to development of the Port's property.

## **SECTION 5. SHARED USE PATH**

**5.1 Shared Use Path.** The City will design, construct, own, operate and maintain a Shared Use Path as part of the first phase of the Regional Stormwater Project. The Shared Use Path will provide access for both long-term operations and maintenance of the Regional Stormwater Project and for pedestrian and bicycle use through the NERA.

**5.2 Easement.** To enable construction and long-term ownership, operation and maintenance of the Shared Use Path the City needs an easement from the Port. The Port agrees to convey to the City, and the City agrees to acquire from the Port, an easement in a form substantially the same as **Exhibit 7**, (the "Shared Use Path Easement"). Consistent with pertinent FAA regulations, the Port will not otherwise contribute to the design, construction, operation or maintenance of the Shared Use Path.

**5.3 Easement Value.** Based on the Appraisal, the Port agrees to convey to the City, and the City agrees to pay the Port, at Closing, a total fair market value of Sixty-Nine Thousand Four Hundred Sixty-Three Dollars (\$69,463.00) for the Shared Use Path Easement.

## **SECTION 6. STREET VACATION**

**6.1 General.** The City will initiate and complete a street vacation process of 12<sup>th</sup> Place South to enable the Port to complete assembly of its properties in the NERA.

**6.2 12th Place South.** 12<sup>th</sup> Place South is shown on **Exhibit 1** attached hereto and incorporated herein. This street comprises approximately Twenty-Three Thousand Eight Hundred Thirty-Eight (23,838) square feet.

**6.3 Street Vacation.** To enable the Port's redevelopment of its properties and upon approval of the 12<sup>th</sup> Place South street vacation ordinance, the City agrees to convey to the Port, and the Port agrees to acquire from the City, 12<sup>th</sup> Place South pursuant to the process described in Chapter 35.79 of the Revised Code of Washington.

**6.4 Appraised Value to be Paid.** Subject to the City Council's approval of an ordinance vacating 12<sup>th</sup> Place South, the appraised value to be paid for 12<sup>th</sup> Place South by the Port to effectuate such an ordinance will be Two Hundred Thirty-Eight Thousand Five Hundred Dollars (\$238,500.00). The City shall be entitled to such amount at Closing, Part 2, consistent with Section 9.2.

## **SECTION 7. INTERCHANGE IMPROVEMENTS**

**7.1 New Eastbound Off-Ramp.** The Parties acknowledge that they are currently cooperating in the planning and design of a new eastbound off-ramp from SR 518 at Des Moines Memorial Drive. The City has received grant funds through the Puget Sound Regional Council to complete the design of the eastbound off-ramp. Location of the proposed off-ramp within the Runway Protection Zone (RPZ) is subject to FAA approval.

**7.2 Right-of-Way.** The City or WSDOT will need to acquire, in fee simple, a portion of the Port's property within the RPZ as right-of-way for the new eastbound off-ramp. Port staff will seek will seek Port Commission approval to surplus and convey the needed property once design of the new off-ramp is finalized, which is anticipated to be in fall of 2014.

**7.3 Value.** The value of the required right-of-way will be determined by appraisal once the legal description for the right-of-way is prepared upon completion of final design of the new off-ramp.

**7.4 Existing Eastbound On-Ramp.** The Port entered into Agreement GCA 1998 with WSDOT, which was most recently supplemented in April 2009, allowing the Port to utilize a temporary



on-ramp onto eastbound SR 518 for runway reconstruction work. GCA 1998 requires the Port to restore the ramp upon completion of the temporary use. The final design of the eastbound SR 518 on-ramp needs to be aligned with the eastbound off-ramp and will operate via a new traffic signal being designed with the City's eastbound off-ramp project. Since the restoration of the eastbound SR 518 on-ramp is most appropriately designed as part of the off-ramp project to ensure proper alignment and coordination of the two ramps, the Port agrees to cooperate with the City in its current design and will seek future Port Commission approval to contribute design and construction funds to the City for the eastbound SR 518 on-ramp to satisfy the Port's responsibilities under GCA 1998.

## **SECTION 8. PILOT PROGRAM**

**8.1 Application.** The City and the Port agree to cooperate in the preparation and submission of an application to the FAA's pilot program for redevelopment of "noise property" as provided for in the FAA Program Guidance Letter 13-04, Pilot Program for Redevelopment of Airport Properties (Acquired Noise Land) dated February 14, 2013 (the "PGL").

**8.2 Governance.** The PGL requires that an enforceable agreement be in place between the parties to undertake airport compatible redevelopment of airport land conforming to applicable FAA requirements. The Parties intend that this Agreement shall serve that purpose.

**8.3 Zoning Designation.** The zoning designation of the NERA is Airport Industrial. The City represents and warrants that this designation permits airport compatible development and shall be unchanged for the duration of this Agreement per the requirements of the PGL.

**8.4 Use of Funds.** The Parties anticipate that any funds awarded pursuant to the PGL will be used for additional planning, design and permitting of infrastructure improvements that will enable redevelopment of the NERA.

**8.5 Local Share.** The Parties acknowledge that the PGL limits the federal share of the allowable costs under the program to eighty percent (80%) and that the participating airport must provide the remaining twenty percent (20%) share of the allowable project costs. The City and the Port agree that the 20% local share will be split evenly between them. Assuming an application for the maximum amount allowed by the FAA of \$5,000,000, the Port and City's share of the local match equals \$500,000 each.

**8.6 Repayment.** The Port and City acknowledge and agree that any funds awarded and expended pursuant to the PGL will have to be repaid and reinvested in the manner described in the PGL.

**SECTION 9. GENERAL PROVISIONS**

**9.1 Total Financial Obligations.** The following table summarizes the total financial obligations of the Port and the City based on this Agreement.

<b>AGREEMENT ITEM</b>	<b>PORT</b>	<b>CITY</b>
SW Facility #3 Easement	--	\$13,889
SW Facility #4 Easement	--	\$14,961
SW Facility #6 Easement	--	--
Temporary Construction Easement		\$8,724
Construction contribution for SW Facilities #3 & #4	\$1,200,000	--
Shared Use Path Easement	--	\$69,463
12 <sup>th</sup> Place South Street Vacation	\$245,000 <small>(includes closing costs)</small>	--
FAA Pilot Program Local Match	\$500,000	\$500,000
<b>TOTAL</b>	\$1,945,000	\$607,037

**9.2 Closing.** Closing of the transactions contemplated in this Agreement will take place in two parts. Closing to accomplish the conveyance of the Stormwater Facilities Easements and the Shared Use Path Easement shall occur within thirty (30) days of execution of this Agreement by both the City and the Port but not sooner than January 3, 2014, at the offices of First American Title Insurance Company, the escrow agent for the transaction (“Closing, Part 1”). Closing to accomplish Port use and ownership of the 12<sup>th</sup> Place South right-of-way is subject to approval by the City Council of an ordinance vacating 12<sup>th</sup> Place South, but City staff shall cooperate with the Port to expedite the street vacation process and accomplish a hearing on a resolution or petition for street vacation by no later than May 30, 2014 (“Closing, Part 2”).

**9.2.1 Port’s Obligations.** At or before Closing, Part 1, the Port shall deliver to the escrow agent: (i) executed originals of the Stormwater Facilities Easements and the Shared Use Path Easement, and (ii) \$1,092,963, which represents the Port Stormwater Contribution of \$1,200,000 minus \$107,037, and the deduct of \$107,037 from \$1,200,000 shall represent the payment by the City of the total purchase for the Stormwater Facility Easements, the Shared Use Path Easement, and the Temporary Construction Easement. At or before Closing, Part 2, the Port: (i) shall deliver to the escrow agent \$238,500, which shall represent the payment of the appraised value required in Chapter 36.79 RCW to effectuate street vacation ordinances; and (ii) shall move forward in an expeditious manner with the process of vacating 12<sup>th</sup> Place South.

**9.2.2 City’s Obligations.** At or before Closing Part 1, the City shall deliver to the escrow agent executed originals of the Stormwater Facilities Easements and the Shared Use Path Easement. At or before Closing, Part 2, the City shall expedite

the process of vacating 12<sup>th</sup> Place South, including completing review of the Port's site development plan, and either initiating the street vacation process by resolution or by providing expeditious review, if the Port has submitted a petition for street vacation so as to accomplish a hearing on said resolution or petition by no later than May 30, 2014.

**9.2.3 Closing Costs.** The City and the Port shall share equally the escrow fees. The City shall be solely responsible for the cost of any title insurance premiums, title endorsements, extended coverage or other title coverage it chooses to obtain.

**9.2.4 Possession.** The City shall be entitled to possession of the easement areas immediately following Closing, Part 1.

**9.3 Notices, Demands and Communications.** Formal notices, demands and communications between the City and the Port shall be sufficient if given and shall not be deemed given unless dispatched by certified mail, postage prepaid, returned receipt requested, or delivered personally, to the principal offices of the City and the Port as follows:

**City:**

City Manager  
City of Burien  
400 152<sup>nd</sup> Street, Suite 300  
Burien, WA 98166

**Port:**

Chief Executive Officer  
Port of Seattle  
2711 Alaskan Way  
Seattle, WA 98121

**9.4 Amendments.** This Agreement may be amended or modified upon mutual consent of the Parties and in accordance with all applicable laws, rules or regulations. Such mutual consent of the Parties shall be evidenced by a written amendment signed by the Parties.

**9.5 Other Government Approvals.** Should the Port at any time require the approval of any governmental body or board, whether of local, regional, state or federal jurisdiction, the Port shall bear the sole cost and responsibility for obtaining needed approvals. The City, upon request by the Port, shall lend its full cooperation and affirmative support if it deems such would be in the interest of timely performance under this Agreement, and such cooperation and support would not compromise the responsibilities of the City, including its responsibilities to the Port as set forth in this Agreement. Nothing contained herein is designed to relieve the Port of the necessity of complying with the laws governing the permitting requirements, conditions, terms or restrictions.

**9.6 Conflict of Interests.** No member, official or employee of the City shall make any decision relating to the Agreement, which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. The Port warrants that it has not paid or given, and shall not pay or give, any third person any money or other consideration for securing the City's approval of this Agreement.

**9.7 Non-Liability of City, Officials, Employees, and Agents.** No member, official, employee or agent of the City shall be personally liable to the Port, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Port or successor or on any obligation under the terms of this Agreement.

**9.8 Title of Parts and Sections.** Any titles of the parts, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provisions.

**9.9 Hold Harmless.** The Port shall indemnify and hold harmless the City and its officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of the negligent act or omission of the Port, its officers, agents, employees, or any of them relating to or arising out of the performance of this Agreement. If a final judgment is rendered against the City, its officers, agents, employees and/or any of them, or jointly against the City and the Port and their respective officers, agents and employees, or any of them, the Port shall satisfy the same to the extent that such judgment was due to the Port's negligent acts or omissions.

**9.10 Enforcement, Rights and Remedies Cumulative.** This Agreement shall be enforceable by the City, applicant, or successor-in-interest notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City that alters or amends the rules, regulations, or policies specified in this Agreement. Enforcement may be through any remedy or enforcement method or process, or combination thereof, allowed under law and/or equity. Except as otherwise stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise one or more of these rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

**9.11 Applicable Law.** This Agreement shall be interpreted under and pursuant to the laws of the State of Washington. Venue for any legal action brought hereunder shall be in the King County Superior Court.

**9.12 Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

**9.13 Legal Actions; Attorneys' Fees.** In the event any legal action is commenced to interpret or to enforce the terms of this Agreement, or to collect damages as a result of any breach of the Agreement, the Parties shall be responsible for their own attorneys' fees and costs incurred in the action.

**9.14 Binding Upon Successors.** This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties. Any reference in this Agreement to a specifically named party shall be deemed to apply to any successor heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Agreement, or under law.

**9.15 Parties Not Co-ventures.** Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another, nor employees and/or employers of each other.

**9.16 Warranties.** The City expresses no warranty or other representation to the Port or any other Party as to the fitness or condition of the Property other than those expressed within this Agreement.

**9.17 Reasonable Approvals.** The approval of a party of any documentation or submissions herein called for shall not be unreasonably withheld unless the text clearly indicates a different standard. All such approvals shall be given or denied in a timely and expeditious fashion.

**9.18 Execution of Other Documentation.** The City and the Port agree to execute any further documentation that may be necessary to carry out the intent and obligations under this Agreement.

**9.19 Complete Understanding of the Parties.** This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original, and constitutes the entire understanding and agreement of the Parties.

**9.20 Exhibits.** This Agreement consists of following the following exhibits, each of which is incorporated herein:

- 9.20.1 Exhibit 1 – NERA Map
- 9.20.2 Exhibit 2 – Master Drainage Plan MOA
- 9.20.3 Exhibit 3 – Stormwater Facility #3 Easement
- 9.20.4 Exhibit 4 – Stormwater Facility #4 Easement
- 9.20.5 Exhibit 5 – Stormwater Facility #6 Easement
- 9.20.6 Exhibit 6 – Temporary Construction Easement
- 9.20.7 Exhibit 7 – Shared Use Path Easement

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates indicated below.

**CITY OF BURIEN**

**PORT OF SEATTLE**

\_\_\_\_\_  
\_\_\_\_\_  
City Manager  
By direction of the Burien City Council  
in Open Public Meeting  
on \_\_\_\_\_, 2013

\_\_\_\_\_  
\_\_\_\_\_  
Tay Yoshitani  
Chief Executive Officer  
By direction of the Port Commission  
in Open Public Meeting  
on \_\_\_\_\_, 2013

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
City of Burien Attorney

\_\_\_\_\_  
Port of Seattle Attorney

DRAFT

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_ to me known as the City Manager, for the City of Burien, the corporation who executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said City of Burien, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

\_\_\_\_\_  
NAME  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
MY COMMISSION EXPIRES: \_\_\_\_\_

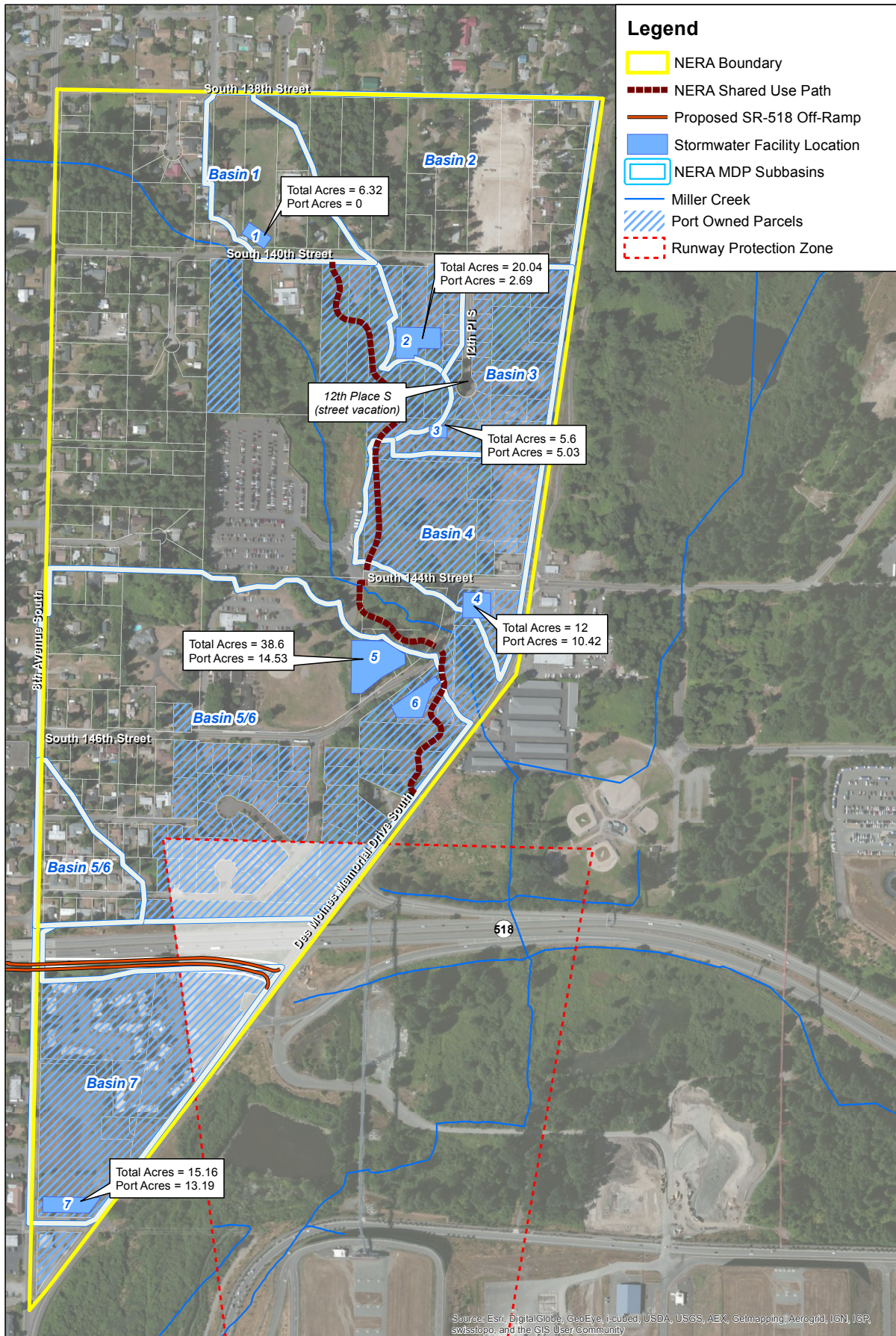
STATE OF WASHINGTON )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Tay Yoshitani to me known as the Chief Executive Officer, for the Port of Seattle, the corporation who executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said Port of Seattle, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

\_\_\_\_\_  
NAME  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
MY COMMISSION EXPIRES: \_\_\_\_\_

# EXHIBIT 1 - NERA MAP



Source: Esri, DigitalGlobe, GeoEye, IGN, USDA, USGS, AEK, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

Exhibit 1: NERA Map



0 150 300 Feet



Missouri Cultural Partner



JAN 31 2013

CITY OF BURIEN  
PUBLIC WORKS

## EXHIBIT 2 - MOA

MEMORANDUM OF AGREEMENT  
CITY OF BURIEN AND PORT OF SEATTLE  
NORTHEAST REDEVELOPMENT AREA  
MASTER DRAINAGE PLAN PHASE 1 IMPLEMENTATION

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into between the PORT OF SEATTLE, a Washington municipal corporation (the "Port") and the CITY OF BURIEN, a Washington municipal corporation (the "City").

## RECITALS

1. The Port owns property located in the City's Northeast Redevelopment Area ("NERA"). A map of the NERA is attached as **Exhibit 1**.
2. The majority of the Port's holdings in the NERA are noise-impacted former residences acquired under the Federal Aviation Administration's ("FAA") Part 150 regulations. As a result, the FAA must review and approve the use, lease, disposal and payment of any Port funds related to these sites.
3. The Port and City share the goal of transitioning the NERA into a mix of airport-compatible retail, auto center, commercial and/or light industrial uses. The City views the NERA as potentially being a significant contributor to its goal of growing and diversifying the City's tax and employment base.
4. The Port and City were partners along with the cities of Des Moines and SeaTac and the Puget Sound Regional Council in the New Economic Strategy Triangle ("NEST") study completed in 2004. The NEST study evaluated the development potential of the NERA and other Port-owned sites surrounding Seattle-Tacoma International Airport ("Sea-Tac Airport").
5. The NEST study followed the City's approval of new Comprehensive Plan policies, development regulations and design guidelines for the NERA in 2003. In 2005, the City adopted a planned action ordinance under the State Environmental Policy Act ("SEPA") to guide redevelopment of the NERA.
6. The Port and the City completed joint preparation of a redevelopment strategy in April, 2010 which provides optimum conceptual design, programming and infrastructure assumptions needed to support long-term redevelopment of the NERA.
7. One of the recommendations of the NERA redevelopment strategy is to direct public investment in infrastructure, such as a regional stormwater facility, that will facilitate private sector investment in the NERA.

## EXHIBIT 2 - MOA

8. Building upon the NERA redevelopment strategy, the Port and the City will now jointly prepare a Master Drainage Plan, one element of a regional stormwater management facility for the NERA.

**NOW, THEREFORE,** for good and valuable consideration, the adequacy of which is acknowledged here, the Port and City agree as follows:

### AGREEMENT

#### I. Purpose.

This MOA is intended to accomplish the following objectives:

- (1) Establish agreement on a process for completing a Master Drainage Plan for NERA;
- (2) Delineate the expected schedule for completing the Master Drainage Plan for NERA and for a Phase 1 Implementation of this plan;
- (3) Define the roles and responsibilities of the parties; and
- (4) Describe the standards and processes governing the relationship between the parties.

#### II. Strategy.

- (1) **Interests & Objectives.** This project implements a portion of the NERA redevelopment strategy. The 158-acre NERA site is bounded by South 138th Street to the north, 8th Avenue South to the west, and Des Moines Memorial Drive South to the east and south. The Miller Creek corridor bisects the NERA from the northwest (upstream) to the southeast (downstream), (see Exhibit 1). Both parties share the objective of completing a Master Drainage Plan for the entire NERA site and for constructing a first phase of infrastructure improvements to support future redevelopment.
- (2) **Consultant Selection.** The City has selected Otak, Inc. as the “Consultant” that will prepare the Master Drainage Plan, design the Phase 1 Improvements and provide construction support services. The City will be the administrative lead for this project, and will be responsible for the contract with the Consultant. All deliverables and products produced during or as a result of the Consultant’s work shall be the property of both the Port and City.
- (3) **Approach; Scope of Work.** This project involves preparation of a Master Drainage Plan for the entire NERA site, including the evaluation of specific stormwater strategies at several locations and identification of Phase 1 improvements. The Phase 1 improvements will provide

## EXHIBIT 2 - MOA

flow control and runoff treatment for up to 55 acres in the basin and are anticipated to include the following project elements:

1. Two regional infiltration facilities with a total storage area of 3 acre per feet.
2. Two pre-treatment facilities that will precede the infiltration facilities.
3. Two constructed floodplain wetlands with a footprint of approximately 3.5 acres.
4. Approximately 2,300 feet of a shared use trail and linear park to be constructed in connection with floodplain/wetland enhancements along Miller Creek.

This MOA is intended to address only the Master Drainage Plan element of the attached scope of work, which is described in detail under Task B of Exhibit 2.

- (4) **Budget; Cost Sharing.** Monetary participation by the Port at this time is limited to the Master Drainage Plan element of the scope of work (Task B of Exhibit 2). Monetary participation in future elements of the scope of work will be based on costs established in the Master Drainage Plan and on the benefit provided to the Port. A future MOA or other form of agreement will establish the Port's participation in these additional elements of the larger stormwater management project.

A budget of Three Hundred Sixty-Five Thousand Dollars (\$365,000) has been established to complete the Master Drainage Plan. The Port agrees to contribute up to One Hundred Thirty-One Thousand Four Hundred Dollars (\$131,400) of this budget, which represents thirty-six percent (36%) of the total project budget and reflects the Port's percentage of land ownership within the NERA.

The Port agrees to remit monthly reimbursements to the City within thirty (30) days from the receipt of invoices from the City.

- (5) **Schedule.** The City and Port agree to undertake the steps necessary to complete the Master Drainage Plan within the schedule established in Exhibit 2 to the greatest extent possible. Per a meeting between the City and the Port on November 14, 2012, this schedule has been revised to complete the Master Drainage Plan by May, 2013.

### III. Relationship Between The Parties.

- (1) **Good Faith; Representation.** The parties agree to act in good faith when carrying out the terms of this MOA. The parties shall each appoint a representative to facilitate completion of the activities that are subject to this MOA. The representative shall communicate with their principals, develop documents, review consultant work and attend meetings with agencies and interested persons. Those representatives are: Burien Public Works Director and Managing Director, Sea-Tac Airport, or their designees.

## EXHIBIT 2 - MOA

- (2) **Dispute Resolution (Mediation then Arbitration).** If any dispute cannot be resolved through discussions between the Managing Director and the Public Works Director, then the parties agree first to attempt to settle the dispute in an amicable manner by mediation. The mediator shall be selected by agreement of the parties. All fees and expenses for mediation shall be borne by the parties equally. Each party shall, however, bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

Should mediation not result in an agreement between the two parties and the Managing Director and the Public Works Director cannot resolve the issue, the parties shall settle the dispute by arbitration administered by the American Arbitration Association Rules and in accordance with the applicable provisions of RCW Title 7. The arbitrator be selected by agreement of the parties. All fees and expenses for arbitration shall be borne by the parties equally; however, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

By agreeing to these conflict resolution procedures, the parties do not waive any legal remedies allowed by any court of competent jurisdiction.

#### IV. Miscellaneous Agreements.

- (1) **Entire Understanding.** This MOA and the exhibits attached to it and incorporated by reference comprise the entire agreement of the parties and supersede any and all prior written or oral agreements.
- (2) **Modification.** This MOA may be amended or modified only by written agreement of the parties.
- (3) **Duration and Termination.** This MOA will remain in effect until the actions required herein are complete, unless otherwise terminated by mutual agreement of the parties. Termination of this MOA shall not result in termination of any other legally binding agreement or action based upon this MOA unless such additional termination is required under the terms of such other agreement or action.
- (4) Notices provided under this MOA shall be sent to the following addresses:


City of Burien  
400 SW 152<sup>nd</sup> St, Suite 300  
Burien Washington 98166

Port of Seattle  
Post Office Box 68727  
Seattle Washington 98168.  
Attention: Managing Director, Sea-Tac Airport


## EXHIBIT 2 - MOA

- (5) **Effective date.** This MOA shall become effective upon the approval of and signature by the authorized signatories.

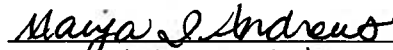
**PORT OF SEATTLE**, a Washington municipal corporation

By:   
Its: CEO  
Date: 1/29/13

Approved as to form:

  
Port of Seattle Attorney

**CITY OF BURIEN**, a Washington municipal corporation

By:   
Its: Public Works Director  
Date: Jan 31, 2013

Approved as to form:

  
Burien City Attorney

# EXHIBIT 3

## NERA STORM WATER FACILITY #3 EASEMENT AGREEMENT

THIS NERA STORM WATER FACILITY #3 EASEMENT AGREEMENT (“Easement”) is entered into as of \_\_\_\_\_, 2013 (“Effective Date”) by and between the **PORT OF SEATTLE**, a Washington municipal corporation, (“Grantor”) and the **CITY OF BURIEN**, a Washington municipal corporation (“Grantee”).

### RECITALS

A. Grantor owns or controls certain real property situated in the City of Burien, King County, Washington, as legally described and depicted on **Exhibit A** attached hereto, incorporated by reference and made a part hereof (the "Premises").

B. Grantee has requested that Grantor grant to Grantee a **non-exclusive permanent easement** over the Premises for the Easement Purpose (as defined below).

C. On \_\_\_\_\_, 2013, Grantor’s Port of Seattle Commissioners authorized execution of an Interlocal Agreement dated \_\_\_\_\_, 2013 between the Port and the City of Burien, which among several items, provides for the City’s construction and operation of a twenty-five (25)-foot wide shared use path in tandem with several storm water facilities in the City’s Northeast Redevelopment Area (the “Project”).

D. Grantor has agreed to grant Grantee the requested easement for good and valuable consideration related to the terms and conditions set forth in this Easement Agreement as well as the benefits associated with accomplishment of the Project.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### AGREEMENT

#### Section 1 Granting of Easement.

1.1 Easement Purpose. The "Easement Purpose" shall include:

- (a) Operation by Grantee, Grantee’s employees, contractors and agents (“Grantee parties”) of storm water drainage facilities that will receive runoff of storm water discharged to NERA Storm Water Facility #3 (“Facility #3”), as identified by the City of Burien in **Exhibit B** (“NERA Stormwater Facility Locations”);
- (b) Activities of Grantee parties related to the construction of Facility #3;
- (c) Maintenance and repair by Grantee parties of the Facility #3; and

- (d) Alteration or reconstruction by Grantee parties of Facility #3 provided that the product of the alteration and reconstruction does not increase Grantor's liability exposure or expand the scope of use of this Easement Agreement.
- (e) Access by Grantee parties, including by foot and by vehicle and any equipment necessary for construction, maintenance, repair, alteration or reconstruction of Facility #3.

1.2 Grant. Grantor does hereby grant unto Grantee a **permanent, non-exclusive easement** ("Easement") over, under, across and through the Premises for the Easement Purpose and for no other purpose not set forth in Section 6, provided that Section 14 shall apply in the event that Grantee abandons operation of Facility #3. This Easement shall only include such rights in the Premises as shall be necessary for the activities contemplated by this Easement. This Easement is subject to all existing encumbrances of record as identified in that preliminary title commitment issued by First American Title dated August 13, 2013 under guarantee number 2137884.

1.3 Responsibilities of Grantee for Premises.

- 1.3.1 Grantee shall be responsible for all maintenance and repair associated with Facility #3 in the Premises.
- 1.3.2 Grantee shall be responsible for maintaining the storm water drainage system, including Facility #3, so as to avoid damage to Port property and migration of Hazardous Substances, if any, from Port property.
- 1.3.3 Grantee shall be responsible for ensuring that activities within the Premises comply with all laws, regulations, orders, covenants and restrictions. Grantee shall regulate to ensure that any activity in the Premises is compatible with not only Airport uses but also the use and safety of the Approach Transition Zone and Runway Protection Zone (as defined in Section 4 below).
- 1.3.4 Grantee shall restrict the height of structures, objects of natural growth and other obstructions on the Premises to a height of not more than 416 feet Datum NAVD 88.
- 1.3.5 Grantee shall ensure the use of the Premises does not interfere with landing or taking off of aircraft at the Seattle Tacoma International Airport (the "Airport"), or otherwise constitute an "airport hazard." Any uses that create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff or maneuvering of aircraft intending to use the airport shall be deemed an airport hazard.

- 1.4 Term of Easement. The term of the Easement shall be perpetual, unless sooner abandoned under provisions of this Easement.
- 1.5 Storm Water Facility Description. Facility #3 is a water quality treatment and infiltration facility. Once constructed, it will be located on **King County Parcel Number 172304-9058**. It will collect, treat, and manage storm water runoff from the surrounding area, designed to fully infiltrate up through the 50-year storm event. It will be situated entirely below ground, and is designed to prevent any ponding of water on the surface.
- 1.6 Grantee's Representations and Warranties. Grantee represents, warrants and agrees that in the exercise of its easement rights, Grantee will not in any manner interfere with or interrupt the use or operation of the Airport or Airport facilities and that Grantee's easement rights will be subordinated to Airport use and development.

Section 2 Indemnification.

- 2.1 At Grantee's sole expense, Grantee shall indemnify, hold harmless, and defend Grantor from and against any and all claims, lawsuits, damages, liabilities, fines, expenses, fees and costs of any kind, arising from Grantee's intentional misconduct, negligence, or breach of the representations or warranties contained herein or default in the performance of Grantee's responsibilities under the provisions of this Easement. As used in this Section 2.1, the term "Grantee" shall include employees, agents, contractors, and persons entering the Premises under the express or implied invitation of Grantee.
- 2.2 Upon written notice from Grantor, Grantee agrees to assume the defense of any lawsuit or other proceeding brought against Grantor by any entity, relating to any matter covered by this Easement for which Grantee has an obligation to assume liability for and/or save and hold harmless Grantor. Grantee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

Section 3 Environmental Liability Allocation and Potential Costs of Handling Hazardous Substances associated with the Project.

- 3.1 Definition of Hazardous Substances. "Hazardous Substance" shall mean and refer to any hazardous or toxic substance, material or waste, including, but not limited to, (i) those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. 172.101), (ii) those substances, materials, and wastes listed by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302 and amendments thereto), (iii) those substances, materials and wastes listed by the Washington State Department of Ecology as hazardous substances (Washington Administrative Code 173-303 and 173-340), (iv) petroleum products and their derivatives, and (v) such other substances, materials and



wastes as are or become regulated or subject to authority by any jurisdiction under any environmental laws.

3.2 Indemnity for Pre-Existing Hazardous Substances.

3.2.1 Grantee shall have no obligation to indemnify or defend Grantor, Grantor's agents, elected officials, officers or employees, from and against any and all liability, loss, damage, expense, actions and claims arising from or related to the pre-existence of any Hazardous Substances, if any, in, under, or on property owned by Grantor.

3.2.2 Grantee shall indemnify or defend Grantor, Grantor's agents, elected officials, officers or employees, from and against any and all liability, loss, damage, expense, actions and claims arising from or related to the migration of Hazardous Substances regardless of whether they are pre-existing or released by Grantee, if the activities of Grantee, Grantee's agents, officers, employees, invitees, or members of the public in the Premises cause such migration.

3.2.3 Grantee shall indemnify or defend Grantor, Grantor's agents, elected officials, officers or employees, from and against any and all liability, loss, damage, expense, actions and claims arising from or related to the actions or omissions of Grantee, or Grantee's breach of its obligations in this Easement, that exacerbate contamination or increase the level of any pre-existing Hazardous Substances to actionable levels.

3.3 Waiver and Release. Grantee waives and releases Grantor from any and all liability, loss, damage, expense, actions and claims arising from or related to the pre-existence of any Hazardous Substances, if any, in, under, or on property owned by Grantor or any other condition of the Premises.

3.4 Materials Management During Construction. Grantee shall be responsible for conducting and paying for all testing, profiling and proper disposal of any materials generated during construction of the Project, including stormwater, construction debris, contaminated soils, or any other materials, that Grantee determines must be removed from the Easement area and the construction site. Grantee shall provide Grantor with copies of all disposal records documenting the management of such materials.

Section 4 Legal Compliance.

4.1 Compliance. Grantee shall observe and comply with any and all laws, including Environmental Laws (as defined below), statutes, regulations, ordinances, orders, covenants, restrictions, and or decisions of any court of competent jurisdiction relating to the use of the Premises. Without waiving Grantor's right to enforce the generality of the foregoing, Grantee shall strictly comply with Federal Aviation Administration ("FAA") regulations related to ensuring that any activity in the Premises is compatible

with not only Airport uses but also the use and safety of the Approach Transition Zone and Runway Protection Zone as defined in FAA regulations.

- 4.2 Definition. "Environmental Laws" shall mean and include any and all local, state or federal laws, rules, orders or regulations in effect during the term of this Easement Agreement, or any part of the term hereof, pertaining to environmental regulation, or the use, processing, storage, housing, disposal, generation or transportation of Hazardous Substances, as defined above. Environmental Laws include, but are not limited to, the following federal statutes, amendments thereto, and any enactments by state or local jurisdictions which address similar subjects: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation Recovery Act, the Hazardous and Solid Waste Amendments 1984, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Water Pollution Control Act, the Federal Clean Air Act, the Federal Clean Water Act, the National Environmental Policy Act, the Hazardous Materials Transportation Act, spill prevention and control legislation, and any regulations promulgated with respect to any such statutes.

Section 5 Insurance. Grantee shall provide the following insurance coverage which it shall obtain from commercial insurance carriers and this coverage shall be maintained throughout the term of the Easement.

5.1 Required Coverage.

5.1.1 Commercial General Liability insurance on ISO Form CG 00 01 10 01 (or an equivalent policy form) 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. Grantee's insurance shall be primary and non-contributory with respect to any insurance the Port carries and apply separately to each insured. The Port shall be named as an additional insured on this policy.

5.1.2 Automobile Liability Insurance on a combined single limit basis for bodily injury and property damage using with a limit of not less than \$1,000,000 per occurrence.

5.1.3 Pollution liability coverage with the Port named as an additional insured on the policy, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The policy coverage shall extend to all sudden and accidental incidents, claims, damages, and losses, including defense costs that are caused by pollution incidents that arise from the operations of the Grantee.

5.2 Insurance Certificates. Grantee shall submit to the Port a Certificate of Insurance which shows that it has obtained the required coverage(s) and a copy of the additional insured endorsement for the commercial general liability insurance policy and the pollution liability policy. The stated insurance limits shall not be construed as to

relieve the Grantee from liability in excess of the limits. All deductibles or self-insurance retentions are the responsibility of Grantee.

- 5.3 Self Insurance. Grantee shall have the option of providing a program of self-insurance in lieu of commercial insurance. “Self-Insurance” shall mean that Grantee is acting as though it were the insurance company providing the required insurance. Grantee will have to provide evidence to the Port that Grantee’s self-insurance program demonstrates a financial worth of sufficient capacity to finance claims, losses, and defense obligations that would otherwise be covered by the commercial insurance specified above. If the Port does not accept in whole or in part, Grantee’s self-insurance program, Grantee shall provide commercial insurance as required by this Section.

Section 6. Grantor’s Use of the Premises; Limitations.

- 6.1 Grantor’s Use. Grantor, its successors and assigns, may use the Premises above Facility #3 for parking, open space, landscaping or other non-structural use for as long as it does not interfere with the Easement Purpose as described in Section 1.1 and as long as it is not inconsistent with the rights herein granted and is subject to the conditions of this Agreement.

6.2 Limitations on Use.

6.2.1 Grantor is specifically prohibited from erecting buildings or permanent structures over, under, or across the Premises.

6.2.2 Grantor is specifically prohibited from planting large trees above Facility #3.

6.2.3 Grantor is specifically prohibited from allowing any utilities in, on, under or above the Premises.

6.2.4 Grantor is specifically prohibited from allowing additional impoundment of water above Facility #3.

6.2.5 Grantor is specifically prohibited from storing any hazardous waste above Facility #3.

6.2.6 Maintenance access for Grantee parties must be preserved to all portions of the Facility #3 exposed to the surface, including, but not limited to, the pretreatment facility, catch basins, inspection ports, and the emergency overflow, all of which shall be located within the permanent easement.

6.2.7 In the event of damage to Facility #3, some chambers may need to be excavated and removed/replaced. This may require temporarily closing a portion of the surface area.

6.2.8 Grantor shall not allow any development that involves re-grade of the Premises that is inconsistent with maintaining a minimum of two (2) feet and maximum of seven (7) feet of cover for Facility #3. In the event of a re-grade the Premises, Grantor shall ensure that the function of Facility #3, including access points, cleanout locations, and inspection ports are preserved.

6.3 Grantor's reservation of rights.

6.3.1 Grantor reserves unto itself, its successors and assigns, for the use and benefit of the public the right of flight for the passage of aircraft in and through the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from, or operating on the Airport.

This reservation of right is for the free and unobstructed use and passage of all types of aircraft in and through the airspace over or in the vicinity of the Premises, with such use and passage to be unlimited as to frequency, type of aircraft, and proximity. Grantee further waives all damages and claims for damages caused or alleged to be caused by or incidental to such activities.

As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, and shall include, but is not limited to, jet aircraft, propeller-driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all other types of aircraft or vehicles now in existence or hereafter developed for the purpose of transporting persons or property through the air.

6.3.2 Grantor reserves unto itself, its successors and assigns, the continuing right to prevent the erection or growth upon the Premise of any building, structure, tree, or other object that extends into the airspace above said Premises. The Grantor reserves a right of ingress to, egress from and passage over the Premises to remove the offending structure or object, and to cut the offending growth, all at the expense of the Grantee, in the event the aforesaid covenant is breached.

6.3.3 Grantor reserves the right to cause in all airspace above or in the vicinity of the surface of the Premises such noise, vibrations, fume, deposits of dust or other particulate matter, fuel particles (which are incidental to the normal operation of said aircraft), fear, interference with sleep and communications and any and all other effects that may be alleged to be incident to or caused by the operation of aircraft over or in the vicinity of the Premises or in landing at or taking off from or operating at or on the Airport.

6.3.4 Grantor reserves the right, with five (5) calendar days advance notice to Grantee, to inspect NERA Storm Water Facility #3.

6.3.5 Grantor reserve the right to require modifications to NERA Storm Water Facility #3 in the event that the facility does not perform in compliance with FAA regulations and in accordance with the objectives for design as well as criteria for operations specified in the Master Drainage Plan.

6.3.6 Grantor reserves the right to require changes to maintenance practices to NERA Storm Water Facility #3 in the event that the facility does not perform in compliance with FAA regulations and in accordance with the objectives for design as well as criteria for operations specified in the Master Drainage Plan.

6.4 Grantee's waiver and release relating to Grantor's reservation of rights. Grantee does hereby fully waive, remise, and release any right or cause of action which they may now have or which they may have in the future against Grantor, its successor and assigns, due to such noise vibrations, fumes, dust, fuel particles and all other effects that may be caused or may have been caused by the operation of aircraft landing at, or taking off from, or operating at or on the Airport.

Section 7. Construction Standard of Care. Grantee shall secure all necessary permits and authorizations necessary to construct and operate facilities. Grantee shall perform all construction activities associated with its completion of the Project in compliance with all federal, state, and local laws, including Environmental Laws and with the terms of this Easement Agreement. Grantee shall exercise reasonable care in the performance of all its activities and shall use industry accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

Section 8. Ownership of Project Improvements. Unless otherwise provided in this Agreement or in other approvals or agreements, Grantee shall own the Project improvements made within the Easement area, including, without limitation, improvements constructed by either party at the cost and expense of Grantee. Nothing in this Agreement, however, shall be construed as granting to Grantee any interest or right in the Easement or the improvements within the Easement other than the rights expressly provided herein.

Section 9. Operations. Grantee shall operate, maintain, and repair the Project located within the Easement in compliance with all federal, state, and local laws and in a manner consistent with industry standards. Grantee shall exercise reasonable care in the performance of all its activities within the Easement and shall use industry accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

Section 10. Liens and Encumbrances. Grantee shall, at its sole cost, keep the Easement free and clear of any liens or other encumbrances arising out of Grantee's activities under this Easement.

Section 11. Transfer of Interests. Grantee shall not assign or transfer this Easement, or any interest therein to any entity other than a successor agency that would operate and maintain the Project, without the express written consent of Grantor. Such consent shall not be unreasonably withheld.

Section 12. Binding Effect. This Easement shall inure to the benefit of Grantee, its successors and/or assigns and shall be binding upon the Easement and Grantor, and their respective heirs, successors and/or assigns.

Section 13. Authority to Execute Easement. Grantor covenants that Grantor is the lawful owner of the Premises and has a good and lawful right to execute this Easement.

Section 14. Termination and Reversion Upon Abandonment. Either party may terminate this Easement upon thirty (30) days written notice to the other in the event that Grantee or its successor agency permanently ceases operation or maintenance of the Premises in accordance with Grantee's responsibilities in Section 1.3, or in the event that Grantee or its successor agency does not construct some portion of the Project within the Easement area. In the event that the Easement terminates, all of the Grantee's rights to the Easement shall cease and all rights hereunder shall revert to Grantor, except that the continuing obligations contained in Section 3 shall survive termination.

Section 15. Notices. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Grantee:

City of Burien  
400 SW 152<sup>nd</sup> Street, Suite 300  
Burien, WA 98166  
Attention: \_\_\_\_\_  
Copy to: \_\_\_\_\_

If to Grantor:

Port of Seattle  
P.O. Box 1209  
Seattle, WA 98111  
Attention: \_\_\_\_\_  
Copy to: General Counsel

Section 16. Nondiscrimination.

- 16.1 Grantee, for itself, its heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this easement, for a purpose for which a United States Department of Transportation/Federal Aviation Administration program or activity is extended or for another purpose involving the provision of similar services or benefits, Grantee shall maintain and operate such facilities and services in compliance with all requirements imposed by the “Acts and Regulations” (as may be amended) such that no person on the grounds of race, color or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination I the use of said facilities. The “Acts and Regulations” referenced in this Section mean Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the secretary, part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations and Acts may be amended.
- 16.2 Grantee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (ii) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or otherwise be subjected to discrimination, and (iii) Grantee shall use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- 16.3 Grantee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates Grantee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates Grantee or any transferee for the longer of the following periods: (i) the period during which the property is used for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (ii) the period during which the Port or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.
- 16.4 Grantee will, at the timely request of the Port, (a) provide access to records, facilities and staff as necessary to comply with DOT/FAA compliance reviews and/or complaint

investigations conducted by the DOT/FAA; and (b) provide information needed for preparation of necessary reports or to meet evaluation requirements of the DOT/FAA.

Section 17 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit C ("**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located.

Section 18 Miscellaneous.

18.1 Washington Law. All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive laws of the State of Washington without regard to conflicts of law provisions.

18.2 Venue. To the fullest extent permitted by law, any dispute arising under or in connection with this Easement Agreement or related to any subject matter which is the subject of this Easement Agreement shall be subject to the sole and exclusive jurisdiction of King County Superior Court. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive. Each party hereto hereby irrevocably consents to the jurisdiction of King County Superior Court in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

18.3 Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

18.4 Severability. If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

18.5 Entire Understanding. This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein; provided, however, nothing herein is intended to terminate any surviving obligation of Grantor or Grantee of their respective



obligations to defend or hold each other harmless in any prior written agreement between the parties involving the Premises.

18.6 Time is of the Essence. Time is of the essence for the performance of this Easement Agreement.

[Signature page follows]

Witness the execution of this Easement Agreement as of the date first set forth above.

**Grantor:**

**Port of Seattle, a Washington municipal corporation**

By: \_\_\_\_\_

Name:

Title:

**Grantee:**

**City of Burien, a Washington municipal corporation**

By: \_\_\_\_\_

Name:

Title:

[Acknowledgment page follows]

STATE OF WASHINGTON )  
 ) §  
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 signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Notary Public in and for the State of Washington

Notary (print name) \_\_\_\_\_

Residing at \_\_\_\_\_

My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) §  
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 signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Dated:

Signature:

Notary Public in and for the State of Washington

Notary (print name)

Residing at

My appointment expires:

## EXHIBIT A

### NERA STORMWATER FACILITY #3 EASEMENT LEGAL DESCRIPTION

#### Parcel No. 172304-9058

That portion of the above named parcel of land described as follows:

Beginning at a point on the north line of the south half of the Southeast Quarter of the Southeast Quarter of Section 17, Township 23 North, Range 4 East, W.M., in King County, Washington, distant 300 feet west of the intersection of said north line with the westerly line of Des Moines Way;

thence N.88°18'27"W. along said north line, 59.18 feet to the TRUE POINT OF BEGINNING;

thence S. 01°41'33"W., 150.00 feet;

thence parallel with said north line N.88°18'27"W., 151.00 feet;

thence N. 01°41'33"E., 130.00 feet;

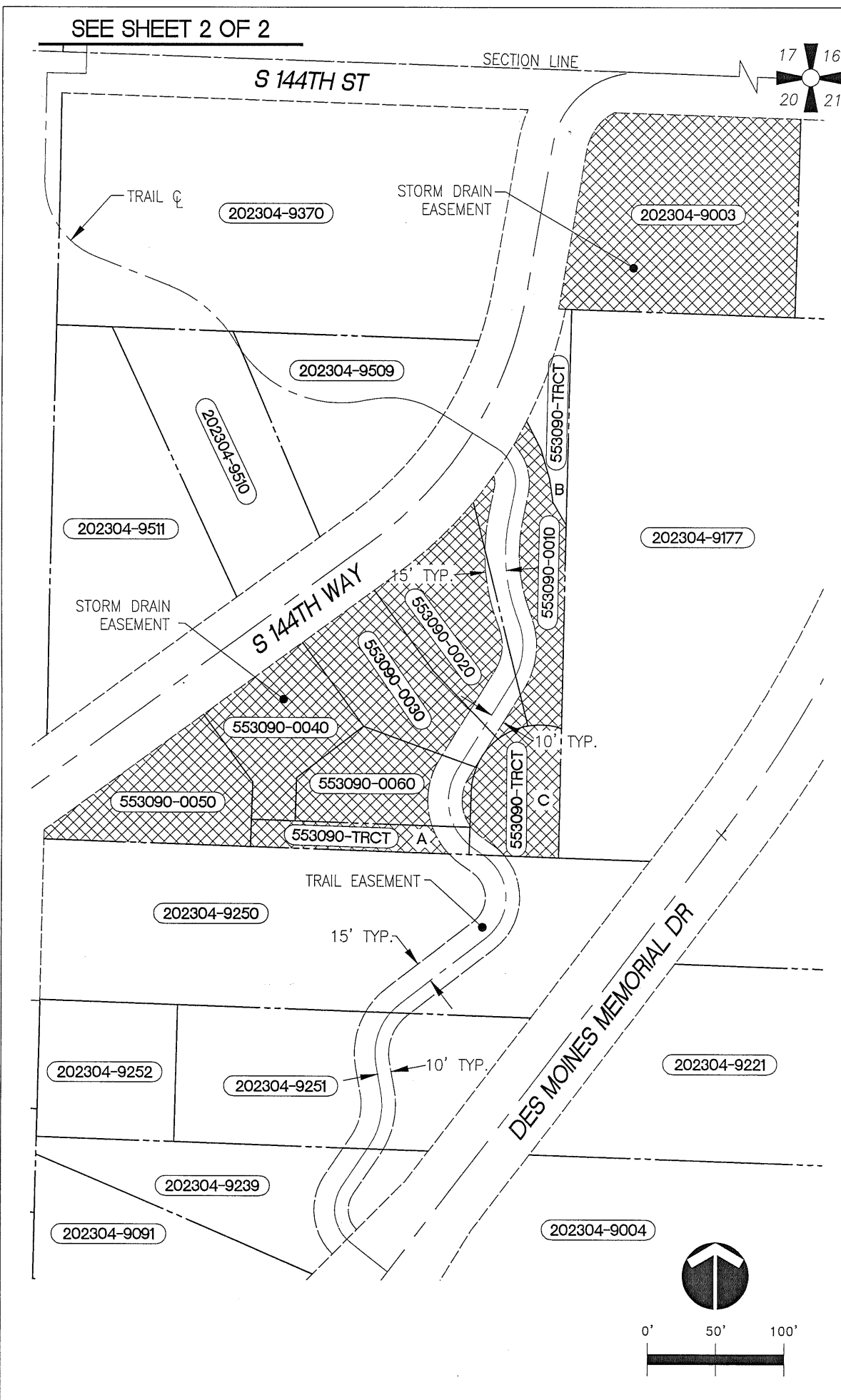
thence parallel to said north line N.88°18'27"W., 84.32 feet;

thence along a concave non-tangent 80.00 foot radius curve left whose radius bears N.43°01'23"W., through a central angle of 17°51'29" a distance of 24.93 feet, more or less, to the north line of said parcel;

thence along said north line 220.60 feet the TRUE POINT OF BEGINNING.

Containing 24,173 square feet, more or less.

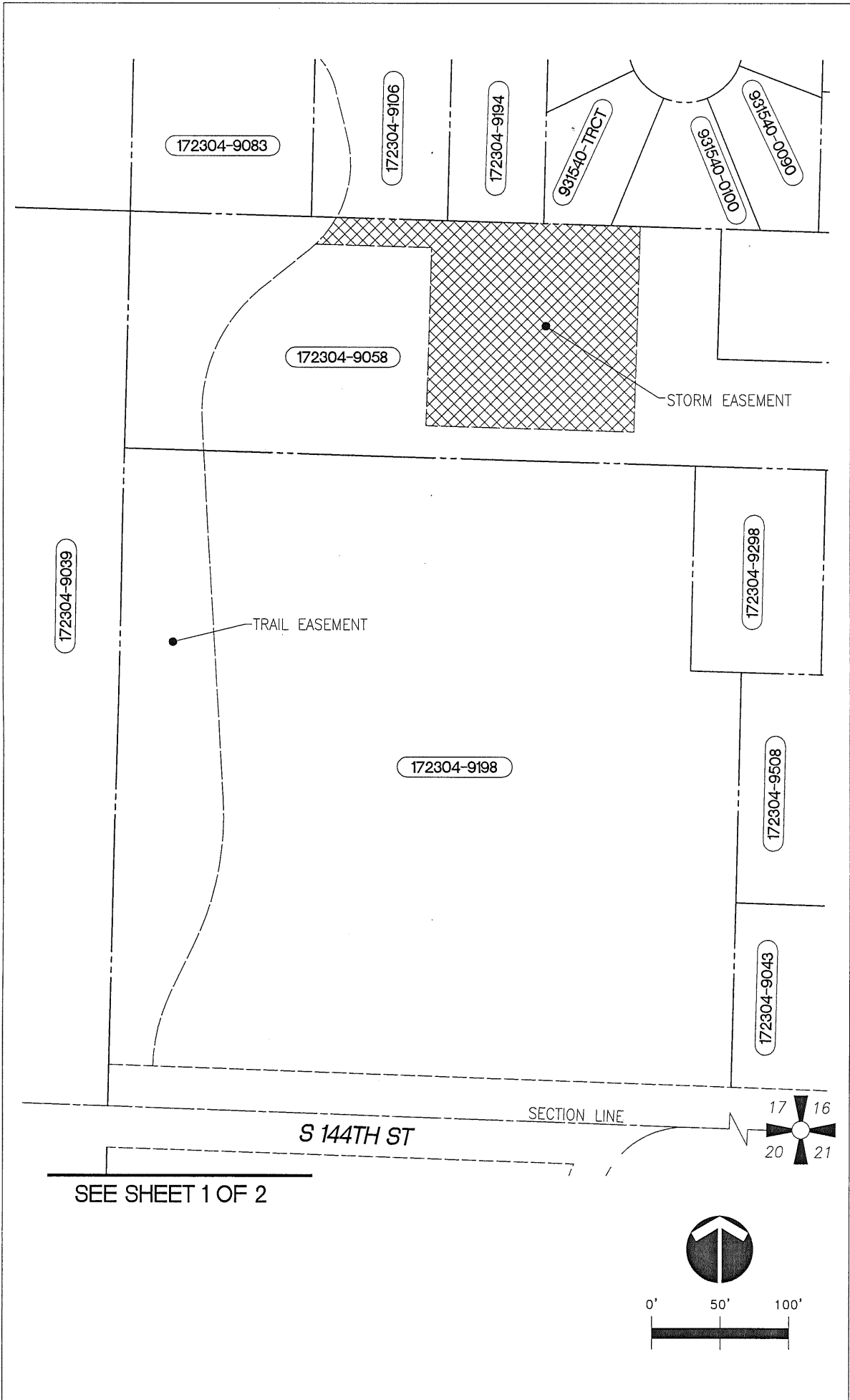
# EXHIBIT A (CONT'D)



<p>WCL          Designed _____          GSO          Drawn _____          Checked By _____ Date _____</p>	<p><b>BURIEN NERA</b>          PORT OF SEATTLE PROPERTIES          A PORTION OF S. 20, TWP. 23 N.,          R. 4 E., W.M.</p>	<p>31235B          Project No. _____          File No. _____          1 OF 2          Sheet No. _____</p>
---	---	---

**otak** Incorporated  
 10230 NE Points Drive  
 Suite 400  
 Kirkland, Washington 98033  
 Phone: (425) 822-4446  
 FAX: (425) 827-9577

# EXHIBIT A (CONT'D)



SEE SHEET 1 OF 2

WCL  
 Designed \_\_\_\_\_  
 GSO  
 Drawn \_\_\_\_\_  
 Checked By \_\_\_\_\_ Date \_\_\_\_\_

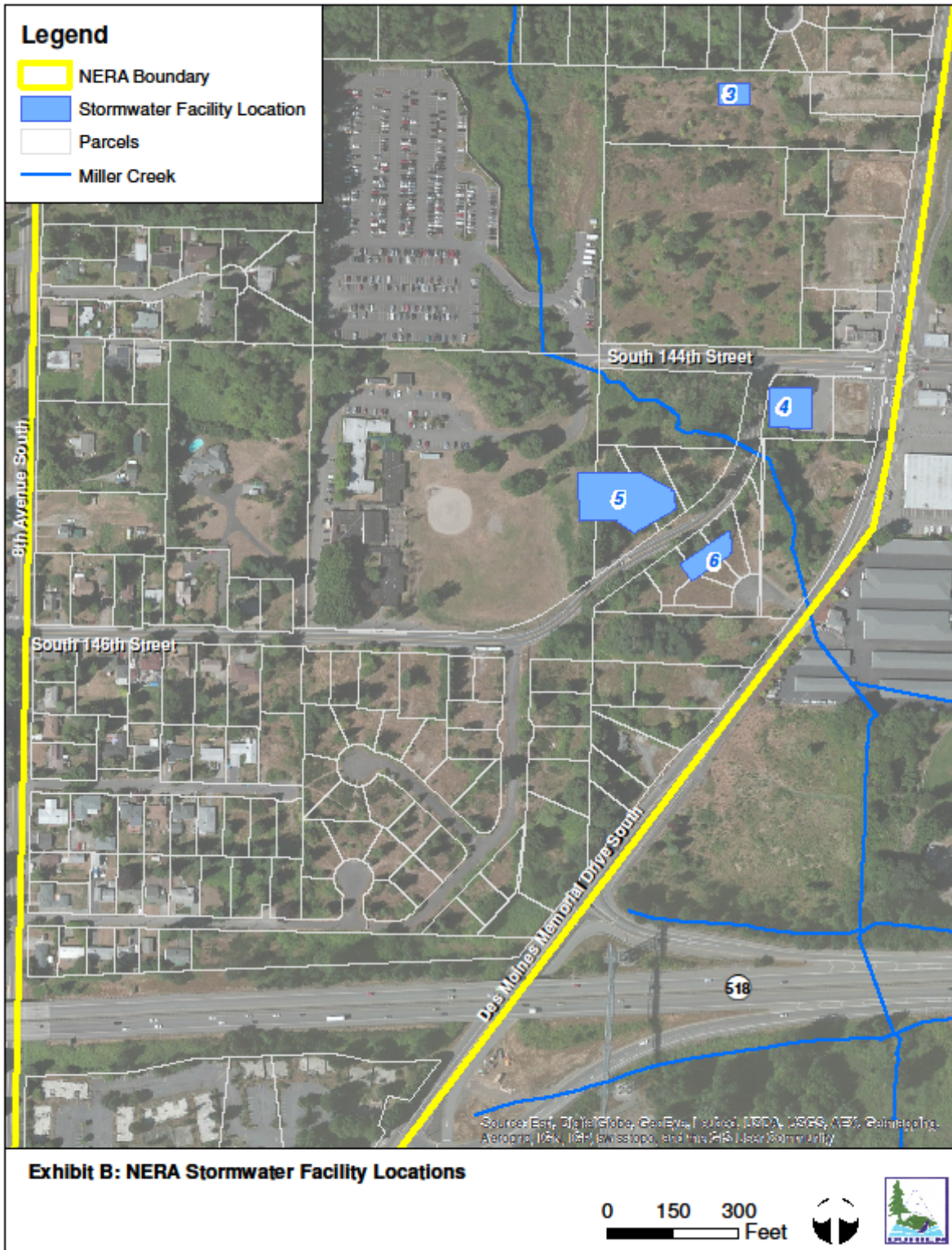
**BURIEN NERA**  
 PORT OF SEATTLE PROPERTIES  
 A PORTION OF S. 17, TWP. 23 N.,  
 R. 4 E., W.M.

**otak**  
 10230 NE Points Drive  
 Suite 400  
 Kirkland, Washington 98033  
 Phone: (425) 822-4446  
 FAX: (425) 827-9577

31235B  
 Project No. \_\_\_\_\_  
 File No. \_\_\_\_\_  
**2 OF 2**  
 Sheet No. \_\_\_\_\_

# EXHIBIT B

## NERA STORMWATER FACILITY LOCATIONS



# EXHIBIT 4

## NERA STORM WATER FACILITY #4 EASEMENT AGREEMENT

THIS NERA STORM WATER FACILITY #4 EASEMENT AGREEMENT (“Easement”) is entered into as of \_\_\_\_\_, 2013 (“Effective Date”) by and between the **PORT OF SEATTLE**, a Washington municipal corporation, (“Grantor”) and the **CITY OF BURIEN**, a Washington municipal corporation (“Grantee”).

### RECITALS

A. Grantor owns or controls certain real property situated in the City of Burien, King County, Washington, as legally described and depicted on **Exhibit A** attached hereto, incorporated by reference and made a part hereof (the "Premises").

B. Grantee has requested that Grantor grant to Grantee a **non-exclusive permanent easement** over the Premises for the Easement Purpose (as defined below).

C. On \_\_\_\_\_, 2013, Grantor’s Port of Seattle Commissioners authorized execution of an Interlocal Agreement dated \_\_\_\_\_, 2013 between the Port and the City of Burien, which among several items, provides for the City’s construction and operation of a twenty-five (25)-foot wide shared use path in tandem with several storm water facilities in the City’s Northeast Redevelopment Area (the “Project”).

D. Grantor has agreed to grant Grantee the requested easement for good and valuable consideration related to the terms and conditions set forth in this Easement Agreement as well as the benefits associated with accomplishment of the Project.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### AGREEMENT

#### Section 1 Granting of Easement.

1.1 Easement Purpose. The "Easement Purpose" shall include:

- (a) Operation by Grantee, Grantee’s employees, contractors and agents (“Grantee parties”) of a storm water drainage facility as identified on **Exhibit B** (“**NERA Stormwater Facility Locations**”);
- (b) Activities of Grantee parties related to the construction of Facility #4;
- (c) Maintenance and repair by Grantee parties of the Facility #4; and



(d) Alteration or reconstruction by Grantee parties of Facility #4 provided that the product of the alteration and reconstruction does not increase Grantor's liability exposure or expand the scope of use of this Easement Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a **permanent, non-exclusive easement** ("Easement") over, under, across and through the Premises for the Easement Purpose and for no other purpose provided that Section 14 shall apply in the event that Grantee abandons operation of Facility #4. This Easement shall only include such rights in the Premises as shall be necessary for the activities contemplated by this Easement. This Easement is subject to all existing encumbrances of record as identified in that preliminary title commitment issued by First American Title dated August 13, 2013 under guarantee number 2144872.

1.3 Responsibilities of Grantee for Premises.

1.3.1 Grantee shall be responsible for all maintenance and repair associated with Facility #4 in the Premises.

1.3.2 Grantee shall be responsible for maintaining the storm water drainage system, including Facility #4, so as to avoid damage to Port property and migration of Hazardous Substances, if any, from Port property.

1.3.3 Grantee shall be responsible for ensuring that activities within the Premises comply with all laws, regulations, orders, covenants and restrictions. Grantee shall regulate to ensure that any activity in the Premises is compatible with not only Airport uses but also the use and safety of the Approach Transition Zone and Runway Protection Zone (as defined in Section 4 below).

1.3.4 Grantee shall restrict the height of structures, objects of natural growth and other obstructions on the Premises to an elevation of not more than 416 feet Datum NAVD 88.

1.3.5 Grantee shall ensure the use of the Premises does not interfere with landing or taking off of aircraft at the Seattle Tacoma International Airport (the "Airport"), or otherwise constitute an "airport hazard." Any uses that create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff or maneuvering of aircraft intending to use the airport shall be deemed an airport hazard.

1.4 Term of Easement. The term of the Easement shall be perpetual, unless sooner abandoned under provisions of this Easement.

- 1.5 Storm Water Facility Description. Facility #4 is a water quality treatment and infiltration facility. Once constructed, it will be located on **King County Parcel Number 202304-9003**. It will collect, treat, and manage storm water runoff from the surrounding area, designed to fully infiltrate up through the 50-year storm event. It will be situated entirely below ground, and is designed to prevent any ponding of water on the surface.
- 1.6 Grantee's Representations and Warranties. Grantee represents, warrants and agrees that in the exercise of its easement rights, Grantee will not in any manner interfere with or interrupt the use or operation of the Airport or Airport facilities and that Grantee's easement rights will be subordinated to Airport use and development.

Section 2 Indemnification.

- 2.1 At Grantee's sole expense, Grantee shall indemnify, hold harmless, and defend Grantor from and against any and all claims, lawsuits, damages, liabilities, fines, expenses, fees and costs of any kind, arising from Grantee's intentional misconduct, negligence, or breach of the representations or warranties contained herein or default in the performance of Grantee's responsibilities under the provisions of this Easement. As used in this Section 2.1, the term "Grantee" shall include employees, agents, contractors, and persons entering the Premises under the express or implied invitation of Grantee.
- 2.2 Upon written notice from Grantor, Grantee agrees to assume the defense of any lawsuit or other proceeding brought against Grantor by any entity, relating to any matter covered by this Easement for which Grantee has an obligation to assume liability for and/or save and hold harmless Grantor. Grantee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

Section 3 Environmental Liability Allocation and Potential Costs of Handling Hazardous Substances associated with the Project.

- 3.1 Definition of Hazardous Substances. "Hazardous Substance" shall mean and refer to any hazardous or toxic substance, material or waste, including, but not limited to, (i) those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. 172.101), (ii) those substances, materials, and wastes listed by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302 and amendments thereto), (iii) those substances, materials and wastes listed by the Washington State Department of Ecology as hazardous substances (Washington Administrative Code 173-303 and 173-340), (iv) petroleum products and their derivatives, and (v) such other substances, materials and wastes as are or become regulated or subject to authority by any jurisdiction under any environmental laws.

3.2 Indemnity for Pre-Existing Hazardous Substances.

3.2.1 Grantee shall have no obligation to indemnify or defend Grantor, Grantor's agents, elected officials, officers or employees, from and against any and all liability, loss, damage, expense, actions and claims arising from or related to the pre-existence of any Hazardous Substances, if any, in, under, or on property owned by Grantor.

3.2.2 Grantee shall indemnify or defend Grantor, Grantor's agents, elected officials, officers or employees, from and against any and all liability, loss, damage, expense, actions and claims arising from or related to the migration of Hazardous Substances regardless of whether they are pre-existing or released by Grantee, if the activities of Grantee, Grantee's agents, officers, employees, invitees, or members of the public in the Premises cause such migration.

3.2.3 Grantee shall indemnify or defend Grantor, Grantor's agents, elected officials, officers or employees, from and against any and all liability, loss, damage, expense, actions and claims arising from or related to the actions or omissions of Grantee, or Grantee's breach of its obligations in this Easement, that exacerbate contamination or increase the level of any pre-existing Hazardous Substances to actionable levels.

3.3 Waiver and Release. Grantee waives and releases Grantor from any and all liability, loss, damage, expense, actions and claims arising from or related to the pre-existence of any Hazardous Substances, if any, in, under, or on property owned by Grantor or any other condition of the Premises.

3.4 Materials Management During Construction. Grantee shall be responsible for conducting and paying for all testing, profiling and proper disposal of any materials generated during construction of the Project, including storm water, construction debris, contaminated soils, or any other materials, that Grantee determines must be removed from the Easement area and the construction site. Grantee shall provide Grantor with copies of all disposal records documenting the management of such materials.

Section 4 Legal Compliance.

4.1 Compliance. Grantee shall observe and comply with any and all laws, including Environmental Laws (as defined below), statutes, regulations, ordinances, orders, covenants, restrictions, and or decisions of any court of competent jurisdiction relating to the use of the Premises. Without waiving Grantor's right to enforce the generality of the foregoing, Grantee shall strictly comply with Federal Aviation Administration ("FAA") regulations related to ensuring that any activity in the Premises is compatible with not only Airport uses but also the use and safety of the Approach Transition Zone and Runway Protection Zone as defined in FAA regulations.

4.2 Definition. "Environmental Laws" shall mean and include any and all local, state or federal laws, rules, orders or regulations in effect during the term of this Easement Agreement, or any part of the term hereof, pertaining to environmental regulation, or the use, processing, storage, housing, disposal, generation or transportation of Hazardous Substances, as defined above. Environmental Laws include, but are not limited to, the following federal statutes, amendments thereto, and any enactments by state or local jurisdictions which address similar subjects: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation Recovery Act, the Hazardous and Solid Waste Amendments 1984, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Water Pollution Control Act, the Federal Clean Air Act, the Federal Clean Water Act, the National Environmental Policy Act, the Hazardous Materials Transportation Act, spill prevention and control legislation, and any regulations promulgated with respect to any such statutes.

Section 5 Insurance. Grantee shall provide the following insurance coverage which it shall obtain from commercial insurance carriers and this coverage shall be maintained throughout the term of the Easement.

5.1 Required Coverage.

5.1.1 Commercial General Liability insurance on ISO Form CG 00 01 10 01 (or an equivalent policy form) 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. Grantee's insurance shall be primary and non-contributory with respect to any insurance the Port carries and apply separately to each insured. The Port shall be named as an additional insured on this policy.

5.1.2 Automobile Liability Insurance on a combined single limit basis for bodily injury and property damage using with a limit of not less than \$1,000,000 per occurrence.

5.1.3 Pollution liability coverage with the Port named as an additional insured on the policy, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The policy coverage shall extend to all sudden and accidental incidents, claims, damages, and losses, including defense costs that are caused by pollution incidents that arise from the operations of the Grantee.

5.2 Insurance Certificates. Grantee shall submit to the Port a Certificate of Insurance which shows that it has obtained the required coverage(s) and a copy of the additional insured endorsement for the commercial general liability insurance policy and the pollution liability policy. The stated insurance limits shall not be construed as to relieve the Grantee from liability in excess of the limits. All deductibles or self-insurance retentions are the responsibility of Grantee.

5.3 Self Insurance. Grantee shall have the option of providing a program of self-insurance in lieu of commercial insurance. “Self-Insurance” shall mean that Grantee is acting as though it were the insurance company providing the required insurance. Grantee will have to provide evidence to the Port that Grantee’s self-insurance program demonstrates a financial worth of sufficient capacity to finance claims, losses, and defense obligations that would otherwise be covered by the commercial insurance specified above. If the Port does not accept in whole or in part, Grantee’s self-insurance program, Grantee shall provide commercial insurance as required by this Section.

Section 6. Grantor’s Use of the Premises; Limitations.

6.1 Grantor’s Use. Grantor, its successors and assigns, may use the Premises above Facility #4 for parking, open space, landscaping or other non-structural use for as long as it does not interfere with the Easement Purpose as described in Section 1.1 and as long as it is not inconsistent with the rights herein granted and is subject to the conditions of this Agreement.

6.2 Limitations on Use.

6.2.1 Grantor is specifically prohibited from erecting buildings or permanent structures over, under, or across the Premises.

6.2.2 Grantor is specifically prohibited from planting large trees above Facility #4.

6.2.3 Grantor is specifically prohibited from allowing any utilities in, on, under or above the Premises.

6.2.4 Grantor is specifically prohibited from allowing additional impoundment of water above Facility #4.

6.2.5 Grantor is specifically prohibited from storing any hazardous waste above Facility #4.

6.2.6 Maintenance access for Grantee parties must be preserved to all portions of Facility #4 exposed to the surface, including, but not limited to, the pretreatment facility, catch basins, inspection ports, and the emergency overflow, all of which shall be located within the permanent easement.

6.2.7 In the event of damage to Facility #4, some chambers may need to be excavated and removed/replaced. This may require temporarily closing a portion of the surface area.

6.2.8 Grantor shall not allow any development that involves re-grade of the Premises that is inconsistent with maintaining a minimum of two (2) feet and maximum of seven (7) feet of cover for Facility #4. In the event of a re-grade the

Premises, Grantor shall ensure that the function of Facility #4, including access points, cleanout locations, and inspection ports are preserved.

### 6.3 Grantor's reservation of rights.

6.3.1 Grantor reserves unto itself, its successors and assigns, for the use and benefit of the public the right of flight for the passage of aircraft in and through the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from, or operating on the Airport.

This reservation of right is for the free and unobstructed use and passage of all types of aircraft in and through the airspace over or in the vicinity of the Premises, with such use and passage to be unlimited as to frequency, type of aircraft, and proximity. Grantee further waives all damages and claims for damages caused or alleged to be caused by or incidental to such activities.

As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, and shall include, but is not limited to, jet aircraft, propeller-driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all other types of aircraft or vehicles now in existence or hereafter developed for the purpose of transporting persons or property through the air.

6.3.2 Grantor reserves unto itself, its successors and assigns, the continuing right to prevent the erection or growth upon the Premise of any building, structure, tree, or other object that extends into the airspace above said Premises. The Grantor reserves a right of ingress to, egress from and passage over the Premises to remove the offending structure or object, and to cut the offending growth, all at the expense of the Grantee, in the event the aforesaid covenant is breached.

6.3.3 Grantor reserves the right to cause in all airspace above or in the vicinity of the surface of the Premises such noise, vibrations, fume, deposits of dust or other particulate matter, fuel particles (which are incidental to the normal operation of said aircraft), fear, interference with sleep and communications and any and all other effects that may be alleged to be incident to or caused by the operation of aircraft over or in the vicinity of the Premises or in landing at or taking off from or operating at or on the Airport.

6.3.4 Grantor reserves the right, with five (5) calendar days' advance notice to Grantee, to inspect NERA Storm Water Facility #4.

6.3.5 Grantor reserve the right to require modifications to NERA Storm Water Facility #4 in the event that the facility does not perform in compliance with FAA

regulations and in accordance with the objectives for design as well as criteria for operations specified in the Master Drainage Plan.

6.3.6 Grantor reserves the right to require changes to maintenance practices to NERA Storm Water Facility #4 in the event that the facility does not perform in compliance with FAA regulations and in accordance with the objectives for design as well as criteria for operations specified in the Master Drainage Plan.

6.4 Grantee's waiver and release relating to Grantor's reservation of rights. Grantee does hereby fully waive, remise, and release any right or cause of action which they may now have or which they may have in the future against Grantor, its successor and assigns, due to such noise vibrations, fumes, dust, fuel particles and all other effects that may be caused or may have been caused by the operation of aircraft landing at, or taking off from, or operating at or on the Airport.

Section 7. Construction Standard of Care. Grantee shall secure all necessary permits and authorizations necessary to construct and operate facilities. Grantee shall perform all construction activities associated with its completion of the Project in compliance with all federal, state, and local laws, including Environmental Laws and with the terms of this Easement Agreement. Grantee shall exercise reasonable care in the performance of all its activities and shall use industry accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

Section 8. Ownership of Project Improvements. Unless otherwise provided in this Agreement or in other approvals or agreements, Grantee shall own the Project improvements made within the Easement area, including, without limitation, improvements constructed by either party at the cost and expense of Grantee. Nothing in this Agreement, however, shall be construed as granting to Grantee any interest or right in the Easement or the improvements within the Easement other than the rights expressly provided herein.

Section 9. Operations. Grantee shall operate, maintain, and repair the Project located within the Easement in compliance with all federal, state, and local laws and in a manner consistent with industry standards. Grantee shall exercise reasonable care in the performance of all its activities within the Easement and shall use industry accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

Section 10. Liens and Encumbrances. Grantee shall, at its sole cost, keep the Easement free and clear of any liens or other encumbrances arising out of Grantee's activities under this Easement.

Section 11. Transfer of Interests. Grantee shall not assign or transfer this Easement, or any interest therein to any entity other than a successor agency that would operate and maintain the Project, without the express written consent of Grantor. Such consent shall not be unreasonably withheld.

Section 12. Binding Effect. This Easement shall inure to the benefit of Grantee, its successors and/or assigns and shall be binding upon the Easement and Grantor, and their respective heirs, successors and/or assigns.

Section 13. Authority to Execute Easement. Grantor covenants that Grantor is the lawful owner of the Premises and has a good and lawful right to execute this Easement.

Section 14. Termination and Reversion Upon Abandonment. Either party may terminate this Easement upon thirty (30) days written notice to the other in the event that Grantee or its successor agency permanently ceases operation or maintenance of the Premises in accordance with Grantee's responsibilities in Section 1.3, or in the event that Grantee or its successor agency does not construct some portion of the Project within the Easement area. In the event that the Easement terminates, all of the Grantee's rights to the Easement shall cease and all rights hereunder shall revert to Grantor, except that the continuing obligations contained in Section 3 shall survive termination.

Section 15. Notices. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Grantee:

City of Burien  
400 SW 152<sup>nd</sup> Street, Suite 300  
Burien, WA 98166  
Attention: \_\_\_\_\_  
Copy to: \_\_\_\_\_

If to Grantor:

Port of Seattle  
P.O. Box 1209  
Seattle, WA 98111  
Attention: \_\_\_\_\_  
Copy to: General Counsel



Section 16. Nondiscrimination.

- 16.1 Grantee, for itself, its heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this easement, for a purpose for which a United States Department of Transportation/Federal Aviation Administration program or activity is extended or for another purpose involving the provision of similar services or benefits, Grantee shall maintain and operate such facilities and services in compliance with all requirements imposed by the “Acts and Regulations” (as may be amended) such that no person on the grounds of race, color or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination I the use of said facilities. The “Acts and Regulations” referenced in this Section mean Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the secretary, part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations and Acts may be amended.
- 16.2 Grantee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (ii) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or otherwise be subjected to discrimination, and (iii) Grantee shall use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- 16.3 Grantee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates Grantee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates Grantee or any transferee for the longer of the following periods: (i) the period during which the property is used for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (ii) the period during which the Port or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

16.4 Grantee will, at the timely request of the Port, (a) provide access to records, facilities and staff as necessary to comply with DOT/FAA compliance reviews and/or complaint investigations conducted by the DOT/FAA; and (b) provide information needed for preparation of necessary reports or to meet evaluation requirements of the DOT/FAA.

16.5 Grantee hereby assures that it will include the above clauses in any subcontract(s) approved by the Port and cause subcontractor(s) to similarly include clauses in further subcontracts.

Section 17 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit C** ("**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located.

Section 18 Miscellaneous.

18.1 Washington Law. All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive laws of the State of Washington without regard to conflicts of law provisions.

18.2 Venue. To the fullest extent permitted by law, any dispute arising under or in connection with this Easement Agreement or related to any subject matter which is the subject of this Easement Agreement shall be subject to the sole and exclusive jurisdiction of King County Superior Court. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive. Each party hereto hereby irrevocably consents to the jurisdiction of King County Superior Court in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

18.3 Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

18.4 Severability. If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement

Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

- 18.5 Entire Understanding. This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein; provided, however, nothing herein is intended to terminate any surviving obligation of Grantor or Grantee of their respective obligations to defend or hold each other harmless in any prior written agreement between the parties involving the Premises.
- 18.6 Time is of the Essence. Time is of the essence for the performance of this Easement Agreement.

[Signature page follows]

Witness the execution of this Easement Agreement as of the date first set forth above.

**Grantor:**

**Port of Seattle, a Washington municipal corporation**

By: \_\_\_\_\_

Name:

Title:

**Grantee:**

**City of Burien, a Washington municipal corporation**

By: \_\_\_\_\_

Name:

Title:

[Acknowledgment page follows]

STATE OF WASHINGTON )  
 ) §  
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 signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Notary Public in and for the State of Washington

Notary (print name) \_\_\_\_\_

Residing at \_\_\_\_\_

My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) §  
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 signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Notary Public in and for the State of Washington

Notary (print name) \_\_\_\_\_

Residing at \_\_\_\_\_

My appointment expires: \_\_\_\_\_

## **EXHIBIT A**

### **NERA STORMWATER FACILITY #4 EASEMENT LEGAL DESCRIPTION**

#### **Parcel No. 202304-9003**

All of "Parcel B" of deed from Filomena Perry to the Port of Seattle recorded at AF No. 20071005001063, records of King County, Washington, described as follows:

The south 145 feet of the north 175 feet of the Northeast Quarter of the Northeast Quarter of Section 20, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington;

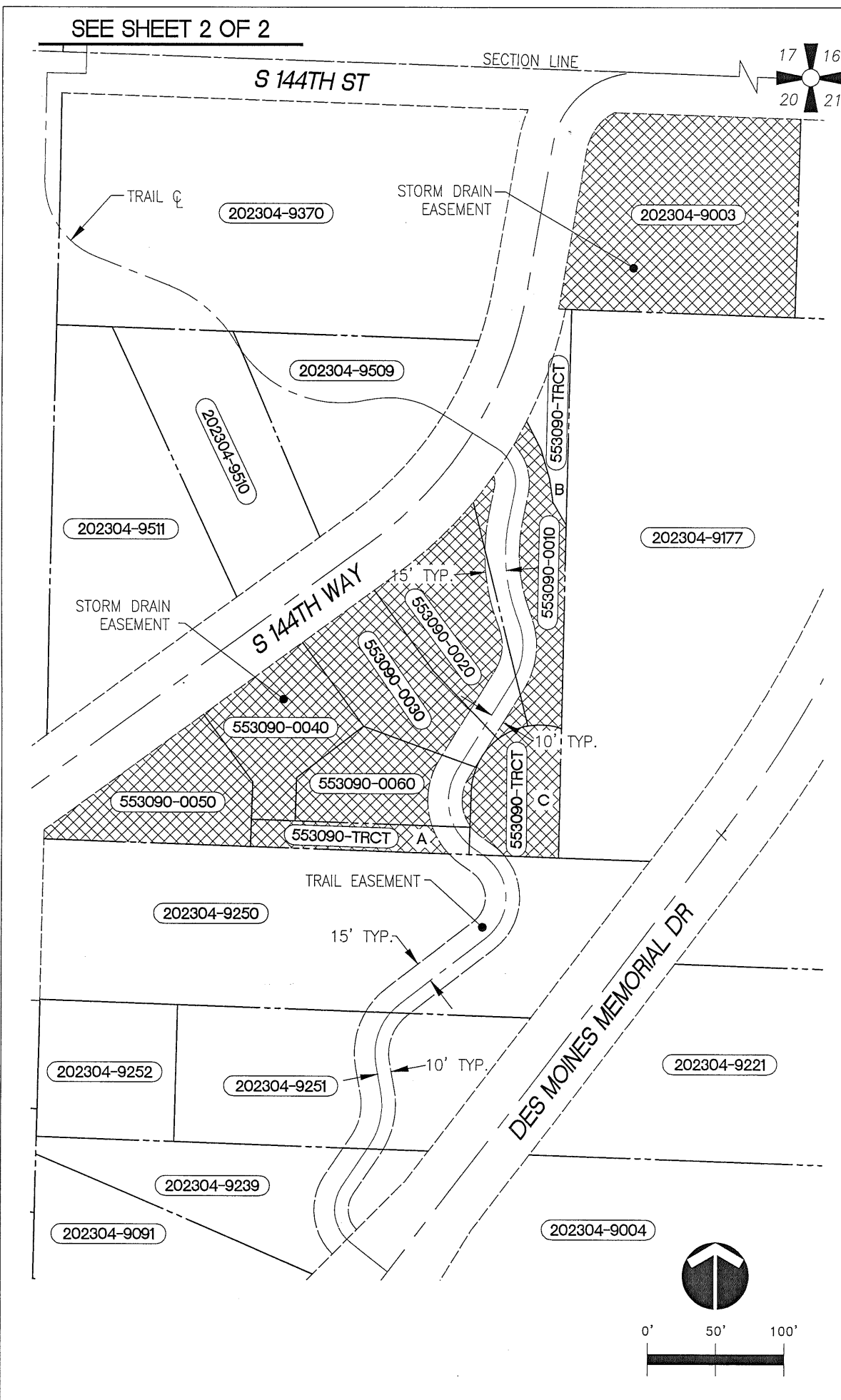
Except the east 766 feet thereof;

Except the west 375 feet thereof;

And except that portion thereof within South 144<sup>th</sup> Way.

Containing 23,374 square feet, more or less.

# EXHIBIT A (CONT'D)



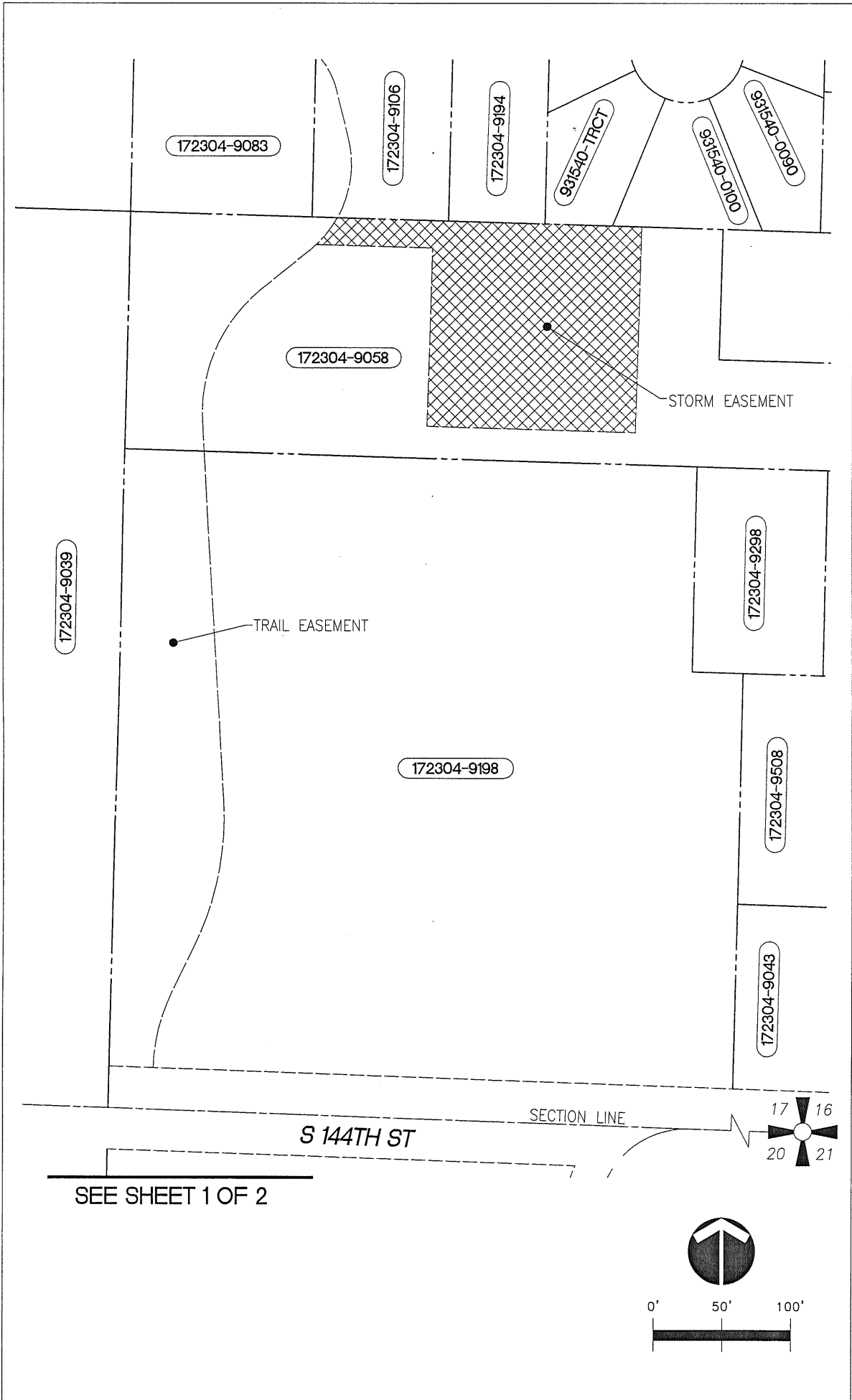
WCL  
 Designed GSO  
 Drawn  
 Checked By \_\_\_\_\_ Date \_\_\_\_\_

**BURIEN NERA**  
 PORT OF SEATTLE PROPERTIES  
 A PORTION OF S. 20, TWP. 23 N.,  
 R. 4 E., W.M.

**otak** Incorporated  
 10230 NE Points Drive  
 Suite 400  
 Kirkland, Washington 98033  
 Phone: (425) 822-4446  
 FAX: (425) 827-9577

31235B  
 Project No.  
 File No. 1 OF 2  
 Sheet No.

# EXHIBIT A (CONT'D)

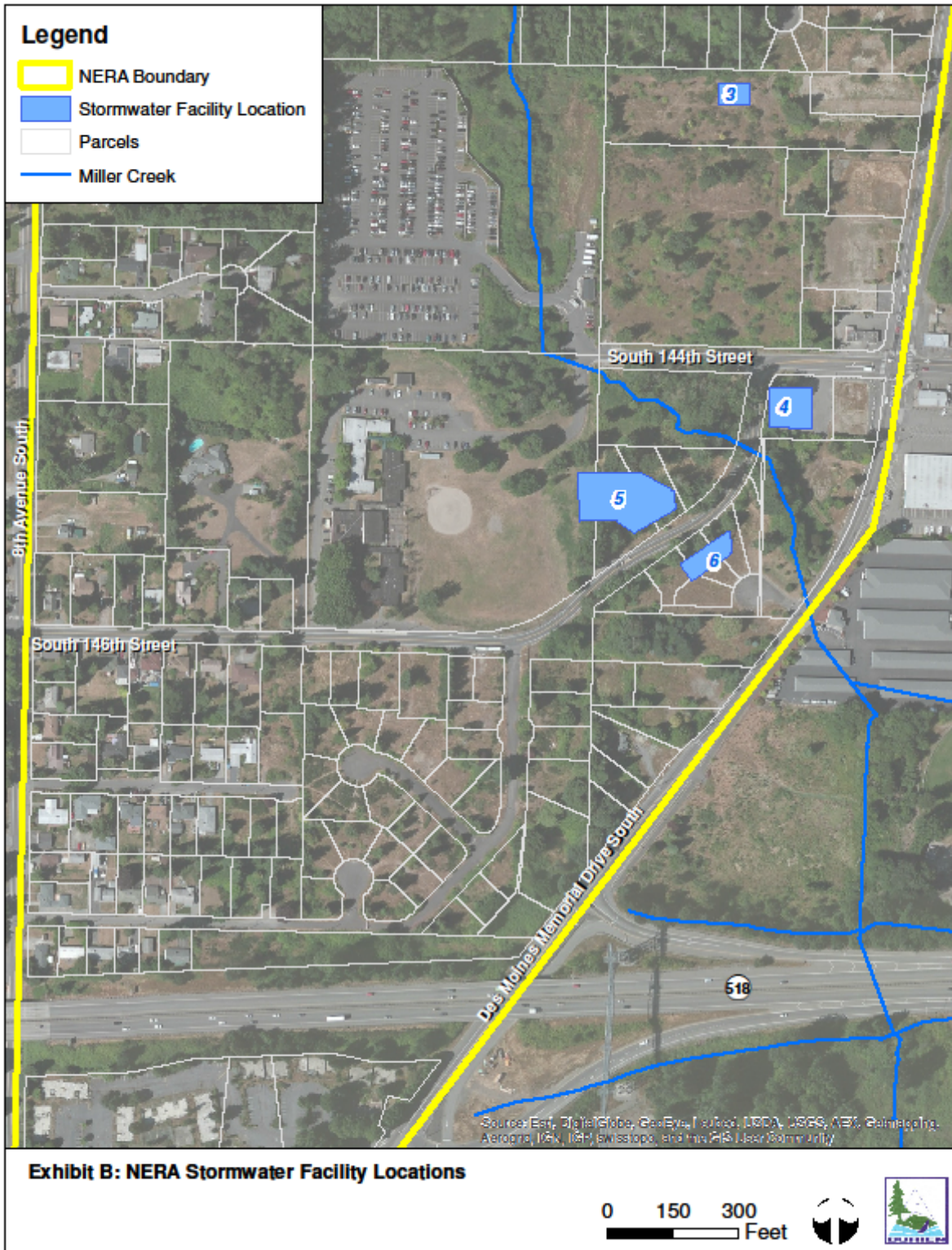


<p>WCL          Designed _____          GSO          Drawn _____          Checked By _____ Date _____</p>	<p><b>BURIEN NERA</b>          PORT OF SEATTLE PROPERTIES          A PORTION OF S. 17, TWP. 23 N.,          R. 4 E., W.M.</p>	<p>31235B          Project No. _____          File No. _____  <b>2 OF 2</b>          Sheet No. _____</p>
<p><b>otak</b>          10230 NE Points Drive          Suite 400          Kirkland, Washington 98033          Phone: (425) 822-4446          FAX: (425) 827-9577</p>		



# EXHIBIT B

## NERA STORMWATER FACILITY LOCATIONS



# EXHIBIT 5

## NERA STORM WATER FACILITY #6 EASEMENT AGREEMENT

This **NERA STORM WATER FACILITY #6 EASEMENT AGREEMENT** (“Easement”) is entered into as of \_\_\_\_\_, 2013 (“Effective Date”) by and between the **PORT OF SEATTLE**, a Washington municipal corporation, (“Grantor”) and the **CITY OF BURIEN**, a Washington municipal corporation (“Grantee”).

### RECITALS

A. Grantor owns or controls certain real property situated in the City of Burien, King County, Washington, as legally described and depicted on **Exhibit A** attached hereto, incorporated by reference and made a part hereof (the "Premises").

B. Grantee has requested that Grantor grant to Grantee an **exclusive permanent easement** over the Premises for the Easement Purpose (as defined below).

C. On \_\_\_\_\_, 2013, Grantor’s Port of Seattle Commissioners authorized execution of an Interlocal Agreement dated \_\_\_\_\_, 2013 between the Port and the City of Burien, which among several items, provides for the City’s construction and operation of a twenty-five (25)-foot wide shared use path in tandem with several storm water facilities in the City’s Northeast Redevelopment Area (the “Project”).

D. Grantor has agreed to grant Grantee the requested easement for good and valuable consideration related to the terms and conditions set forth in this Easement Agreement as well as the benefits associated with accomplishment of the Project.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### AGREEMENT

#### Section 1 Granting of Easement.

1.1 Easement Purpose. The "Easement Purpose" shall include:

- (a) Operation by Grantee, Grantee’s employees, contractors and agents (“Grantee parties”) of a storm water drainage facility (NERA Storm Water Facility #6) that will receive overflow of storm water discharged from Storm Water Facility #5 (“Facility #5”), as identified on **Exhibit B** (“**NERA Stormwater Facility Locations**”);
- (b) Activities of Grantee parties related to the construction of Facility #6 and connection to Facility #5;
- (c) Maintenance and repair by Grantee parties of Facility #6; and

(d) Alteration of reconstruction by Grantee parties of Facility #6 provided that the product of the alteration and reconstruction does not increase Grantor's liability exposure or expand the scope of use of this Easement Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a **permanent, exclusive easement** ("Easement") over, under, across and through the Premises for the Easement Purpose and for no other purpose provided that Section 14 shall apply in the event that Grantee abandons operation of Facility #6. This Easement shall only include such rights in the Premises as shall be necessary for the activities contemplated by this Easement. This Easement is subject to all existing encumbrances of record as identified in those preliminary title commitments issued by First American Title dated August 13, 2013 under guarantee numbers 2137881, 2137882, and 2144874.

1.3 Responsibilities of Grantee for Premises.

1.3.1 Grantee shall be responsible for all maintenance and repair associated with Facility #6 in the Premises.

1.3.2 Grantee shall be responsible for maintaining the storm water drainage system, including Facility #5 and Facility #6, so as to avoid damage to Port property and migration of Hazardous Substances, if any, from Port property.

1.3.3 Grantee shall be responsible for ensuring that activities within the Premises comply with all laws, regulations, orders, covenants and restrictions. Grantee shall regulate to ensure that any activity in the Premises is compatible with not only Airport uses but also the use and safety of the Approach Transition Zone and Runway Protection Zone (as defined in Section 4 below). Grantee shall be responsible for proper management of any waste or other materials deposited on the Premises by Grantee, Grantee's agents, officers, employees, invitees or members of the public.

1.3.4 Grantee shall restrict the height of structures, objects of natural growth and other obstructions on the Premises to an elevation of not more than 416 feet Datum NAVD 88.

1.3.5 Grantee shall ensure the use of the Premises does not interfere with landing or taking off of aircraft at the Seattle Tacoma International Airport (the "Airport"), or otherwise constitute an "airport hazard." Any uses that create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff or maneuvering of aircraft intending to use the airport shall be deemed an airport hazard.

1.4 Term of Easement. The term of the Easement shall be perpetual, unless sooner abandoned under provisions of this Easement.

1.5 Storm Water Facility Descriptions.

1.5.1 Facility #5. This facility is a City of Burien-owned facility, located on City owned property on the north side of S. 144<sup>th</sup> Way. Once constructed, it will be located on **King County Parcel Numbers 202304-9509, 202304-9510, 202304-9511, and 202304-9006.** It will collect, treat, and manage storm water runoff from the surrounding area, and is designed to infiltrate up through the 50-year storm event. Any water received beyond the infiltration capacity of this facility will be bypassed via underground conveyance beneath S. 144<sup>th</sup> Way to Facility #6.

1.5.2 Facility #6. This facility shall act as an emergency overflow location for Facility #5. Once constructed, it will be located on **King County Parcel Numbers 553090-0010, 553090-0020, 553090-0030, 553090-0040, 553090-0050, 553090-0060, 553090-TRCT A and 553090-TRCT C.** It will receive water from Facility #5 during severe storm events when in bypass mode. It will then contain and store the water and attenuate the release rates directly into Miller Creek through surface discharge and infiltration. It shall be a vegetated depression, open to the surface, and shall only hold water for short time periods, and very infrequently.

1.6 Grantee's Representations and Warranties. Grantee represents, warrants and agrees that in the exercise of its easement rights, Grantee will not in any manner interfere with or interrupt the use or operation of the Airport or Airport facilities and that Grantee's easement rights will be subordinated to Airport use and development.

Section 2 Indemnification.

2.1 At Grantee's sole expense, Grantee shall indemnify, hold harmless, and defend Grantor from and against any and all claims, lawsuits, damages, liabilities, fines, expenses, fees and costs of any kind, arising from Grantee's intentional misconduct, negligence, or breach of the representations or warranties contained herein or default in the performance of Grantee's responsibilities under the provisions of this Easement. As used in this Section 2.1, the term "Grantee" shall include employees, agents, contractors, and persons entering the Premises under the express or implied invitation of Grantee.

2.2 Upon written notice from Grantor, Grantee agrees to assume the defense of any lawsuit or other proceeding brought against Grantor by any entity, relating to any matter covered by this Easement for which Grantee has an obligation to assume liability for and/or save and hold harmless Grantor. Grantee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

Section 3      Environmental Liability Allocation and Potential Costs of Handling Hazardous Substances associated with the Project.

- 3.1      Definition of Hazardous Substances. “Hazardous Substance” shall mean and refer to any hazardous or toxic substance, material or waste, including, but not limited to, (i) those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. 172.101), (ii) those substances, materials, and wastes listed by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302 and amendments thereto), (iii) those substances, materials and wastes listed by the Washington State Department of Ecology as hazardous substances (Washington Administrative Code 173-303 and 173-340), (iv) petroleum products and their derivatives, and (v) such other substances, materials and wastes as are or become regulated or subject to authority by any jurisdiction under any environmental laws.
- 3.2      Indemnity for Pre-Existing Hazardous Substances.
- 3.2.1      Grantee shall have no obligation to indemnify or defend Grantor, Grantor’s agents, elected officials, officers or employees, from and against any and all liability, loss, damage, expense, actions and claims arising from or related to the pre-existence of any Hazardous Substances, if any, in, under, or on property owned by Grantor.
- 3.2.2      Grantee shall indemnify or defend Grantor, Grantor’s agents, elected officials, officers or employees, from and against any and all liability, loss, damage, expense, actions and claims arising from or related to the migration of Hazardous Substances regardless of whether they are pre-existing or released by Grantee, if the activities of Grantee, Grantee’s agents, officers, employees, invitees, or members of the public in the Premises cause such migration.
- 3.2.3      Grantee shall indemnify or defend Grantor, Grantor’s agents, elected officials, officers or employees, from and against any and all liability, loss, damage, expense, actions and claims arising from or related to the actions or omissions of Grantee, or Grantee’s breach of its obligations in this Easement, that exacerbate contamination or increase the level of any pre-existing Hazardous Substances to actionable levels.
- 3.3      Waiver and Release. Grantee waives and releases Grantor from any and all liability, loss, damage, expense, actions and claims arising from or related to the pre-existence of any Hazardous Substances, if any, in, under, or on property owned by Grantor or any other condition of the Premises.
- 3.4      Materials Management During Construction. Grantee shall be responsible for conducting and paying for all testing, profiling and proper disposal of any materials generated during construction of the Project, including stormwater, construction debris,

contaminated soils, or any other materials, that Grantee determines must be removed from the Easement area and the construction site. Grantee shall provide Grantor with copies of all disposal records documenting the management of such materials.

Section 4     Legal Compliance.

4.1     Compliance. Grantee shall observe and comply with any and all laws, including Environmental Laws (as defined below), statutes, regulations, ordinances, orders, covenants, restrictions, and or decisions of any court of competent jurisdiction relating to the use of the Premises. Without waiving Grantor's right to enforce the generality of the foregoing, Grantee shall strictly comply with Federal Aviation Administration ("FAA") regulations related to ensuring that any activity in the Premises is compatible with not only Airport uses but also the use and safety of the Approach Transition Zone and Runway Protection Zone as defined in FAA regulations.

4.2     Definition. "Environmental Laws" shall mean and include any and all local, state or federal laws, rules, orders or regulations in effect during the term of this Easement Agreement, or any part of the term hereof, pertaining to environmental regulation, or the use, processing, storage, housing, disposal, generation or transportation of Hazardous Substances, as defined above. Environmental Laws include, but are not limited to, the following federal statutes, amendments thereto, and any enactments by state or local jurisdictions which address similar subjects: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation Recovery Act, the Hazardous and Solid Waste Amendments 1984, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Water Pollution Control Act, the Federal Clean Air Act, the Federal Clean Water Act, the National Environmental Policy Act, the Hazardous Materials Transportation Act, spill prevention and control legislation, and any regulations promulgated with respect to any such statutes.

Section 5     Insurance. Grantee shall provide the following insurance coverage which it shall obtain from commercial insurance carriers and this coverage shall be maintained throughout the term of the Easement.

5.1     Required Coverage.

5.1.1     Commercial General Liability insurance on ISO Form CG 00 01 10 01 (or an equivalent policy form) 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. Grantee's insurance shall be primary and non-contributory with respect to any insurance the Port carries and apply separately to each insured. The Port shall be named as an additional insured on this policy.

- 5.1.2 Automobile Liability Insurance on a combined single limit basis for bodily injury and property damage using with a limit of not less than \$1,000,000 per occurrence.
- 5.1.3 Pollution liability coverage with the Port named as an additional insured on the policy, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The policy coverage shall extend to all sudden and accidental incidents, claims, damages, and losses, including defense costs that are caused by pollution incidents that arise from the operations of the Grantee.
- 5.2 Insurance Certificates. Grantee shall submit to the Port a Certificate of Insurance which shows that it has obtained the required coverage(s) and a copy of the additional insured endorsement for the commercial general liability insurance policy and the pollution liability policy. The stated insurance limits shall not be construed as to relieve the Grantee from liability in excess of the limits. All deductibles or self-insurance retentions are the responsibility of Grantee.
- 5.3 Self Insurance. Grantee shall have the option of providing a program of self-insurance in lieu of commercial insurance. "Self-Insurance" shall mean that Grantee is acting as though it were the insurance company providing the required insurance. Grantee will have to provide evidence to the Port that Grantee's self-insurance program demonstrates a financial worth of sufficient capacity to finance claims, losses, and defense obligations that would otherwise be covered by the commercial insurance specified above. If the Port does not accept in whole or in part, Grantee's self-insurance program, Grantee shall provide commercial insurance as required by this Section.

Section 6. Grantor's Use of the Premises.

- 6.1 Limited Use by Grantor. Grantor, its successors and assigns, may use the surface of the Premises for access by persons and vehicles, for storage of goods, materials and equipment and for temporary parking of vehicles -- as long as it is consistent with the dedication of the Premises to the Easement Purpose as described in Section 1.1 and as long as it is not inconsistent with the exclusive rights herein granted and is subject to the conditions of this Agreement.
- 6.2 Specifically Prohibited Use by Grantor. Without waiver of the generality of the foregoing restriction or the exclusive nature of the easement rights granted to Grantee, the Grantor is specifically prohibited from erecting buildings or structures over, under, or across the Premises, planting large trees or installing utilities on, under, or above the Premises.
- 6.3 Grantor's reservation of rights.
  - 6.3.1 Grantor reserves unto itself, its successors and assigns, for the use and benefit of the public the right of flight for the passage of aircraft in and through the

airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from, or operating on the Airport.

This reservation of right is for the free and unobstructed use and passage of all types of aircraft in and through the airspace over or in the vicinity of the Premises, with such use and passage to be unlimited as to frequency, type of aircraft, and proximity. Grantee further waives all damages and claims for damages caused or alleged to be caused by or incidental to such activities.

As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, and shall include, but is not limited to, jet aircraft, propeller-driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all other types of aircraft or vehicles now in existence or hereafter developed for the purpose of transporting persons or property through the air.

- 6.3.2 Grantor reserves unto itself, its successors and assigns, the continuing right to prevent the erection or growth upon the Premise of any building, structure, tree, or other object that extends into the airspace above said Premises. The Grantor reserves a right of ingress to, egress from and passage over the Premises to remove the offending structure or object, and to cut the offending growth, all at the expense of the Grantee, in the event the aforesaid covenant is breached.
- 6.3.3 Grantor reserves the right to cause in all airspace above or in the vicinity of the surface of the Premises such noise, vibrations, fume, deposits of dust or other particulate matter, fuel particles (which are incidental to the normal operation of said aircraft), fear, interference with sleep and communications and any and all other effects that may be alleged to be incident to or caused by the operation of aircraft over or in the vicinity of the Premises or in landing at or taking off from or operating at or on the Airport.
- 6.3.4 Grantor reserves the right, with five (5) calendar days' advance notice to Grantee, to inspect NERA Storm Water Facility #6.
- 6.3.5 Grantor reserve the right to require modifications to NERA Storm Water Facility #6 in the event that the facility does not perform in compliance with FAA regulations and in accordance with the objectives for design as well as criteria for operations specified in the Master Drainage Plan.
- 6.3.6 Grantor reserves the right to require changes to maintenance practices to NERA Storm Water Facility #6 in the event that the facility does not perform in compliance with FAA regulations and in accordance with the objectives for design as well as criteria for operations specified in the Master Drainage Plan.



6.4 Grantee's waiver and release relating to Grantor's reservation of rights. Grantee does hereby fully waive, remise, and release any right or cause of action which they may now have or which they may have in the future against Grantor, its successor and assigns, due to such noise vibrations, fumes, dust, fuel particles and all other effects that may be caused or may have been caused by the operation of aircraft landing at, or taking off from, or operating at or on the Airport.

Section 7. Construction Standard of Care. Grantee shall secure all necessary permits and authorizations necessary to construct and operate facilities. Grantee shall perform all construction activities associated with its completion of the Project in compliance with all federal, state, and local laws, including Environmental Laws and with the terms of this Easement Agreement. Grantee shall exercise reasonable care in the performance of all its activities and shall use industry accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

Section 8. Ownership of Project Improvements. Unless otherwise provided in this Agreement or in other approvals or agreements, Grantee shall own the Project improvements made within the Easement area, including, without limitation, improvements constructed by either party at the cost and expense of Grantee. Nothing in this Agreement, however, shall be construed as granting to Grantee any interest or right in the Easement or the improvements within the Easement other than the rights expressly provided herein.

Section 9. Operations. Grantee shall operate, maintain, and repair the Project located within the Easement in compliance with all federal, state, and local laws and in a manner consistent with industry standards. Grantee shall exercise reasonable care in the performance of all its activities within the Easement and shall use industry accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

Section 10. Liens and Encumbrances. Grantee shall, at its sole cost, keep the Easement free and clear of any liens or other encumbrances arising out of Grantee's activities under this Easement.

Section 11. Transfer of Interests. Grantee shall not assign or transfer this Easement, or any interest therein to any entity other than a successor agency that would operate and maintain the Project, without the express written consent of Grantor. Such consent shall not be unreasonably withheld.

Section 12. Binding Effect. This Easement shall inure to the benefit of Grantee, its successors and/or assigns and shall be binding upon the Easement and Grantor, and their respective heirs, successors and/or assigns.

Section 13. Authority to Execute Easement. Grantor covenants that Grantor is the lawful owner of the Premises and has a good and lawful right to execute this Easement.

Section 14. Termination and Reversion Upon Abandonment. Either party may terminate this Easement upon thirty (30) days written notice to the other in the event that Grantee or its successor agency permanently ceases operation or maintenance of the Premises in accordance with Grantee's responsibilities in Section 1.3, or in the event that Grantee or its successor agency does not construct some portion of the Project within the Easement area. In the event that the Easement terminates, all of the Grantee's rights to the Easement shall cease and all rights hereunder shall revert to Grantor, except that the continuing obligations contained in Section 3 shall survive termination.

Section 15. Notices. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Grantee:

City of Burien  
400 SW 152<sup>nd</sup> Street, Suite 300  
Burien, WA 98166  
Attention: Public Works Director  
Copy to: \_\_\_\_\_

If to Grantor:

Port of Seattle  
P.O. Box 1209  
Seattle, WA 98111  
Attention: \_\_\_\_\_  
Copy to: General Counsel

Section 16. Nondiscrimination.

16.1 Grantee, for itself, its heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this easement, for a purpose for which a United States Department of Transportation/Federal Aviation Administration program or activity is extended or for another purpose involving the provision of similar services or benefits, Grantee shall maintain and operate such facilities and services in compliance with all requirements imposed by the "Acts and Regulations" (as may be amended) such that no person on the grounds of race, color or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities. The "Acts and Regulations" referenced in this Section mean Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the

secretary, part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations and Acts may be amended.

- 16.2 Grantee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (ii) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or otherwise be subjected to discrimination, and (iii) Grantee shall use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- 16.3 Grantee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates Grantee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates Grantee or any transferee for the longer of the following periods: (i) the period during which the property is used for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (ii) the period during which the Port or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.
- 16.4 Grantee will, at the timely request of the Port, (a) provide access to records, facilities and staff as necessary to comply with DOT/FAA compliance reviews and/or complaint investigations conducted by the DOT/FAA; and (b) provide information needed for preparation of necessary reports or to meet evaluation requirements of the DOT/FAA.
- 16.5 Grantee hereby assures that it will include the above clauses in any subcontract(s) approved by the Port and cause subcontractor(s) to similarly include clauses in further subcontracts.

Section 17 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit C** ("**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The

Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located.

Section 18     Miscellaneous.

18.1     Washington Law. All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive laws of the State of Washington without regard to conflicts of law provisions.

18.2     Venue. To the fullest extent permitted by law, any dispute arising under or in connection with this Easement Agreement or related to any subject matter which is the subject of this Easement Agreement shall be subject to the sole and exclusive jurisdiction of King County Superior Court. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive. Each party hereto hereby irrevocably consents to the jurisdiction of King County Superior Court in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

18.3     Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

18.4     Severability. If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

18.5     Entire Understanding. This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein; provided, however, nothing herein is intended to terminate any surviving obligation of Grantor or Grantee of their respective obligations to defend or hold each other harmless in any prior written agreement between the parties involving the Premises.

18.6     Time is of the Essence. Time is of the essence for the performance of this Easement Agreement.

[Signature page follows]

Witness the execution of this Easement Agreement as of the date first set forth above.

**Grantor:**

**Port of Seattle, a Washington municipal corporation**

By: \_\_\_\_\_

Name:

Title:

**Grantee:**

**City of Burien, a Washington municipal corporation**

By: \_\_\_\_\_

Name:

Title:

[Acknowledgment page follows]

STATE OF WASHINGTON )  
 ) §  
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 signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Notary Public in and for the State of Washington

Notary (print name) \_\_\_\_\_

Residing at \_\_\_\_\_

My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) §  
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 signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Notary Public in and for the State of Washington

Notary (print name) \_\_\_\_\_

Residing at \_\_\_\_\_

My appointment expires: \_\_\_\_\_

## EXHIBIT A

### NERA STORMWATER FACILITY #6 EASEMENT LEGAL DESCRIPTIONS

#### Parcel No. 553090-TRCT C

That portion of Tract C, Miller Court, according to the plat thereof recorded in Volume 192 of Plats, Page(s) 88 and 89, in King County, Washington; lying east and north of the following described line;

Commencing at the Southeast corner of said Tract C, thence along the south line N.88°02'01"W., 39.25 feet to the TRUE POINT OF BEGINNING;  
Thence leaving the south line of said parcel along a non-tangent 47.00 foot radius curve to the left whose radius bears S.49°38'40"W., through a central angle of 14°09'33", a distance of 11.61 feet;  
thence N.54°30'52"W., 11.01 feet to the point of curve right of a 32.00 foot radius curve;  
thence along the arc of said curve right through a central angle of 19°40'15", a distance of 10.99 feet, more or less, to the west line of said Tract C and the Point of Termination of herein described line.

Containing 5,418 square feet, more or less.

#### Parcel No. 553090-TRCT A

That portion of Tract A, Miller Court, according to the plat thereof recorded in Volume 192 of Plats, Page(s) 88 and 89, in King County, Washington; lying to the west of the following described line;

Commencing at the Southeast corner of said Tract A, thence along the south line N.88°02'01"W., 14.69 feet to the TRUE POINT OF BEGINNING;  
Thence leaving the south line of said parcel along a non-tangent 57.00 foot radius curve to the right whose radius bears N.46°58'31"E., through a central angle of 24°06'17", a distance of 23.98 feet, more or less, to the north line of said Tract A and the Point of Termination of herein described line.

Containing 2,746 square feet, more or less.

#### Parcel No. 553090-0060

All of Lot 6 of Plat of Miller Court, according to plat recorded in Volume 192 of Plats, Page(s) 88 and 89, in King County, Washington;

Except the following portion of said lot;

Beginning at the Southeast corner of said Lot 6, thence along east line N.01°57'59"E., 1.15 feet to the a non-tangent 32.00 foot radius curve to the right whose radius bears N.55°09'23"E., through a central angle of 66°49'43", a distance of 37.32 feet;  
Thence N.31°59'06"E., 9.01 feet, more or less, to the north line of said Lot 6;  
Thence along said north line N.70°12'36"W., 25.58 feet;  
Thence S.31°59'06"W., 3.61 feet to the point of curve left of a 57.00 foot curve;  
Thence along the arc of said curve left through a central angle of 50°54'19", a distance of 50.64 feet, more or less, to the south line of said Lot 6;  
Thence along said south line S.88°02'01"W., 27.63 feet to the Point of Beginning.

Containing 5,795 square feet, more or less.

### **Parcel No. 553090-0030**

All of Lot 3 of Plat of Miller Court, according to plat recorded in Volume 192 of Plats, Page(s) 88 and 89, in King County, Washington;

Except for the following portion of said Lot 3.

Commencing at the Southeast corner of said Lot 3, thence along south line of lot N.70°12'36"W., 0.75 feet to the TRUE POINT OF BEGINNING;  
Thence continuing along said south line N.70°12'36"W., 25.58 feet;  
Thence leaving south line N.31°59'06"E., 38.60 feet to the northeast line of said Lot 6;  
Thence along said northeast line S.43°38'38"E., 25.81 feet;  
Thence leaving said northeast line S.31°59'06"W., 26.79 feet to the TRUE POINT OF BEGINNING.

Containing 7,259 square feet, more or less.

### **Parcel No. 553090-0020**

All Lot 2 of Plat of Miller Court, according to plat recorded in Volume 192 of Plats at Page(s) 88 and 89, in King County, Washington;

Except for the following portion of said Lot 2.

Commencing at the Southwest corner of said Lot 2, thence along the southwest line N.43°38'38"W., 3.28 feet to the TRUE POINT OF BEGINNING;  
Thence continuing along the southwest line N.43°38'38"W., 25.81 feet;  
Thence leaving said line N.31°59'06"E., 33.83 feet to the point of curve left of a 35.00 foot radius curve;  
Thence along the arc of said curve left through a central angle of 51°52'14", a distance of 31.69 feet;  
Thence N.19°53'07"W., 5.83 feet to the point of curve right of a 145.00 foot radius curve;  
Thence along the arc of said curve right through a central angle of 20°56'33", a distance of 53.00 feet, more or less, to the east line of said Lot 2;



Thence along east line S.13°40'56"E., 108.80 feet;  
Thence leaving east line of lot S.31°59'06"W., 34.87 feet to the TRUE POINT OF BEGINNING.

Containing 7,451 square feet, more or less.

**Parcel No. 553090-0010**

All of Lot 1 of Plat of Miller Court, according to plat recorded in Volume 192 of Plats, Page(s) 88 and 89, in King County, Washington;

Except for the following portion of said Lot 1.

Commencing at the Southwest corner of said Lot 1, thence along the west line N.13°40'56"W., 23.02 feet to the TRUE POINT OF BEGINNING;  
Thence N.31°59'06"E., 5.37 feet to the point of curve left of a 60.00 foot radius curve;  
Thence along the arc of said curve left through a central angle of 51°52'14", a distance of 54.32 feet;  
Thence N.19°53'07"W., 5.83 feet to the point of curve right of a 120.00 foot radius curve;  
Thence along the arc of said curve right through a central angle of 31°16'07", a distance of 65.49 feet;  
Thence N.11°22'59"E., 20.90 feet to the point of curve left of a 40.00 foot radius curve;  
Thence along the arc of said curve left through a central angle of 55°31'33", a distance of 38.76 feet, more or less, to the east margin of South 144<sup>th</sup> Way;  
Thence southwesterly along said margin being on a concave 316.50 foot curve, whose radius bears N.59°40'11"W., along said arc through a central angle of 4°53'23", a distance of 27.01 feet;  
Thence leaving said margin along a non-tangent 15.00 foot radius curve to the right whose radius bears S.69°54'11"W.;;  
Thence along the arc of said curve right through a central angle of 31°28'48", a distance of 8.24 feet;  
Thence S.11°22'59"W., 20.90 feet to the point of curve left of a 145.00 foot radius curve;  
Thence along the arc of said curve left through a central angle of 10°19'34", a distance of 26.13 feet, more or less, to the west line of said Lot 1;  
Thence along said west line S.13°40'56"E., 108.80 feet to the TRUE POINT OF BEGINNING.

Containing 5,554 square feet, more or less.

**Parcel No. 553090-0040**

All of Lot 4 of plat of Miller Court, according to the plat thereof recorded in Volume 192 of Plats, Page(s) 88 and 89, in King County, Washington;

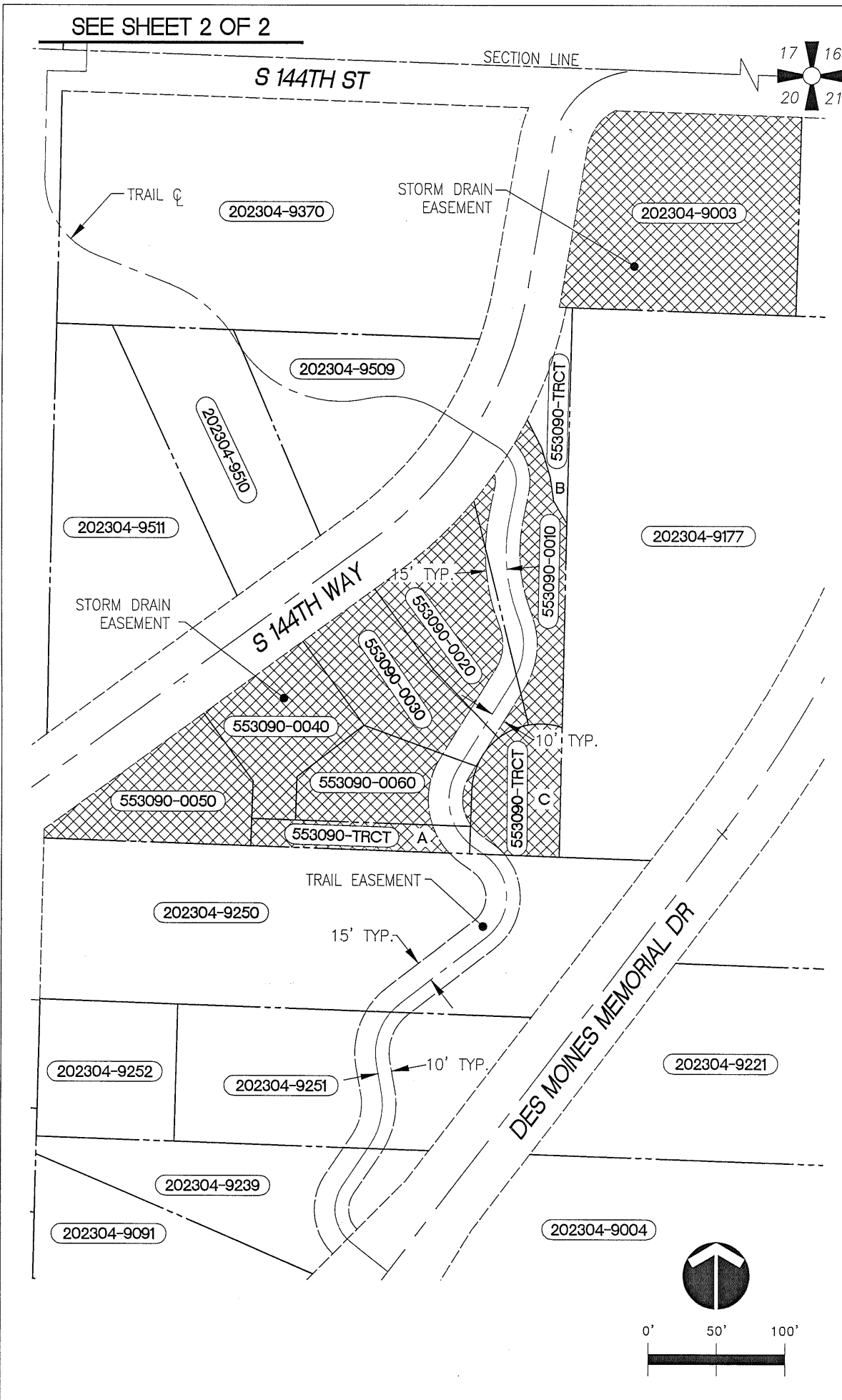
Containing 7,559 square feet, more or less.

**Parcel No. 553090-0050**

All of Lot 5 of plat of Miller Court, according to the plat thereof recorded in Volume 192 of Plats, Page(s) 88 and 89, in King County, Washington;

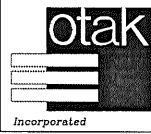
Containing 8,399 square feet, more or less.

# EXHIBIT A (CONT'D)



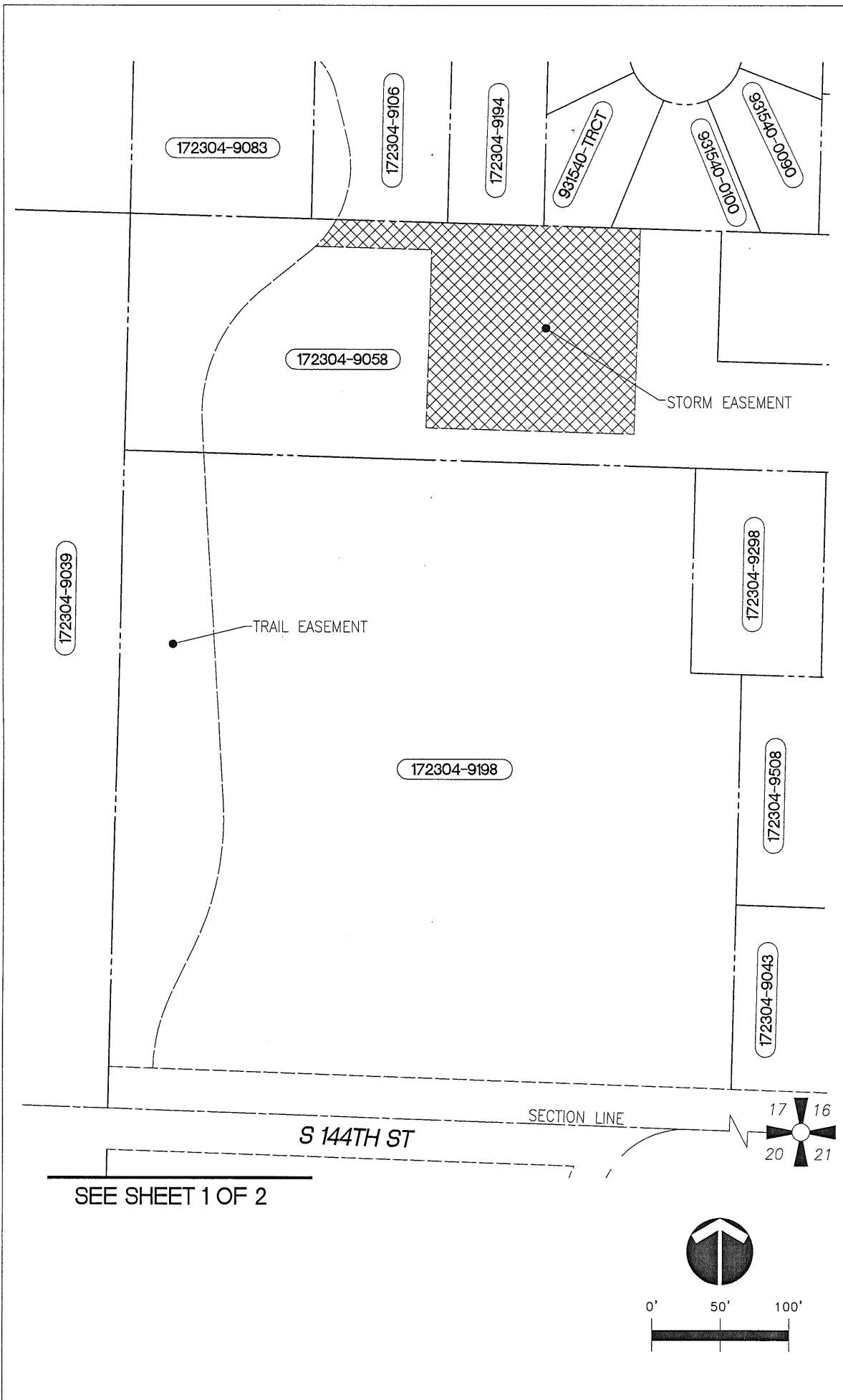
WCL  
 Designed \_\_\_\_\_  
 GSO  
 Drawn \_\_\_\_\_  
 Checked By \_\_\_\_\_ Date \_\_\_\_\_

**BURIEN NERA**  
 PORT OF SEATTLE PROPERTIES  
 A PORTION OF S. 20, TWP. 23 N.,  
 R. 4 E., W.M.


 10230 NE Points Drive  
 Suite 400  
 Kirkland, Washington 98033  
 Phone: (425) 822-4446  
 FAX: (425) 827-9577

31235B  
 Project No. \_\_\_\_\_  
 File No. \_\_\_\_\_  
 1 OF 2  
 Sheet No. \_\_\_\_\_

# EXHIBIT A (CONT'D)



SEE SHEET 1 OF 2

WCL  
 Designed \_\_\_\_\_  
 GSO  
 Drawn \_\_\_\_\_  
 Checked By \_\_\_\_\_ Date \_\_\_\_\_

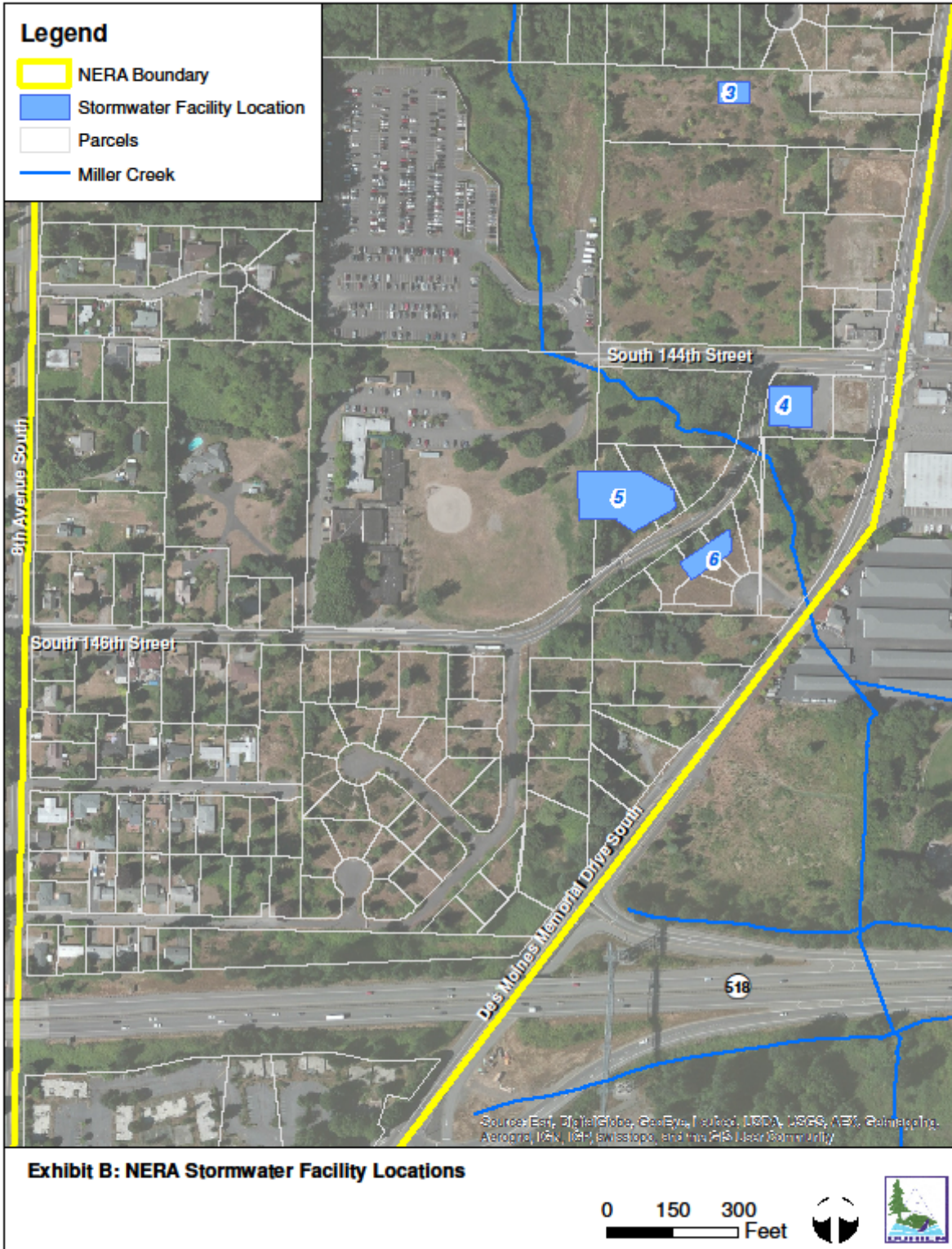
**BURIEN NERA**  
 PORT OF SEATTLE PROPERTIES  
 A PORTION OF S. 17, TWP. 23 N.,  
 R. 4 E., W.M.

**otak**  
 10230 NE Points Drive  
 Suite 400  
 Kirkland, Washington 98033  
 Phone: (425) 822-4446  
 FAX: (425) 827-9577

31235B  
 Project No. \_\_\_\_\_  
 File No. \_\_\_\_\_  
 2 OF 2  
 Sheet No. \_\_\_\_\_

# EXHIBIT B

## NERA STORMWATER FACILITY LOCATIONS



# EXHIBIT 6

\_\_\_\_\_, 2014

City of Burien  
400 152<sup>nd</sup> Street, Suite 300  
Burien, WA 98166  
Attn: Maiya Andrews, Public Works Director

**Re: License for Temporary Use – Construction – Regional Stormwater System  
and Shared Use Path for NERA**

Dear Ms. Andrews:

This letter will confirm the terms under which the Port of Seattle (“Port”) will grant to the City of Burien (“Licensee”), a non-exclusive temporary use for construction license (“the License”). The License shall be for the temporary use and/or occupancy of all or a portion of King County Parcel Numbers 931540-0100, 172304-9198, 172304-9058, 172304-9106, 172304-9083, 172304-9220, 172304-9269, 553090-TRCT A, 553090-TRCT C, 553090-0010, 553090-0020, 553090-0030, 553090-0040, 553090-0050, 553090-0060, 202304-9003, 202304-9239, 202304-9250, and 202304-9251 located in the City’s Northeast Redevelopment Area (the “NERA”) as depicted on **Exhibit 1** attached and incorporated by reference hereto (“the Premises”) for the following use of said Premises:

Construction-related activities including accessing construction work areas, grading required to achieve final elevations, placement of erosion control facilities, invasive species removal and re-vegetation as part of the vegetation management plan, and to provide additional area adjacent to the NERA shared use path and stormwater facilities for operating equipment during construction (“the Permitted Use”).

The following terms apply to this License:

1. Agreement is a License. The relationship between the Port and Licensee is not one of landlord and tenant, but rather one of licensor and licensee. The incurrence of any costs with respect to the Premises or Permitted Use by Licensee shall in no way operate to confer upon Licensee any other interest, status, or estate of any kind other than licensee nor obligate the Port to enter into any agreement conferring such other interest. Licensee shall have no recourse against the Port for any breach hereunder.
2. Term. This License shall commence on \_\_\_\_\_, 2014, and terminate on \_\_\_\_\_, 2014. It shall not be subject to extension or renewal without the express written consent of the Port.
3. Access Fee. On or before the commencement of the term set forth in paragraph 2, Licensee shall pay to the Port the sum of Eight Thousand Seven Hundred Twenty-Four Dollars (\$8,724.00) for the use and/or occupancy of the Premises as set forth herein.

Licensee is responsible for payment of any tax levied on, or measured by, the access fee paid by Licensee. Per Washington State Law (RCW 82.29A) leasehold excise tax is applicable on all terms thirty (30) days or more. In compliance with said RCW 82.29A the above stated amount does not include leasehold excise tax.

4. Environmental. Licensee agrees to comply with all applicable rules and regulations of the Port pertaining to the Premises in existence or hereafter promulgated for water quality and pollution prevention, for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public. Licensee further agrees to comply with all applicable federal, state, and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters.
5. Licensee Responsible for Safety and Property. Licensee specifically accepts the Premises in their present condition on an as-is, where-is basis. Licensee's activities within, on or about the Premises shall be at Licensee's sole risk, and the Port and the City of Burien shall not be responsible for the safety of Licensee, its employees, agents, licensees or invitees, or for the condition or loss of any items of personal property brought onto the Premises by any of them.
6. Compliance with Laws, Rules, and Regulations. Licensee shall, at its sole cost and expense, use and/or occupy the Premises solely: (i) in the manner contemplated by this License, (ii) in an orderly manner so as to avoid unreasonably interfering with or interrupting the normal business operations and quiet enjoyment of the other occupants of the Premises or adjoining properties or premises, and (iii) in full compliance with all applicable governmental laws, rules, regulations, and codes, specifically including those related to the protection of the environment and those promulgated by the Port for the general safety and convenience of its customers and the public. Licensee also shall, at its sole cost and expense, obtain any and all permits, licenses, and approvals that may be required in order to make lawful the Licensee's activities on the Premises.
7. Indemnity. The Port, its employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Licensee or by other persons directly or indirectly employed by the Licensee, or any agents, contractors, subcontractors or invitees of Licensee, as a result of any condition (including existing or future defects in the Premises) or occurrence (including failure or interruption of utility service) whatsoever related in any way to the Premises, or for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Licensee or by others, including but not limited to persons directly or indirectly employed by the Licensee, or any agents, contractors, subcontractors or invitees of Licensee related in any way to Licensee's use and/or occupancy of the Premises. Licensee agrees to defend and to hold and save the Port harmless from all liability or expenses (including attorneys' fees, costs, and all expenses of litigation) in connection with either (i) any such items of actual or alleged injury or damage as described above, except when such injury or damage is caused by the sole negligence of the Port, or (ii) any breach of the terms of this License.

Licensee expressly agrees that its duty to defend and indemnify the Port includes negligent acts, which are concurrent, contributory, or both by the Port, resulting in said damage or injury. Licensee also agrees that the foregoing indemnity specifically covers actions brought by its own employees, and thus Licensee expressly waives its immunity under industrial insurance, Title 51 RCW, as necessary to effectuate this indemnity.

8. Insurance. Licensee at Licensee's expense shall procure and maintain a continuous program of commercial insurance, self-insurance, or a combination of commercial and self-insurance that is acceptable to the Port. Evidence of Licensee's insurance program shall be submitted and reviewed by the Port. If the program is found to be deficient in any capacity, the Port will require Licensee to correct the deficiencies. If Licensee uses self-insurance to meet any part of the required insurance obligation, the self-insurance must be equivalent in coverage and terms to the required coverage identified below. Any commercial insurance coverage that Licensee 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 commercial insurance or self-insurance the Licensee may carry. The required insurance to be provided is:
  - i. 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. The Port shall be named as an additional insured on this policy.
  - ii. 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).
9. Licensee Responsible for Damages. Licensee assumes full responsibility for all damages or losses incurred by the Port or others arising from Licensee's entry onto, occupancy of and/or use of the Premises, whether caused by Licensee, its employees, agent, licensees or invitees.
10. Termination of Agreement. Notwithstanding any specific term set forth in this License, the Port may terminate this License, in its sole discretion and for any reason whatsoever, effective upon delivery of written notice to Licensee at the address set forth above.
11. Applicable Law; Attorneys' Fees. This License shall be construed and enforced in accordance with the laws of the State of Washington. In the event either party requires the services of an attorney in connection with enforcing the terms of this License, the prevailing party shall be entitled to a reasonable sum for attorneys' fees, witness fees and other court costs and expenses, both at trial and on appeal.
12. Entire Agreement. This letter sets forth all covenants, promises, agreements, conditions and understandings between the Port and Licensee concerning the use of the Premises for the Permitted Use. No subsequent alteration, amendment, change or addition to this



Licensee shall be binding upon the Port or Licensee unless reduced to writing and signed by Licensee and the Port.

13. Restoration. At the termination of this License, Licensee shall restore the Premises and any other impacted property to the same or similar condition as it was immediately before Licensee entered the Premises. All equipment and material stored on the Premises pursuant to the License will be removed from the Premises at the termination of the term of the License.

If you have a program of self-insurance, please provide a statement describing the program and your solvency and ability to meet the obligations of the program. Otherwise, when communicating with your insurance agent regarding the processing and distribution of the above-specified proof of insurance, please note that a broker-generated Accord Form 25-S is acceptable, but it must be modified to strictly match the terms of the Agreement. Certificates that do not include the foregoing requirements specified in paragraph 8 above cannot be accepted by the Port.

Please countersign and return the enclosed duplicate original of this License along with any required access fee, any applicable security deposit, certificate of insurance, and additional insured endorsement or statement regarding your program of self-insurance by \_\_\_\_\_, 2014.

Sincerely,

Name:  
Title:

Enclosures  
1. Drawing of Premises

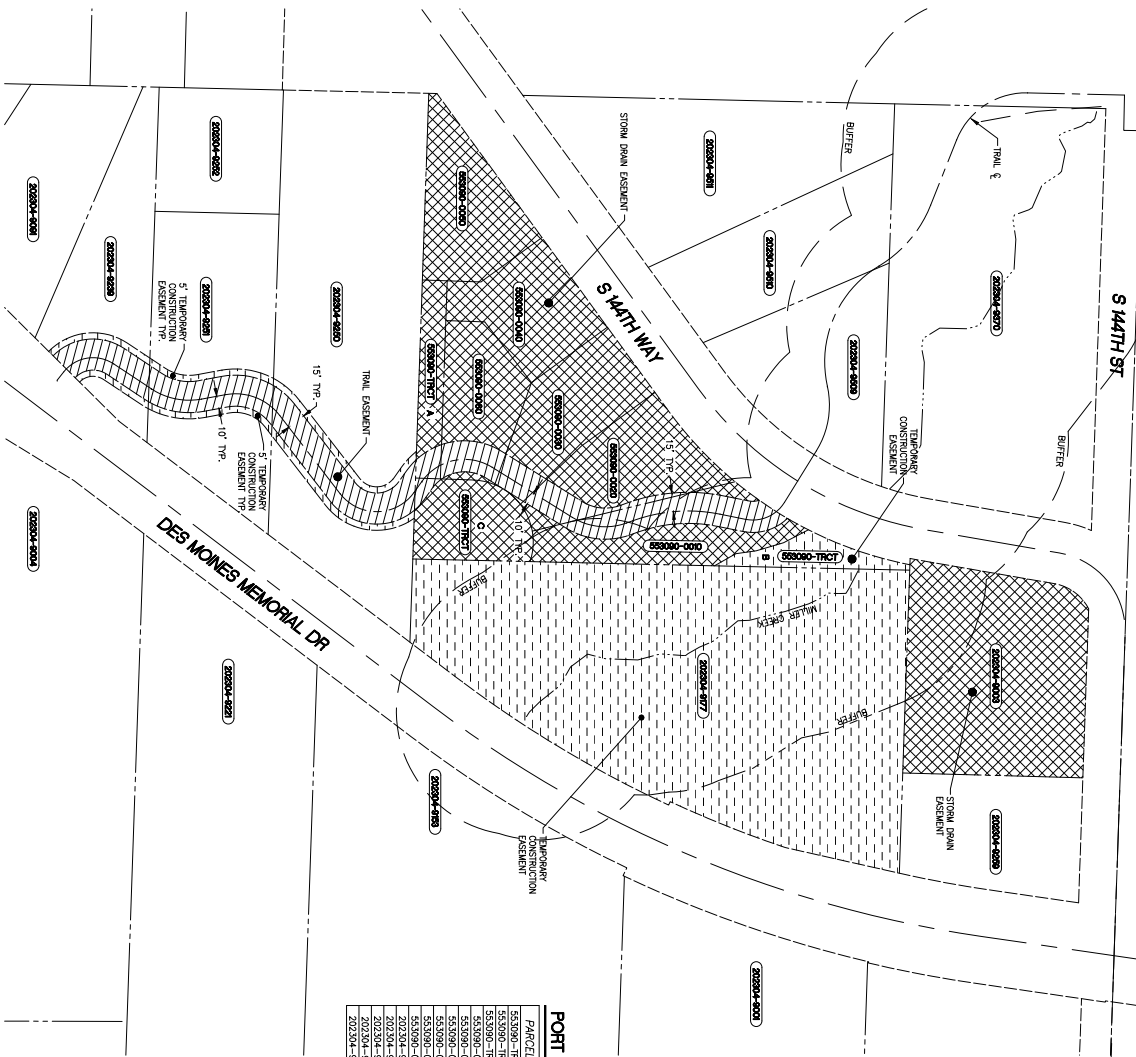
Agreed and accepted this \_\_\_ day of \_\_\_\_\_, 2014:

**City of Burien,**  
a Washington Municipal Corporation

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

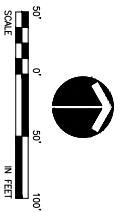
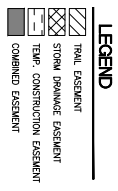
A PORTION OF SECTION 20, T23N, R04E, W.M.

# EXHIBIT A



PORT OF SEATTLE PARCEL AREAS

PARCEL #	PARCEL AREA	TRAIL ESMT.	STORM ESMT.	FACILITY #	COMBINED ESMT.	TOTAL PERM. ESMT.	TEMP. CONST. ESMT.
553090-1000	3,131 S.F.	444 S.F.	2,177 S.F.		3,181 S.F.		2,397 S.F.
553090-1001	2,397 S.F.	289 S.F.	5,418 S.F.		5,687 S.F.		
553090-1002	5,687 S.F.	3,677 S.F.	5,554 S.F.		9,231 S.F.		
553090-1003	9,231 S.F.	1,380 S.F.	7,551 S.F.		8,931 S.F.		
553090-1004	8,931 S.F.	817 S.F.	7,559 S.F.		7,559 S.F.		
553090-1005	7,559 S.F.	8,399 S.F.	8,399 S.F.		8,399 S.F.		
553090-1006	7,065 S.F.	1,270 S.F.	5,795 S.F.		7,065 S.F.		70,414 S.F.
202304-9251	14,798 S.F.	1,937 S.F.	23,374 S.F.	4	23,374 S.F.		774 S.F.
202304-9252	22,201 S.F.	2,625 S.F.			2,625 S.F.		1,660 S.F.
202304-9250	46,791 S.F.	4,001 S.F.			4,001 S.F.		1,592 S.F.



CAL BERTHOE, PLS. INC. 800-424-5555

**BURIEN NERA**  
 BURIEN, WASHINGTON KING COUNTY

PORT OF SEATTLE  
 EASEMENT EXHIBIT MAP

**OTAK**  
 10200 1st Pointe Dr. #102  
 Burien, WA 98148  
 Phone: (206) 822-4146  
 Fax: (206) 822-4146  
 Internet: info@otak.com  
 Project No. 312358

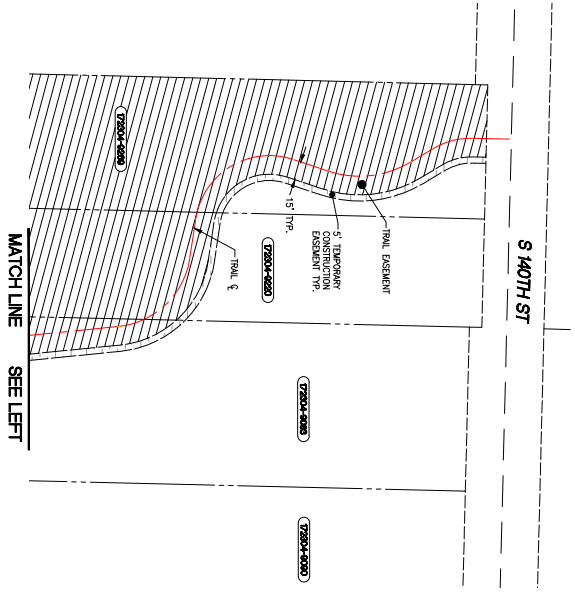
Sheet No. 1 of 2



NO.	DATE	BY	Checked	W.C.L.	W.C.L.	ADDED 5' TEMPORARY CONSTRUCTION EASEMENT

A PORTION OF SECTION 17, T23N, R04E, W.M.

# EXHIBIT A



PORT OF SEATTLE PARCEL AREAS

PARCEL #	PARCEL AREA	TRAIL ESMT.	STORM ESMT.	FACILITY #	COMBINED ESMT.	TOTAL PERM. ESMT.	TEMP. CONST. ESMT.
172304-9198	188,699 S.F.	11,428 S.F.		3,43,6	11,428 S.F.	134,146 S.F.	
172304-9068	96,582 S.F.	14,577 S.F.	24,173 S.F.		38,750 S.F.	1,923 S.F.	
931940-0100	6,596 S.F.			3		1,972 S.F.	
172304-9108	21,028 S.F.	2,443 S.F.		3	2,443 S.F.	18,292 S.F.	
172304-9194	44,177 S.F.		6,094 S.F.	3	6,094 S.F.	28,914 S.F.	
172304-9220	55,171 S.F.		35,482 S.F.	3	35,482 S.F.	14,661 S.F.	
172304-9268	63,194 S.F.		62,072 S.F.		62,072 S.F.	1,178 S.F.	

**LEGEND**

- TRAIL EASEMENT
- STORM DRAINAGE EASEMENT
- TEMP. CONSTRUCTION EASEMENT
- COMBINED EASEMENT

SCALE

IN FEET

**BURIEN NERA**  
 BURIEN, WASHINGTON  
 PORT OF SEATTLE  
 EASEMENT EXHIBIT MAP

KING COUNTY



NO.	DATE	BY	WCL	WCL	ADDED 5' TEMPORARY CONSTRUCTION EASEMENT REVISIONS
	07/30/13		WCL	Checked & Approved	

# EXHIBIT 7

## SHARED-USE PATH EASEMENT AGREEMENT

THIS **SHARED-USE PATH EASEMENT AGREEMENT** ("Easement") is entered into as of \_\_\_\_\_, 2013 ("Effective Date") by and between the **PORT OF SEATTLE**, a Washington municipal corporation, ("Grantor") and the **CITY OF BURIEN**, a Washington municipal corporation ("Grantee").

### RECITALS

- A. Grantor owns or controls certain real property situated in the City of Burien, King County, Washington, as legally described and depicted on **Exhibits A-1 and A-2** attached hereto, incorporated by reference and made a part hereof (the "Premises").
- B. Grantee has requested that Grantor grant to Grantee an **exclusive permanent easement** over the Premises for the Easement Purpose (as defined below).
- C. On \_\_\_\_\_, 2013, Grantor's Port of Seattle Commissioners authorized execution of an Interlocal Agreement dated \_\_\_\_\_, 2013 between the Port and the City of Burien, which among several items, provides for the City's construction and operation of a twenty-five (25)-foot wide shared use path in tandem with several storm water facilities in the City's Northeast Redevelopment Area (the "Project").
- D. Grantor has agreed to grant Grantee the requested easement for good and valuable consideration related to the terms and conditions set forth in this Easement Agreement as well as the benefits associated with accomplishment of the Project.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### AGREEMENT

#### Section 1 Granting of Easement.

- 1.1 Easement Purpose. The "Easement Purpose" shall include:
- (a) Access by Grantee parties, including via vehicles with equipment, supplies and labor necessary to perform maintenance of NERA Storm Water Facilities #3, #5, and #6 as identified on **Exhibit B** ("**NERA Stormwater Facility Locations**") attached hereto, incorporated by reference and made a part hereof;
  - (b) Maintenance and repair by Grantee, Grantee's employees, contractors, agents ("Grantee parties") of the Shared-Use Path and access by foot or vehicles necessary to maintain and repair it;
  - (c) Activities related to construction of the Shared-Use Path;

- (d) Access for vehicles used by police, firefighters, emergency medical personnel to address public health and safety issues or emergencies in the Premises and at the adjacent NERA Storm Water Facilities #3, #5, and #6;
- (e) Access by police and police vehicles for enforcement of laws, rules, regulations and restrictions applicable to the Premises; and
- (f) Travel and recreational use by the public, including walking, hiking, jogging, bicycling, or other human-powered modes of transport; provided that persons who have mobility impairments may use mobility-aid devices to provide an alternate local transportation connection between development and neighborhoods within and outside the NERA. Any recreational use is secondary and incidental to this easement's primary purpose, which is to provide access to the stormwater facilities to be built in the NERA, and to provide a local alternate transportation corridor ("Shared-Use Path Use").

1.2 Grant. Grantor does hereby grant unto Grantee a permanent, exclusive easement ("Easement") over, under, across and through the Premises for the Easement Purpose and for no other purpose provided that Section 14 shall apply in the event that Grantee abandons operation of the Easement area for the Shared-Use Path Use described in Section 1.1(a) or Grantee abandons operation of the storm water facilities referenced in Section 1.1(c). This Easement shall only include such rights in the Premises as shall be necessary for the activities contemplated by this Easement. This Easement is subject to all existing encumbrances of record as identified in those preliminary title commitments issued by First American Title dated August 13, 2013 under guarantee numbers 2137878, 2137879, 2137880, 2137881, 2137882, 2137883, 2137884, 2137885, 2137886, and 2144874.

1.3 Responsibilities of Grantee for Premises.

- 1.3.1 Grantee shall be responsible for all maintenance and repair associated with the Shared-Use Path in the Premises.
- 1.3.2 Grantee shall be responsible for maintaining public health and safety in the Premises.
- 1.3.3 Grantee shall be responsible for regulating and policing the Shared-Use Path to ensure that there is no public assembly, congregation or congestion of persons, bicycles or other vehicles in the Premises that conflict with applicable FAA regulations.
- 1.3.4 Grantee shall be responsible for ensuring that activities within the Premises comply with all laws, regulations, orders, covenants and restrictions. Grantee shall be responsible for proper management of any waste or other materials deposited in the Premises by Grantee, Grantee's agents, officers, employees, invitees or members of the public. Grantee shall regulate to ensure that any

activity in the Premises is compatible with not only Airport uses but also the use and safety of the Approach Transition Zone.

1.3.5 Grantee shall restrict the height of structures, objects of natural growth and other obstructions on the Premises to an elevation of not more than 416 feet Datum NAVD 88.

1.3.6 Grantee shall ensure the use of the Premises does not interfere with landing or taking off of aircraft at the Seattle Tacoma International Airport (the "Airport"), or otherwise constitute an "airport hazard." Any uses that create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff or maneuvering of aircraft intending to use the airport shall be deemed an airport hazard.

1.4 Term of Easement. The term of the Easement shall be perpetual, unless sooner abandoned under provisions of this Easement.

1.5 Grantee's Representations and Warranties.

1.5.1 Grantee represents and warrants that the bicycle and pedestrian use of the Shared-Use Path Easement will not convert the Premises into a park or recreational facility. Grantee acknowledges that in the event the Premises is deemed to be a public park or recreation area under 49 U.S. C. Section 303, also known as a Section 4(f) use, the ability to use the Premises for Airport-related purposes will be unacceptably compromised or curtailed. Grantee further warrants that any official references to the Premises by the Grantee, whether in speech or writing, will specify that it is an easement to connect to the Burien Loop (as defined and depicted in the Burien Pedestrian and Bicycle Facilities Plan), but the Premises itself is not a park or recreational facility.

1.5.2 Grantee represents and warrants that any recreational use of the Shared-Use Path Easement shall be secondary to its purpose to provide access to the stormwater facilities to be built in the NERA and to provide an alternate local transportation connection between neighborhoods within and outside the NERA.

1.5.3 Grantee represents, warrants and agrees that in the exercise of its easement rights, Grantee will not in any manner interfere with or interrupt the use or operation of the Airport or Airport facilities and that Grantee's easement rights will be subordinated to Airport use and development.

Section 2 Indemnification.

- 2.1 At Grantee's sole expense, Grantee shall indemnify, hold harmless, and defend Grantor from and against any and all claims, lawsuits, damages, liabilities, fines, expenses, fees and costs of any kind, arising from Grantee's intentional misconduct, negligence, or breach of the representations or warranties contained herein or default in the performance of Grantee's responsibilities under the provisions of this Easement. As used in this Section 2.1, the term "Grantee" shall include employees, agents, contractors, and persons entering the Premises under the express or implied invitation of Grantee.
- 2.2 Upon written notice from Grantor, Grantee agrees to assume the defense of any lawsuit or other proceeding brought against Grantor by any entity, relating to any matter covered by this Easement for which Grantee has an obligation to assume liability for and/or save and hold harmless Grantor. Grantee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

Section 3     Environmental Liability Allocation and Potential Costs of Handling Hazardous Substances associated with the Project.

- 3.1 Definition of Hazardous Substances. "Hazardous Substance" shall mean and refer to any hazardous or toxic substance, material or waste, including, but not limited to, (i) those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. 172.101), (ii) those substances, materials, and wastes listed by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302 and amendments thereto), (iii) those substances, materials and wastes listed by the Washington State Department of Ecology as hazardous substances (Washington Administrative Code 173-303 and 173-340), (iv) petroleum products and their derivatives, and (v) such other substances, materials and wastes as are or become regulated or subject to authority by any federal, state, or local jurisdiction under any environmental laws.
- 3.2 Indemnity for pre-existing hazardous substances.
  - 3.2.1 Grantee shall have no obligation to indemnify or defend Grantor, Grantor's agents, elected officials, officers or employees, from and against any and all liability, loss, damage, expense, actions and claims arising from or related to the pre-existence of any Hazardous Substances, if any, in, under, or on property owned by Grantor.
  - 3.2.2 Grantee shall indemnify or defend Grantor, Grantor's agents, elected officials, officers or employees, from and against any and all liability, loss, damage, expense, actions and claims arising from or related to the migration of Hazardous Substances regardless of whether they are pre-existing or released by Grantee, if the activities of Grantee, Grantee's agents, officers, employees, invitees, or members of the public in the Premises cause such migration.

- 3.2.3 Grantee shall indemnify or defend Grantor, Grantor's agents, elected officials, officers or employees, from and against any and all liability, loss, damage, expense, actions and claims arising from or related to the actions or omissions of Grantee, or Grantee's breach of its obligations in this Easement, that exacerbate contamination or increase the level of any pre-existing Hazardous Substances to actionable levels.
- 3.3 Waiver and Release. Grantee waives and releases Grantor from any and all liability, loss, damage, expense, actions and claims arising from or related to the pre-existence of any Hazardous Substances, if any, in, under, or on property owned by Grantor or any other condition of the Premises.
- 3.4 Materials Management During Construction. Grantee shall be responsible for conducting and paying for all testing, profiling and proper disposal of any materials generated during construction of the Project, including stormwater, construction debris, contaminated soils, or any other materials, that Grantee determines must be removed from the Easement area and the construction site. Grantee shall provide Grantor with copies of all disposal records documenting the management of such materials.

#### Section 4 Legal Compliance.

- 4.1 Compliance. Grantee shall observe and comply with any and all laws, including Environmental Laws (as defined below), statutes, regulations, ordinances, orders, covenants, restrictions, and or decisions of any court of competent jurisdiction relating to the use of the Premises. Without waiving Grantor's right to enforce the generality of the foregoing, Grantee shall strictly comply with Federal Aviation Administration ("FAA") regulations related to ensuring that any activity in the Premises is compatible with not only Airport uses but also the use and safety of the Approach Transition Zone and Runway Protection Zone as defined in FAA regulations.
- 4.2 Definition. "Environmental Laws" shall mean and include any and all local, state or federal laws, rules, orders or regulations in effect during the term of this Easement Agreement, or any part of the term hereof, pertaining to environmental regulation, or the use, processing, storage, housing, disposal, generation or transportation of Hazardous Substances, as defined above. Environmental Laws include, but are not limited to, the following federal statutes, amendments thereto, and any enactments by state or local jurisdictions which address similar subjects: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation Recovery Act, the Hazardous and Solid Waste Amendments 1984, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Water Pollution Control Act, the Federal Clean Air Act, the Federal Clean Water Act, the National Environmental Policy Act, the Hazardous Materials Transportation Act, spill prevention and control legislation, and any regulations promulgated with respect to any such statutes.



Section 5 Insurance. Grantee shall provide the following insurance coverage which it shall obtain from commercial insurance carriers and this coverage shall be maintained throughout the term of the Easement.

5.1 Required Coverage.

5.1.1 Commercial General Liability insurance on ISO Form CG 00 01 10 01 (or an equivalent policy form) 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. Grantee's insurance shall be primary and non-contributory with respect to any insurance the Port carries and apply separately to each insured. The Port shall be named as an additional insured on this policy.

5.1.2 Automobile Liability Insurance on a combined single limit basis for bodily injury and property damage using with a limit of not less than \$1,000,000 per occurrence.

5.1.3 Pollution liability coverage with the Port named as an additional insured on the policy, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The policy coverage shall extend to all sudden and accidental incidents, claims, damages, and losses, including defense costs that are caused by pollution incidents that arise from the operations of the Grantee.

5.2 Insurance Certificates. Grantee shall submit to the Port a Certificate of Insurance which shows that it has obtained the required coverage(s) and a copy of the additional insured endorsement for the commercial general liability insurance policy and the pollution liability policy. The stated insurance limits shall not be construed as to relieve the Grantee from liability in excess of the limits. All deductibles or self-insurance retentions are the responsibility of Grantee.

5.3 Self Insurance. Grantee shall have the option of providing a program of self-insurance in lieu of commercial insurance. "Self-Insurance" shall mean that Grantee is acting as though it were the insurance company providing the required insurance. Grantee will have to provide evidence to the Port that Grantee's self-insurance program demonstrates a financial worth of sufficient capacity to finance claims, losses, and defense obligations that would otherwise be covered by the commercial insurance specified above. If the Port does not accept in whole or in part, Grantee's self-insurance program, Grantee shall provide commercial insurance as required by this Section.

Section 6. Grantor's Use of the Premises. Grantor, its successors and assigns, may use the Premises only for uses specifically granted in the Easement Purpose, for as long as it does not interfere with the Easement Purpose as described in Section 1.1, and as long as it is not inconsistent with the rights herein granted and is subject to the conditions of this Agreement. .

6.1 Grantor's reservation of rights.

6.1.1 Grantor reserves unto itself, its successors and assigns, for the use and benefit of the public the right of flight for the passage of aircraft in and through the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from, or operating on the Airport.

This reservation of right is for the free and unobstructed use and passage of all types of aircraft in and through the airspace over or in the vicinity of the Premises, with such use and passage to be unlimited as to frequency, type of aircraft, and proximity. Grantee further waives all damages and claims for damages caused or alleged to be caused by or incidental to such activities.

As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, and shall include, but is not limited to, jet aircraft, propeller-driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters and all other types of aircraft or vehicles now in existence or hereafter developed for the purpose of transporting persons or property through the air.

6.1.2 Grantor reserves unto itself, its successors and assigns, the continuing right to prevent the erection or growth upon the Premise of any building, structure, tree, or other object that extends into the airspace above said Premises. The Grantor reserves a right of ingress to, egress from and passage over the Premises to remove the offending structure or object, and to cut the offending growth, all at the expense of the Grantee, in the event the aforesaid covenant is breached.

6.1.3 Grantor reserves the right to cause in all airspace above or in the vicinity of the surface of the Premises such noise, vibrations, fumes, deposits of dust or other particulate matter, fuel particles (which are incidental to the normal operation of said aircraft), fear, interference with sleep and communications and any and all other effects that may be alleged to be incident to or caused by the operation of aircraft over or in the vicinity of the Premises or in landing at or taking off from or operating at or on the Airport.

6.2 Grantee's waiver and release relating to Grantor's reservation of rights. Grantee does hereby fully waive, remise, and release any right or cause of action which they may now have or which they may have in the future against Grantor, its successor and assigns, due to such noise vibrations, fumes, dust, fuel particles and all other effects that may be caused or may have been caused by the operation of aircraft landing at, or taking off from, or operating at or on the Airport

Section 7. Construction Standard of Care. Grantee shall secure all necessary permits and authorizations necessary to construct and operate facilities. Grantee shall perform all construction activities associated with its completion of the Project in compliance with all federal, state, and local laws, including Environmental Laws and with the terms of this Easement Agreement. Grantee shall exercise reasonable care in the performance of all its activities and shall use industry accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

Section 8. Ownership of Project Improvements. Unless otherwise provided in this Agreement or in other approvals or agreements, Grantee shall own the Project improvements made within the Easement area, including, without limitation, improvements constructed by either party at the cost and expense of Grantee. Nothing in this Agreement, however, shall be construed as granting to Grantee any interest or right in the Easement or the improvements within the Easement other than the rights expressly provided herein.

Section 9. Operations. Grantee shall operate, maintain, and repair the Project located within the Easement in compliance with all federal, state, and local laws and in a manner consistent with industry standards. Grantee shall exercise reasonable care in the performance of all its activities within the Easement and shall use industry accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

Section 10. Liens and Encumbrances. Grantee shall, at its sole cost, keep the Easement free and clear of any liens or other encumbrances arising out of Grantee's activities under this Easement.

Section 11. Transfer of Interests. Grantee shall not assign or transfer this Easement, or any interest therein to any entity other than a successor agency that would operate and maintain the Project, without the express written consent of Grantor. Such consent shall not be unreasonably withheld.

Section 12. Binding Effect. This Easement shall inure to the benefit of Grantee, its successors and/or assigns and shall be binding upon the Easement and Grantor, and their respective heirs, successors and/or assigns.

Section 13. Authority to Execute Easement. Grantor covenants that Grantor is the lawful owner of the Premises and has a good and lawful right to execute this Easement.

Section 14. Termination and Reversion Upon Abandonment. Either party may terminate this Easement upon thirty (30) days written notice to the other in the event that Grantee or its successor agency permanently ceases operation or maintenance of the Premises in accordance with Grantee's responsibilities in Section 1.3, or in the event that Grantee or its successor agency does not construct some portion of the Project within the Easement area. In the event that the Easement terminates, all of the Grantee's rights to the Easement shall cease and all rights hereunder shall revert to Grantor, except that the continuing obligations contained in Section 3 shall survive termination.

Section 15. Notices. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Grantee:

City of Burien  
400 SW 152<sup>nd</sup> Street, Suite 300  
Burien, WA 98166  
Attention: Public Works Director  
Copy to: \_\_\_\_\_

If to Grantor:

Port of Seattle  
P.O. Box 1209  
Seattle, WA 98111  
Attention: \_\_\_\_\_  
Copy to: General Counsel

Section 16. Nondiscrimination.

- 16.1 Grantee, for itself, its heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this easement, for a purpose for which a United States Department of Transportation/Federal Aviation Administration program or activity is extended or for another purpose involving the provision of similar services or benefits, Grantee shall maintain and operate such facilities and services in compliance with all requirements imposed by the "Acts and Regulations" (as may be amended) such that no person on the grounds of race, color or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination I the use of said facilities. The "Acts and Regulations" referenced in this Section mean Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the secretary, part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations and Acts may be amended.
- 16.2 Grantee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said

facilities, (ii) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or otherwise be subjected to discrimination, and (iii) Grantee shall use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

- 16.3 Grantee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates Grantee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates Grantee or any transferee for the longer of the following periods: (i) the period during which the property is used for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (ii) the period during which the Port or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.
- 16.4 Grantee will, at the timely request of the Port, (a) provide access to records, facilities and staff as necessary to comply with DOT/FAA compliance reviews and/or complaint investigations conducted by the DOT/FAA; and (b) provide information needed for preparation of necessary reports or to meet evaluation requirements of the DOT/FAA.
- 16.5 Grantee hereby assures that it will include the above clauses in any subcontract(s) approved by the Port and cause subcontractor(s) to similarly include clauses in further subcontracts

Section 17 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit C ("**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located.

Section 18 Miscellaneous.

- 18.1 Washington Law. All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive laws of the State of Washington without regard to conflicts of law provisions.

- 18.2 Venue. To the fullest extent permitted by law, any dispute arising under or in connection with this Easement Agreement or related to any subject matter which is the subject of this Easement Agreement shall be subject to the sole and exclusive jurisdiction of King County Superior Court. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive. Each party hereto hereby irrevocably consents to the jurisdiction of King County Superior Court in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.
- 18.3 Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.
- 18.4 Severability. If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- 18.5 Entire Understanding. This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein; provided, however, nothing herein is intended to terminate any surviving obligation of Grantor or Grantee of their respective obligations to defend or hold each other harmless in any prior written agreement between the parties involving the Premises.
- 18.6 Time is of the Essence. Time is of the essence for the performance of this Easement Agreement.

[Signature page follows]

Witness the execution of this Easement Agreement as of the date first set forth above.

**Grantor:**

**Port of Seattle, a Washington municipal corporation**

By: \_\_\_\_\_

Name:

Title:

**Grantee:**

**City of Burien, a Washington municipal corporation**

By: \_\_\_\_\_

Name:

Title:

[Acknowledgment page follows]

STATE OF WASHINGTON )  
 ) §  
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 signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Notary Public in and for the State of Washington

Notary (print name) \_\_\_\_\_

Residing at \_\_\_\_\_

My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) §  
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 signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Dated:

Signature:

Notary Public in and for the State of Washington

Notary (print name)

Residing at

My appointment expires:



## EXHIBIT A-1

### SHARED-USE PATH EASEMENT AFFECTED PROPERTIES

#### **Parcel No. 202304-9239**

That portion of the Northeast quarter of the Northeast quarter of Section 20, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington, described as follows:

BEGINNING at a point on the Westerly line of said subdivision 792 feet south of the Northwest corner thereof;

Thence South 89°28'14" East, 287.26 feet to Des Moines Way;

Thence Southwesterly along Des Moines Way 120 feet;

Thence Northwesterly to a point on the West line of said subdivision, 13 feet south of the POINT OF BEGINNING;

Thence North to the POINT OF BEGINNING;

Except that portion thereof condemned in King County Superior Court Cause number 705679 for Secondary State Highway No. 1-K.

#### **Parcel No. 202304-9251**

That portion of the Northeast quarter of the Northeast quarter of Section 20, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington, described as follows:

BEGINNING at a point on the West line of said subdivision at a point 692.00 feet south of the North line thereof;

Thence on said West line South 100.00 feet;

Thence East parallel with the North line of said subdivision 304.766 feet, more or less, to the Northwest line of Des Moines Way;

Thence on said Northwest line Northeasterly 122.42 feet to a point to a point East of the point of beginning on a line parallel with the North line of said subdivision;

Thence West parallel with the North line of said subdivision 376.155 feet, more or less, to the POINT OF BEGINNING;

Except the West 100 feet thereof.

#### **Parcel No. 202304-9250**

Beginning at the Northeast corner of Section 20, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington;

Thence West along the North line of said Section 1320 feet;

Thence South 575 feet to the true POINT OF BEGINNING;

Thence South 117 feet;

Thence East 376.15 feet, more or less, to the Westerly line of Des Moines Way;

Thence Northeasterly along said Way line 143.24 feet to a point East of the true POINT OF BEGINNING;

Thence West 459.68 feet, more or less, to the true POINT OF BEGINNING.

**Parcel No. 553090-TRCT C**

Tract C, Miller Court, according to the plat thereof recorded in Volume 192 of Plats, Page(s) 88 and 89, in King County, Washington;

**Parcel No. 553090-TRCT A**

Tract A, Miller Court, according to the plat thereof recorded in Volume 192 of Plats, Page(s) 88 and 89, in King County, Washington;

**Parcel No. 553090-0060**

Lot 6 of Plat of Miller Court, according to plat recorded in Volume 192 of Plats, Page(s) 88 and 89, in King County, Washington;

Together with an undivided interest in Tract C of said Plat.

**Parcel No. 553090-0030**

Lot 3 of Plat of Miller Court, according to plat recorded in Volume 192 of Plats, Page(s) 88 and 89, in King County, Washington;

Together with an undivided interest in Tract C of said Plat.

**Parcel No. 553090-0020**

Lot 2 of Plat of Miller Court, according to plat recorded in Volume 192 of Plats at Page(s) 88 and 89, in King County, Washington;

Together with an undivided interest in Tracts B and C of said Plat.

**Parcel No. 553090-0010**

Lot 1 of Plat of Miller Court, according to plat recorded in Volume 192 of Plats, Page(s) 88 and 89, in King County, Washington;

**Parcel No. 172304-9198**

That portion of the south half of the southeast quarter of the southeast quarter of Section 17, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington. Described as follows:

Beginning at the intersection of the westerly margin of Des Moines Highway as it existed on January 2, 1969 with a line 30 feet north of and parallel to the south line of said subdivision; Thence westerly along the northerly margin of South 144<sup>th</sup> Street a distance of 195 feet to the TRUE POINT OF BEGINNING;  
Thence northerly along a line parallel to the westerly line of said subdivision to the intersection with the southerly line of the northerly 322.20 feet of the south half of the southeast quarter of the southeast quarter,  
Thence westerly along said line to the east line of the west 415.70 feet of said subdivision;  
Thence northerly along the east line of the said west 415.70 feet of said subdivision to the southerly line of the north 173 feet of the south half of the southeast quarter of the southeast quarter;  
Thence westerly along the southerly line of the said north 173 feet of the south half of the southeast quarter of the southeast quarter to the westerly line of said subdivision;  
Thence southerly along the westerly line of said subdivision to a point 30 feet north of said south line of said subdivision,  
Thence easterly along a line 30 feet north of and parallel to the south line of said subdivision to the TRUE POINT OF BEGINNING;

Together with easements for ingress and egress over and across the westerly 25 feet and the southerly 20 feet of the following described property, to wit:

That portion of the south half of the southeast quarter of the southeast quarter of Section 17, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington. Described as follows:

Beginning at the intersection of the westerly margin of Des Moines Highway as it existed on January 2, 1969 with a line 30 feet north of and parallel to the south line of said subdivision, Thence northerly along said westerly highway margin a distance of 90 feet to the TRUE POINT OF BEGINNING of the tract of land herein described;

Thence westerly parallel to the southerly margin of said southeast quarter of the southeast quarter a distance of 103.07 feet;  
Thence northerly parallel to the westerly line of said southeast quarter of the southeast quarter a distance of 44.54 feet;  
Thence westerly parallel to the southerly line of said subdivision a distance of 75 feet,  
Thence northerly parallel to the westerly line of said subdivision to an intersection with the south line of the north 322.30 feet of said south half of the southeast quarter of the southeast quarter;  
Thence east on said line to westerly margin of said Des Moines Highway;  
Thence southerly along said westerly margin to the TRUE POINT OF BEGINNING;

Except that portion of said property previously conveyed to Theodore C. Lund and Jeanne Lund, by deed dated August 10, 1959, in partial fulfillment of real estate contract dated October 4, 1957 and recorded under Recording Number 4842284, which deed of August 10, 1959, in partial fulfillment of said contract is recorded under Recording Number 5067494;

Also except that portion thereof conveyed to King County by deed recorded under Recording Number 7212180143.

### **Parcel No. 172304-9058**

Beginning at a point on the north line of the south half of the Southeast Quarter of the Southeast Quarter of Section 17, Township 23 North, Range 4 East, W.M., in King County, Washington, distant 300 feet west of the intersection of said north line with the westerly line of Des Moines Way, thence south at right angles to said north line 95 feet, thence east parallel to said north line of said subdivision 289.09 feet to the westerly line of said Des Moines Way, thence southerly along said westerly line of Des Moines Way 78.51 feet to an intersection with a line 173 feet south of and parallel to the north line of said subdivision, thence west along said parallel line 709.32 feet to the west line of said subdivision, thence northerly along said west line 173 feet to the northwest corner of said subdivision; thence east along said north line 430.26 feet to the place of beginning.

Together with that certain easement for water lines recorded under Recording Number 5059085.

### **Parcel No. 172304-9106**

The east 99 feet of the west 231 feet of the northwest quarter of the southeast quarter of the southeast quarter of Section 17, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington;  
Except the north 440 feet thereof.

### **Parcel No. 172304-9083**

The west 132 feet of the northwest quarter of the southeast quarter of the southeast quarter of Section 17, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington;  
Except the north 30 feet thereof for County road (South 140<sup>th</sup> Street).

### **Parcel No. 172304-9220**

That portion of the east three-tenths of the northeast quarter of the southwest quarter of the southeast quarter of Section 17, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at the quarter corner common to Sections 17 and 20 in said Township and Range;

Running thence North 1°29'03" East along the center line of said Section 17 a distance of 1289.88 feet to the northerly line of the southwest quarter of the southeast quarter;  
Thence South 88°36'04" East along said northerly line 1214.52 feet;  
Thence South 1°21'52" West 20 feet to a point on the southerly line of South 140<sup>th</sup> Street, which point is the TRUE POINT OF BEGINNING of the tract herein described;

Thence continuing South 1°21'52" West 630.98 feet, to the southerly line of said northeast quarter of the southwest quarter of the southeast quarter;  
Thence South 88°18'59" East along said southerly line, 87.37 feet;  
Thence North 1°20'36" East 631.42 feet, to the southerly line of said South 140<sup>th</sup> Street;  
Thence North 88°36'04" West along said southerly line 87.26 feet to the TRUE POINT OF BEGINNING.

### **Parcel No. 172304-9269**

That portion of the east three-tenths of the northeast quarter of the southwest quarter of the southeast quarter of Section 17, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at the quarter corner common to Sections 17 and 20 in said Township and Range; and running

Thence North 1°29'03" East along the center line of said Section 17 a distance of 1289.88 feet to the northerly line of the southwest quarter of the southeast quarter;  
Thence South 88°36'04" East along said northerly line 1106.52 feet to the westerly line of said east three-tenths of the northeast quarter of the southwest quarter of the southeast quarter;  
Thence South 1°21'52" West along said westerly line 20 feet to a point on the southerly line of South 140<sup>th</sup> Street, which point is the TRUE POINT OF BEGINNING of the tract herein described;

Thence continuing South 1°21'52" West along said westerly line 630.45 feet, more or less, to the southerly line of said northeast quarter of the southwest quarter of the southeast quarter;  
Thence South 88°18'59" East along said southerly line 108.24 feet;  
Thence North 1°21'10" East 630.98 feet, more or less, to the southerly line of said 140<sup>th</sup> Street;  
Thence North 88°36'04" West along said southerly line 108 feet to the TRUE POINT OF BEGINNING.

## EXHIBIT A-1 (CONT'D)

### SHARED-USE PATH EASEMENT ALIGNMENT LEGAL DESCRIPTION

That portion of the Northeast Quarter of Section 20 lying within a strip of land 25.00 feet wide, lying 15.00 feet to the left and 10 feet to the right of the following described line;

Commencing at the northeast corner of Section 20, Township 23 North, Range 4 East, W.M., King County, Washington;

thence N.88°02'01"W. along the north line of said Section 20, a distance of 1305.05 feet to the northwest corner of the Northeast Quarter of the Northeast Quarter of said Section;  
thence leaving said north section line S.01°17'50"W. along the west line of said subdivision line, 792.00 feet;  
thence leaving said west subdivision line S.88°02'01"E. parallel to said north section line, 322.85 feet, to the centerline of Des Moines Memorial Drive;  
thence S.37°12'53"W. along said centerline, 109.51 feet to the TRUE POINT OF BEGINNING of the strip line herein described;

thence leaving said centerline, N.51°49'53"W., a distance of 34.74 feet to the point of curve right for a 30.00 foot radius curve;

thence along the arc of said curve right through a central angle of 85°24'35", a distance of 44.72 feet;

thence N.33°34'43"E., 36.34 feet to the point of curve left for a 55.00 foot radius curve;

thence along the arc of said curve left through a central angle of 44°01'48", a distance of 42.27 feet;

thence N.10°27'06"W., 19.55 feet to the point of curve right for a 45.00 foot radius curve;

thence along the arc of said curve right through a central angle of 62°47'03", a distance of 49.31 feet;

thence N.52°19'57"E., 79.61 feet to the point of curve left of a 37.00 foot radius curve;

thence along the arc of said curve left through a central angle of 106°50'49", a distance of 69.00 feet;

thence N.54°30'52"W., 11.01 feet to the point of curve right of a 42.00 foot radius curve;

thence along the arc of said curve right through a central angle of 86°29'59", a distance of 63.41 feet;

thence N.31°59'06"E., 76.04 feet to the point of curve left of a 50.00 foot radius curve;

thence along the arc of said curve left through a central angle of 51°52'14", a distance of 45.27 feet;

thence N.19°53'07"W., 5.83 feet to the point of curve right for a 130.00 foot radius curve;

thence along the arc of said curve right through a central angle of 31°16'07", a distance of 70.95 feet;

thence N.11°22'59"E., 20.90 feet to the point of curve left of a 30.00 foot radius curve;

thence along the arc of said curve left through a central angle of 69°37'45", a distance of 36.46 feet;

thence N.58°14'46"W., 48.78 feet to the point of curve left of a 70.00 foot radius curve;

thence along the arc of said curve left through a central angle of 44°17'25", a distance of 54.11 feet to the point of reverse curve right of a 90.00 foot radius curve;

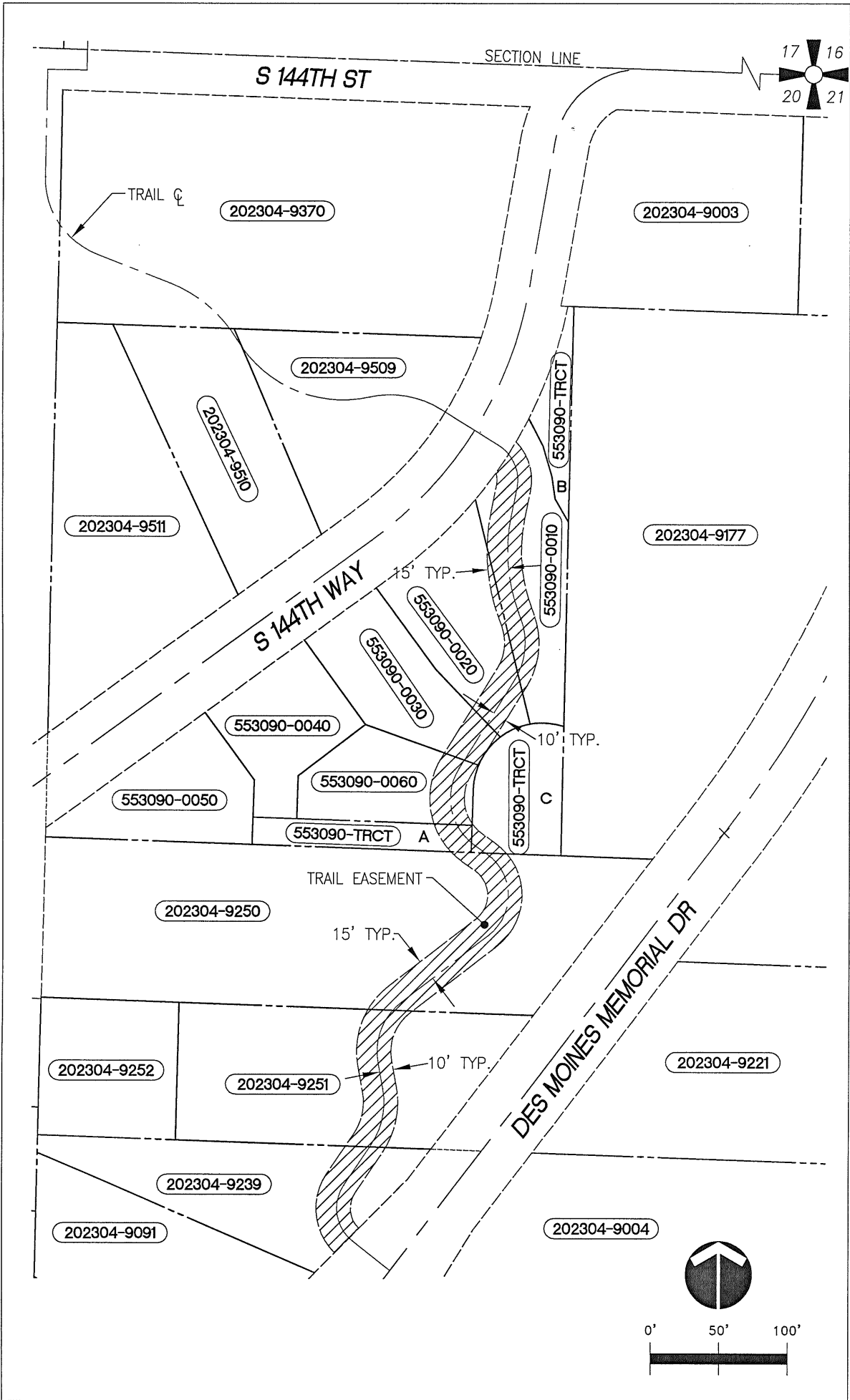
thence along the arc of said curve right through a central angle of 71°35'44", a distance of 112.46 feet to the point of reverse curve left of a 100.00 foot radius curve;

thence along the arc of said curve left through a central angle of 37°23'46", a distance of 65.27 feet;

thence N.68°20'13"W., 56.64 feet to the point of curve right of a 60.00 foot radius curve;  
thence along the arc of said curve right through a central angle of 69°36'55", a distance of 72.90  
feet; thence N.01°16'42"E., 78.00 feet;  
thence S.88°47'32"E., 28.50 feet; thence N.00°51'12"E., 15.03 feet to a point on the north line of  
said Section, being the Point of Termination of herein described line, the Northeast Corner of  
said Section bears S.88°02'01"E., 1,287.95 feet.

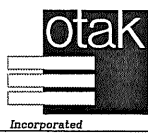
Except that portion lying within public streets.

# EXHIBIT A-1 (CONT'D)



WCL  
 Designed GSO  
 Drawn WCL 10/27/13  
 Checked By \_\_\_\_\_ Date \_\_\_\_\_

**BURIEN NERA**  
 PORT OF SEATTLE PROPERTIES  
 A PORTION OF S. 20, TWP. 23 N.,  
 R. 4 E., W.M.


 10230 NE Points Drive  
 Suite 400  
 Kirkland, Washington 98033  
 Phone: (425) 822-4446  
 FAX: (425) 827-9577

31235B  
 Project No. \_\_\_\_\_  
 File No. \_\_\_\_\_  
 Sheet No. 1 OF 1



## EXHIBIT A-2

### SHARED-USE PATH EASEMENT AFFECTED PROPERTIES

#### Parcel No. 172304-9198

That portion of the south half of the southeast quarter of the southeast quarter of Section 17, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington.  
Described as follows:

Beginning at the intersection of the westerly margin of Des Moines Highway as it existed on January 2, 1969 with a line 30 feet north of and parallel to the south line of said subdivision;  
Thence westerly along the northerly margin of South 144<sup>th</sup> Street a distance of 195 feet to the TRUE POINT OF BEGINNING;  
Thence northerly along a line parallel to the westerly line of said subdivision to the intersection with the southerly line of the northerly 322.20 feet of the south half of the southeast quarter of the southeast quarter,  
Thence westerly along said line to the east line of the west 415.70 feet of said subdivision;  
Thence northerly along the east line of the said west 415.70 feet of said subdivision to the southerly line of the north 173 feet of the south half of the southeast quarter of the southeast quarter;  
Thence westerly along the southerly line of the said north 173 feet of the south half of the southeast quarter of the southeast quarter to the westerly line of said subdivision;  
Thence southerly along the westerly line of said subdivision to a point 30 feet north of said south line of said subdivision,  
Thence easterly along a line 30 feet north of and parallel to the south line of said subdivision to the TRUE POINT OF BEGINNING;

Together with easements for ingress and egress over and across the westerly 25 feet and the southerly 20 feet of the following described property, to wit:

That portion of the south half of the southeast quarter of the southeast quarter of Section 17, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington.  
Described as follows:

Beginning at the intersection of the westerly margin of Des Moines Highway as it existed on January 2, 1969 with a line 30 feet north of and parallel to the south line of said subdivision,  
Thence northerly along said westerly highway margin a distance of 90 feet to the TRUE POINT OF BEGINNING of the tract of land herein described;

Thence westerly parallel to the southerly margin of said southeast quarter of the southeast quarter a distance of 103.07 feet;  
Thence northerly parallel to the westerly line of said southeast quarter of the southeast quarter a distance of 44.54 feet;

Thence westerly parallel to the southerly line of said subdivision a distance of 75 feet,  
Thence northerly parallel to the westerly line of said subdivision to an intersection with the south line of the north 322.30 feet of said south half of the southeast quarter of the southeast quarter;  
Thence east on said line to westerly margin of said Des Moines Highway;  
Thence southerly along said westerly margin to the TRUE POINT OF BEGINNING;  
Except that portion of said property previously conveyed to Theodore C. Lund and Jeanne Lund, by deed dated August 10, 1959, in partial fulfillment of real estate contract dated October 4, 1957 and recorded under Recording Number 4842284, which deed of August 10, 1959, in partial fulfillment of said contract is recorded under Recording Number 5067494;

Also except that portion thereof conveyed to King County by deed recorded under Recording Number 7212180143.

**Parcel No. 172304-9058**

Beginning at a point on the north line of the south half of the Southeast Quarter of the Southeast Quarter of Section 17, Township 23 North, Range 4 East, W.M., in King County, Washington, distant 300 feet west of the intersection of said north line with the westerly line of Des Moines Way, thence south at right angles to said north line 95 feet,  
thence east parallel to said north line of said subdivision 289.09 feet to the westerly line of said Des Moines Way, thence southerly along said westerly line of Des Moines Way 78.51 feet to an intersection with a line 173 feet south of and parallel to the north line of said subdivision, thence west along said parallel line 709.32 feet to the west line of said subdivision, thence northerly along said west line 173 feet to the northwest corner of said subdivision; thence east along said north line 430.26 feet to the place of beginning.

Together with that certain easement for water lines recorded under Recording Number 5059085.

**Parcel No. 172304-9106**

The east 99 feet of the west 231 feet of the northwest quarter of the southeast quarter of the southeast quarter of Section 17, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington;  
Except the north 440 feet thereof.

**Parcel No. 172304-9083**

The west 132 feet of the northwest quarter of the southeast quarter of the southeast quarter of Section 17, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington;  
Except the north 30 feet thereof for County road (South 140<sup>th</sup> Street).

**Parcel No. 172304-9220**

That portion of the east three-tenths of the northeast quarter of the southwest quarter of the southeast quarter of Section 17, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at the quarter corner common to Sections 17 and 20 in said Township and Range;

Running thence North 1°29'03" East along the center line of said Section 17 a distance of 1289.88 feet to the northerly line of the southwest quarter of the southeast quarter;

Thence South 88°36'04" East along said northerly line 1214.52 feet;

Thence South 1°21'52" West 20 feet to a point on the southerly line of South 140<sup>th</sup> Street, which point is the TRUE POINT OF BEGINNING of the tract herein described;

Thence continuing South 1°21'52" West 630.98 feet, to the southerly line of said northeast quarter of the southwest quarter of the southeast quarter;

Thence South 88°18'59" East along said southerly line, 87.37 feet;

Thence North 1°20'36" East 631.42 feet, to the southerly line of said South 140<sup>th</sup> Street;

Thence North 88°36'04" West along said southerly line 87.26 feet to the TRUE POINT OF BEGINNING.

### **Parcel No. 172304-9269**

That portion of the east three-tenths of the northeast quarter of the southwest quarter of the southeast quarter of Section 17, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at the quarter corner common to Sections 17 and 20 in said Township and Range; and running

Thence North 1°29'03" East along the center line of said Section 17 a distance of 1289.88 feet to the northerly line of the southwest quarter of the southeast quarter;

Thence South 88°36'04" East along said northerly line 1106.52 feet to the westerly line of said east three-tenths of the northeast quarter of the southwest quarter of the southeast quarter;

Thence South 1°21'52" West along said westerly line 20 feet to a point on the southerly line of South 140<sup>th</sup> Street, which point is the TRUE POINT OF BEGINNING of the tract herein described;

Thence continuing South 1°21'52" West along said westerly line 630.45 feet, more or less, to the southerly line of said northeast quarter of the southwest quarter of the southeast quarter;

Thence South 88°18'59" East along said southerly line 108.24 feet;

Thence North 1°21'10" East 630.98 feet, more or less, to the southerly line of said 140<sup>th</sup> Street;

Thence North 88°36'04" West along said southerly line 108 feet to the TRUE POINT OF BEGINNING.

## EXHIBIT A-2 (CONT'D)

### SHARED-USE PATH EASEMENT ALIGNMENT LEGAL DESCRIPTION

That portion of those parcels listed above, lying westerly of the following described line;

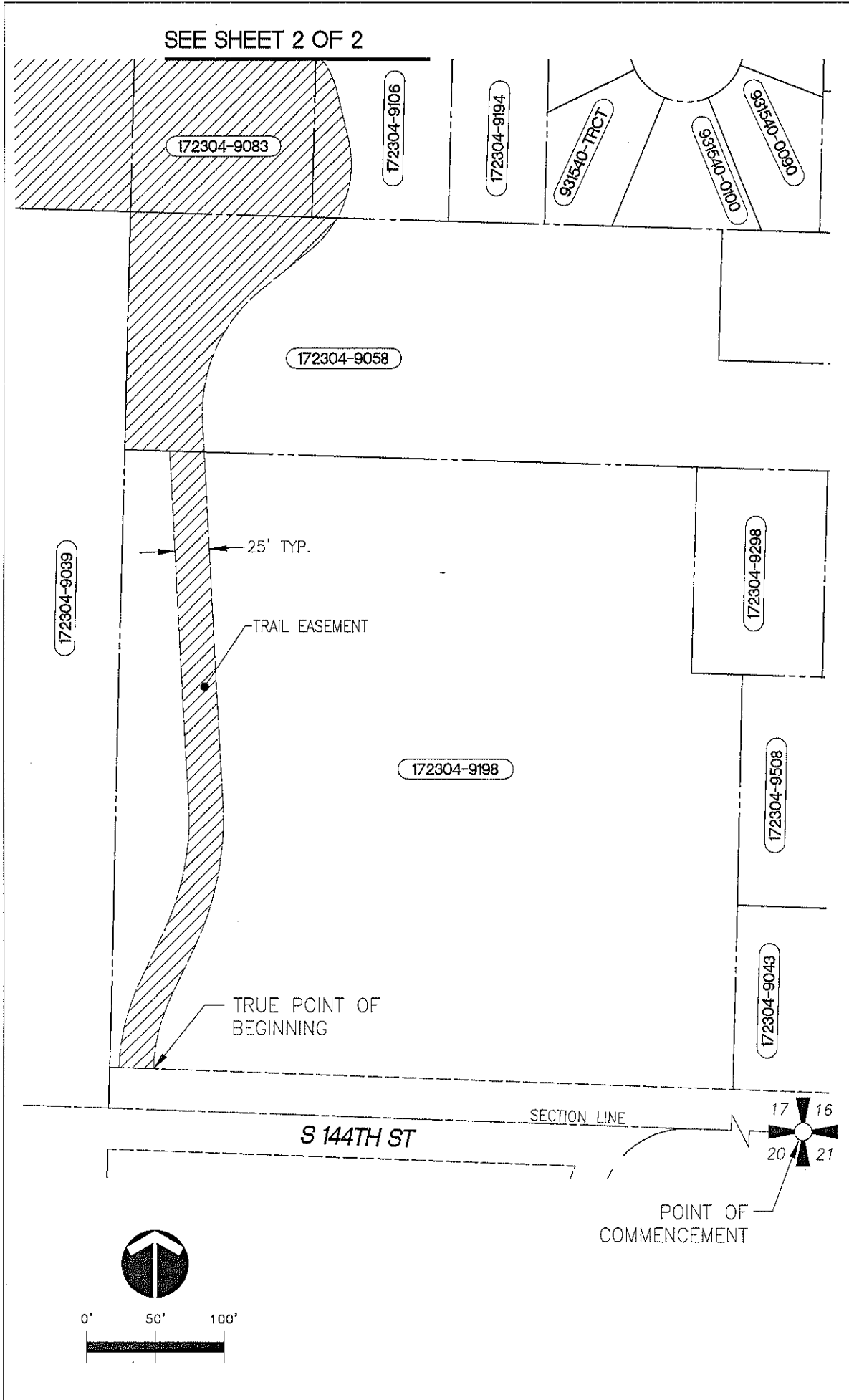
Commencing at the Southeast Corner of Section 17, Township 23 North, Range 4 East, W.M., King County, Washington;

thence N.88°02'01"W. along the south line of said Section 17, a distance of 1287.95 feet;  
thence N.00°51'12"E., 27.57 feet to the point of curve right of a 150.00 foot radius curve;  
thence along the arc of said curve right through a central angle of 0°55'53", a distance of 2.44 feet to the north margin of S 144<sup>th</sup> Street;  
thence along said north margin S.88°02'01"E., 15.00 feet to the TRUE POINT OF BEGINNING of the line herein described;

thence along a non-tangent 135.00 foot radius curve to the right, the radius of which bears S.88°14'08"E., through a central angle of 23°50'36", a distance of 56.18 feet;  
thence N.25°36'28"E., 38.08 feet to the point of curve left of a 215.00 foot radius curve;  
thence along the arc of said curve left through a central angle of 28°44'40", a distance of 107.86 feet; thence N.03°08'12"W., 277.17 feet to the point of curve right of a 115.00 foot radius curve;  
thence along the arc of said curve right through a central angle of 54°06'56", a distance of 108.62 feet;  
thence N.50°58'44"E., 46.49 feet to the point of curve left of a 80.00 foot radius curve; thence along the arc of said curve left through a central angle of 64°43'48", a distance of 90.38 feet;  
thence N.13°45'04"W., 36.89 feet to the point of curve left of a 55.00 foot radius curve;  
thence along the arc of said curve left through a central angle of 38°26'17", a distance of 36.90 feet; thence N.52°11'22"W., 97.26 feet to the point of curve right of a 25.00 foot radius curve;  
thence along the arc of said curve right through a central angle of 46°30'33", a distance of 20.29 feet; thence N.05°40'49"W., 144.30 feet to the point of curve left of a 80.00 foot radius curve;  
thence along the arc of said curve left through a central angle of 75°49'05", a distance of 105.86 feet; thence N.81°29'53"W., 31.81 feet to the point of curve right of a 45.00 foot radius curve;  
thence along the arc of said curve right through a central angle of 99°59'23", a distance of 78.53 feet; thence N.18°29'30"E., 29.63 feet to the point of curve left of a 95.00 foot radius curve;  
thence along the arc of said curve left through a central angle of 49°27'09", a distance of 82.00 feet; thence N.30°57'39"W., 20.64 feet to the point of curve right of a 45.00 foot radius curve;  
thence along the arc of said curve right through a central angle of 32°13'03", a distance of 25.30 feet; thence N.01°15'24"E., 11.02 feet to the south margin of S 140<sup>th</sup> Street;  
thence along said south margin N.88°34'56"W., 15.00 feet;  
thence leaving said margin N.01°15'24"E., 20.00 feet to the north line of South Half of the Southeast Quarter of said Section being the Point of Termination of herein described line from which the northeast corner of the Southeast Quarter of the Southeast Quarter of said Section bears S.88°34'56"E., 1453.59 feet.

Except that portion lying within public streets.

# EXHIBIT A-2 (CONT'D)



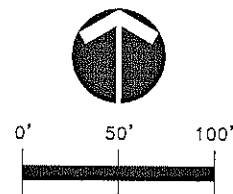
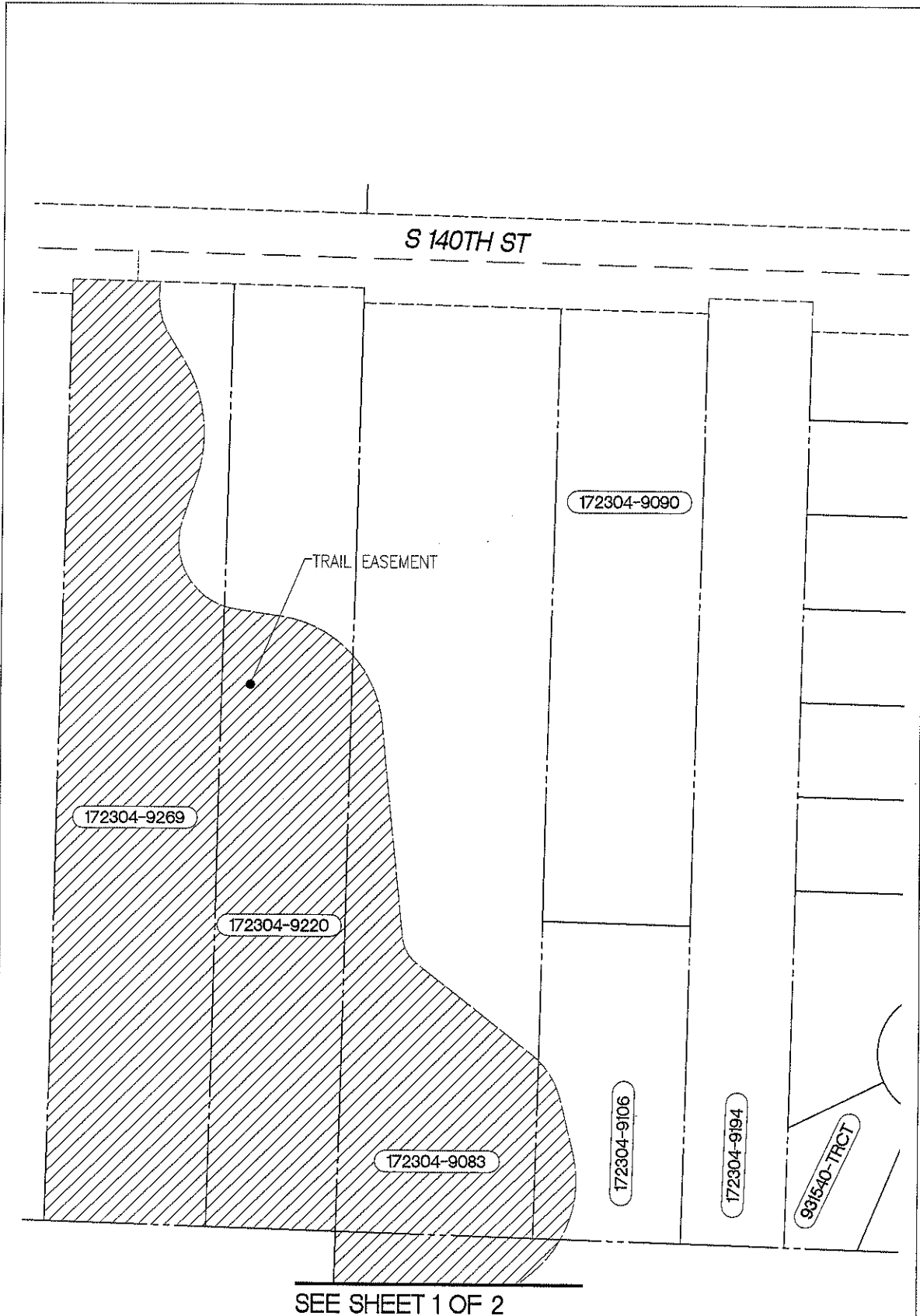
Designed WCL  
 Drawn GSO  
 Checked By WCL Date 10/27/13

**BURIEN NERA**  
 PORT OF SEATTLE PROPERTIES  
 A PORTION OF S. 17, TWP. 23 N.,  
 R. 4 E., W.M.

**otak** 10230 NE Points Drive  
 Suite 400  
 Kirkland, Washington 98033  
 Phone: (425) 822-4446  
 FAX: (425) 827-9577


Project No. 31235B  
 File No. 1 OF 2  
 Sheet No. 1 OF 2

# EXHIBIT A-2 (CONT'D)



WCL  
 Designed GSO  
 Drawn WCL 10/27/13  
 Checked By \_\_\_\_\_ Date \_\_\_\_\_

**BURIEN NERA**  
 PORT OF SEATTLE PROPERTIES  
 A PORTION OF S. 17, TWP. 23 N.,  
 R. 4 E., W.M.


 10230 NE Points Drive  
 Suite 400  
 Kirkland, Washington 98033  
 Phone: (425) 822-4446  
 FAX: (425) 827-9577

31235B  
 Project No.  
 File No. 2 OF 2  
 Sheet No.

# EXHIBIT B

## NERA STORMWATER FACILITY LOCATIONS

