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Port of Seattle Legal Department
P. O. Box 1209
Seattle, WA 98122

Document Title: Possession and Use Agreement
Grantor: Port of Seattle
Grantee: City of SeaTac
Abbreviated Legal Description:
Additional Legal Description is on Page(s) ___ of Document.
Assessor's Tax Parcel Number(s):

POSSESSION AND USE AGREEMENT

This AGREEMENT is made and entered into on _____, 2014 (the "Date of Execution"), by and between the City of SeaTac, a municipal corporation of the State of Washington (the "City") and the Port of Seattle, a municipal corporation of the State of Washington (the "Port"), the City and the Port referred to herein as the "Parties":

WITNESSETH

WHEREAS, the Port owns real property located in the City of SeaTac, King County, Washington, which the City needs for the Connecting 28th/24th Avenue South Project, (the "Project"); and

WHEREAS, the City Council adopted Ordinance No. 14-1010 providing for the City's authority to acquire by condemnation, in the event negotiations are not successful, of Port-owned vacant land in fee simple (the "Port Property"). The Port Property is described in Ordinance No. 14-1010 attached as Exhibit A and incorporated herein by reference; and

WHEREAS, the City affirms that it requires the Port Property described herein for immediate construction of the Project;

WHEREAS, the Parties agree that the proposed Project is a public use of the City;

WHEREAS, any interest in the Port Property being acquired is under the imminent threat of the City's exercise of its rights of eminent domain;

WHEREAS, the City affirms that a delay to the Project is contrary to the public interest;

WHEREAS, the City has made a firm and continuing offer to pay the Just Compensation Amount (defined below) for the purchase of the Port Property;

WHEREAS, the Port has agreed to convey the real property interests to the City and the Parties intend to enter into a Purchase and Sale Agreement conveying the Port Property, but the Parties require additional time to obtain necessary approvals to complete the transfer of the Port Property.

NOW, THEREFORE, for and in consideration of the payments set forth in this Agreement and under the imminent threat of the City's exercise of its rights of eminent domain, the Port hereby grants to the City a right to possess and use the Port Property and the Parties further agree that:

1. The Port Property is necessary for a public use of the City.
2. The Port, as fee owner of the Port Property, has full right and authority to enter into this Agreement and sell, transfer and convey title of the Port Property.
3. The Port has accepted the City's offer of Three Million Six Hundred Thousand Dollars (\$3,600,000) in just compensation ("Just Compensation Amount") for the Port Property. The City shall pay the Port the Just Compensation Amount by no later than the Date of Execution.
4. Notwithstanding the foregoing, if it becomes necessary for the City to institute condemnation proceedings, the Port has no objection to the City entering an Order Adjudicating Public Use, as provided by RCW 8.12.090, and agrees that this instrument shall be treated as having the same legal effect as an Order for Immediate Possession provided by RCW 8.25.070.
5. Upon execution of this Agreement and payment of the Just Compensation Amount, the Parties agree to negotiate a Purchase and Sale Agreement conveying the Port Property to the City. Conveyance of the Port Property to the City by negotiated sale is subject to Port Commission approval.
6. 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 the City or by others, including but not limited to all persons directly or indirectly employed by the City, or any agents, contractors, subcontractors, licensees, or invitees of the City, as a result of any condition (including existing or future defects in the Port Property) or occurrence whatsoever related in any way to the Port Property, or related in any way to the City's use or occupancy of the Port Property. The City 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 any such

items of actual or alleged injury or damage, except when such injury or damage is caused by the sole negligence of the Port. The City 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. However to the extent this Agreement is construed to be subject to RCW 4.24.115, and where the injury or damage arises from the concurrent negligence of the Port and the City, the City's indemnity will only extend to its negligence. The City expressly waives any immunity it may have under the Washington State Industrial Insurance Act, Title 51 RCW.

7. The Port agrees to surrender possession of the Port Property to the City by no later than the date of the Port's receipt of the Use and Possession Payment.
8. The Parties agree that effective on the Date of Execution, that Month-to-Month Land Lease between the Port and the City dated April 4, 2014 (the "Lease"), for the City's use of the Port Property shall terminate. The City shall remain liable to the Port for any rental amounts owed under the Lease through the Date of Execution.

PORT OF SEATTLE,
a Washington municipal corporation

By: _____
Tay Yoshitani
Chief Executive Officer

CITY OF SEATAC,
a Washington municipal corporation

By: _____
Todd Cutts
City Manager

STATE OF WASHINGTON)
: ss.
COUNTY OF KING)

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

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2014.

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My Commission Expires: _____
Print Name: _____

STATE OF WASHINGTON)
: ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Todd Cutts is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the City Manager of the CITY OF SEATAC, a municipal corporation of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2014.

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My Commission Expires: _____
Print Name: _____

EXHIBIT A

City of SeaTac Ordinance

DRAFT