
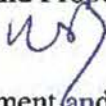


**PORT OF SEATTLE**  
**MEMORANDUM**

**COMMISSION AGENDA**Item No. 6bDate of Meeting December 13, 2011

DATE: December 5, 2011

TO: Tay Yoshitani, Chief Executive Officer

FROM:  Joe McWilliams, Managing Director, Real Estate and Property Management  
Tom Tanaka, Sr. Port Counsel, Legal Department SUBJECT: Boeing/Port Settlement Agreement including Easement and Access Agreements  
to Portions of Former Commercial Waterway District No. 1 Property

Net Proceeds to the Port: \$1.5 million

**ACTION REQUESTED:**

Request Commission authorization for the Chief Executive Officer to execute a Settlement Agreement that grants the Boeing Company (Boeing) access to undertake environmental cleanup, bankline corrective measures, habitat restoration, and install/improve stormwater infrastructure on former Commercial Waterway District No. 1 property. In exchange, Boeing will provide \$1.5 million in compensation as well as allow the Port temporary access to a portion of the Boeing Developmental Center for construction of the Terminal 117 Natural Resource Damage Habitat Restoration project.

**BACKGROUND:**

The Commercial Waterway District No. 1 of King County (CWD) was formed in the early 1900s to straighten the course of the Lower Duwamish River from Harbor Island to Turning Basin #3. The CWD owned a 500 foot swath of land through which the waterway flowed. The CWD decided to dissolve in the early 1960s and it asked the Port if it would take the District's assets. The Port agreed and the CWD transferred its interests, including the waterway basin land, to the Port in 1963.

Boeing owns property abutting the east bankline of the former CWD property on either side of the South Park Bridge. This property, as well as portions of the former CWD property which it abuts, are both the subject of an Administrative Order on Consent (AOC) from the U.S. Environmental Protection Agency (EPA) and Washington State Department of Ecology (Ecology) that requires Boeing to clean up pollution in the soil/sediments as well as improve conditions along the bankline.

**COMMISSION AGENDA**

Tay Yoshitani, Chief Executive Officer

December 5, 2011

Page 2 of 6

Subsequent to the AOC, Boeing entered in to a consent decree with the Elliott Bay Trustee Council (Trustees) that resolves Boeing's natural resource damage liability associated with the pollution that they are cleaning up. The consent decree specifies that Boeing will implement a habitat restoration project to restore and/or create off-channel and riparian habitats in the Lower Duwamish Waterway. Boeing would like to build this project partially on former CWD property that has been previously identified in the Lower Duwamish River Habitat Restoration Plan as Sites #18, 21 and 22. The project is designed to include removal of over-water structures, reduction of slopes, cutback of banks, softening of banks, creation of new intertidal habitat, creation of brackish marsh fringe and addition of large woody debris habitat features.

Boeing is also seeking to redevelop and improve its stormwater management system. Various existing stormwater facilities and systems are located throughout the Boeing property, including a storm drain line that discharges stormwater through an outfall pipe currently located in the former CWD property. As part of the redevelopment, Boeing intends to upgrade the stormwater system by, among other things, installing new storm drain lines and outfall pipes to three new outfalls in the former CWD property, as well as modifying the existing outfall.

By carrying out its restoration project on the former CWD property, Boeing will be precluding the Port, or any other party, from receiving natural resource damage (NRD) settlement credit for habitat improvements on that property. As compensation to the Port for that lost opportunity, the Settlement Agreement specifies that Boeing will pay the Port the sum of \$1.5 million. Additional compensation to the Port includes site access rights through the Boeing Development Center to support the Terminal 117 NRD Restoration project if and when it is constructed.

**ACCESS AND EASEMENT AGREEMENTS:**

The Settlement Agreement includes four separate access and easement agreements that would be executed concurrently. They are:

- Site Access Agreement (Exhibit 3). The AOC will require that Boeing, its contractors and its agents be granted access to the former CWD property to perform the necessary cleanup and bankline corrective work. The Site Access Agreement specifies terms and conditions related to schedule, cooperation, work standards and indemnification.
- Habitat Restoration Easement Agreement (Exhibit 4). The Boeing Consent Decree requires Boeing to obtain site access and a perpetual conservation easement for the habitat restoration project. The Habitat Restoration Easement Agreement conveys to Boeing the transferable rights of the Port's with respect to the former CWD property needed for the Boeing habitat project.
- Stormwater Outfall Easement Agreement (Exhibit 5). The Settlement Agreement includes a Stormwater Outfall Easement Agreement that will grant Boeing temporary and perpetual easements to construct, modify, maintain, monitor, replace and restore Boeing's

**COMMISSION AGENDA**

Tay Yoshitani, Chief Executive Officer

December 5, 2011

Page 3 of 6

storm drain lines and outfalls in the former CWD property. The easement agreement includes an indemnity provided by Boeing to protect the Port from any liability associated with discharges from the stormwater outfalls.

- Port Access through Boeing Development Center Agreement (Exhibit 6). This agreement allows the Port temporary upland access to the former CWD property through the Boeing Development Center in order to facilitate construction of the Terminal 117 NRD Restoration project. The easement will lower costs, improve safety and improve the Port's ability to manage environmental impacts during construction if the Port chooses to move forward with the project.

These documents may be subject to some further modification by the parties, but the content would be substantively similar to the forms presented here.

**STRATEGIC OBJECTIVES:**

This project supports the Port's strategies to "Ensure Airport and Seaport Vitality" and "Exhibit Environmental Stewardship through our Actions".

- The Settlement Agreement contributes to Seaport vitality by:
  - Generating revenue from previously non-revenue generating property.
  - Validating an emerging market for natural resource functions and ecosystem services that may be important to the Port in the future.
  - Improving relationships with South Park and Georgetown communities, environmental groups, regulatory agencies and the Trustees.
  - Reducing construction costs for Terminal 117 NRD Restoration project if/when it is constructed.
- The Settlement Agreement furthers Seaport goals, guiding principles and objectives related to environmental stewardship by:
  - Allowing Boeing to undertake important fish and wildlife habitat restoration activities on former CWD property. Habitat restoration in the Duwamish corridor is viewed as a key component of salmon recovery efforts, among other things. The easement helps to facilitate Boeing's restoration project, which is one of several projects proposed or being contemplated for this portion of the Duwamish. Cumulatively, the Boeing project will contribute to a regionally significant complex of restored fish and wildlife habitat.
  - Supporting water quality improvement and river-wide pollution "source control" efforts by facilitating better stormwater management on Boeing's property.
  - Allowing Boeing to conduct environmental cleanup that will improve conditions for people, fish and wildlife.
  - Allowing Port access through the Boeing Development Center, which will lower costs, improve safety and reduce construction-related environmental impacts (if the Port chooses to construct the project).

**COMMISSION AGENDA**

Tay Yoshitani, Chief Executive Officer

December 5, 2011

Page 4 of 6

- Establishing a benchmark for valuation of natural resource functions and ecosystem services.

**BUSINESS PLAN OBJECTIVES:**

- Capitalizing on natural resource functions and ecosystem services that are provided, or could be provided, in the former CWD property demonstrates value and creates opportunity for low performing or non-revenue generating properties.
- Collaboration with NRD potentially responsible parties (in this case Boeing) will help to foster a positive working relationship with the Trustees, community and others, which enhances our ability to achieve a cost-effective NRD settlement.
- Port access through the Boeing Development Center will significantly lower costs if the Port chooses to construct the T-117 NRD Restoration project.

**FINANCIAL ANALYSIS:**

The Port is unable to control uses on the former CWD property due to Washington State Supreme Court precedent. As such, the former CWD property has not been a source of revenue to the Port in the past. However, the former CWD property has value for habitat restoration purposes and for parties like Boeing that wish to settle their natural resource damages liability through the creation of habitat projects. The agreements with Boeing will allow the Port to obtain value for the transfer of habitat development rights to a third party and will set a precedent for future transactions that could be favorable to the Port financially.

Negotiations with Boeing regarding the settlement amount were underpinned by the imperative that the Port should be compensated for the value of foregone habitat credit opportunities in the easement area. To support the negotiation and establish the range of value, the Port completed an analysis that estimated:

- the potential number of credits that could be produced if the Port undertook its own habitat project in the easement area;
- the costs to produce the credits; and,
- potential market value of the credits.

The analysis confirmed that the settlement realizes returns from the Port's asset that could not otherwise be achieved.

**Budget/Authorization Summary**

Previous Authorizations	NA
Current request for authorization	NA
Total Authorizations, including this request	NA
Remaining budget to be authorized	NA

**COMMISSION AGENDA**

Tay Yoshitani, Chief Executive Officer

December 5, 2011

Page 5 of 6

**Source of Funds**

No funds are required by this transaction. This transaction will generate approximately \$1.5 million in cash proceeds.

**Financial Analysis Summary**

<b>CIP Category</b>	NA
<b>Project Type</b>	NA
<b>Risk adjusted Discount rate</b>	NA
<b>Key risk factors</b>	<ul style="list-style-type: none"> <li>Boeing has indicated that they need to authorize the Settlement Agreement and complete the financial transaction before the end of 2011 to avoid delays associated with their budgeting process.</li> <li>Each of the Easement Agreements include "hold harmless" and indemnity conditions as appropriate.</li> </ul>
<b>Project cost for analysis</b>	NA
<b>Business Unit (BU)</b>	Seaport Division
<b>Effect on business performance</b>	Granting of the easement will result in \$1.5 million of non-operating revenue to the Seaport in 2011.
<b>IRR/NPV</b>	NA

**SUSTAINABILITY AND LIFE CYCLE COSTS:**

- Future costs associated with maintenance of Boeing's habitat project and stormwater infrastructure within the granted easements will be the sole responsibility of Boeing. The Settlement Agreement will not increase life cycle costs associated with Port interests in the former CWD property.
- From a sustainability perspective, the Settlement Agreement will promote environmental cleanup, habitat restoration, water quality improvement, and community benefits.

**ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:**

- Alternative 1 - No Action -- do not enter into a Settlement Agreement with Boeing.<sup>{tan1}</sup> This alternative would put our relationship with Boeing, the Trustees, the EPA, Ecology, the community and environmental groups at risk, and it would forego \$1.5 million in proceeds. However, it would preserve the Port's ability to construct fish and wildlife habitat within the

**COMMISSION AGENDA**

Tay Yoshitani, Chief Executive Officer

December 5, 2011

Page 6 of 6

former CWD property at this location in the future, to use either for Port liability resolution or to capitalize on NRD and mitigation markets.

- Alternative 2 – Partial Action. Enter into a Settlement Agreement with Boeing that includes site access for cleanup and bankline corrective actions only. This alternative would preserve our relationship with EPA and Ecology and generate environmental improvements in the former CWD property (not including habitat restoration). However, it would be damaging to our relationship with the Trustees, Boeing, the community and environmental groups, inasmuch as the Port would be perceived to be standing in the way of habitat restoration. This alternative would also forego potential environmental benefits and indemnity associated with Boeing's stormwater infrastructure in the former CWD property. [tan2]
- Alternative 3 – Execute the Settlement Agreement and related agreements in exchange for \$1.5 million and access rights through the Boeing Developmental Center for construction of the T117 NRD Restoration project (if Port chooses to move forward with that project). This alternative fosters important relationships with Duwamish stakeholders, generates revenue from marginal property, and results in significant environmental improvements. **This is the recommended alternative.**

**OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:**

The access and easement agreements that are attachments to the Settlement Agreement include map exhibits which illustrate the boundaries of the site access and habitat easement areas. The Settlement Agreement is attached to this memo.

**PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:**

On July 7, 2009 the Port Commission adopted the Lower Duwamish River Habitat Restoration Plan (LDRHRP), which includes identification of 31 potential habitat restoration sites. The Settlement Agreement includes portions of LDRHRP Sites 18, 21 and 22.

**BOEING/PORT AGREEMENT**

This Agreement (“Agreement” or “Port/Boeing Agreement”) is made between Port of Seattle (“Port”) and The Boeing Company (“Boeing”) (hereinafter the “Parties”). The effective date of the Agreement is [INSERT DATE] (the “Effective Date”).

**WHEREAS**, the Port is the successor in interest to Commercial Waterway District No. 1 of King County, which acquired interests in certain real property located in King County, Washington, lying along and including a portion of the shoreline and submerged lands on the Lower Duwamish Waterway and generally shown on EXHIBIT 1 (the “Port Property”).

**WHEREAS**, Boeing owns certain real property adjacent to the Port Property and generally shown on EXHIBIT 2 (the “Boeing Property”).

**WHEREAS**, Boeing intends to complete the Duwamish Sediment Other Area (“DSOA”) and Southwest Bank Corrective Measure pursuant to the Administrative Order on Consent [RCRA Docket No 1092-01-22-3008(h)], issued to Boeing in 1994 by the United States Environmental Protection Agency under RCRA Section 3008(h), as amended by 42 U.S.C. 6928(h). A portion of the DSOA and Southwest Bank Corrective Measure is to occur on the Port Property.

**WHEREAS**, Boeing has executed a consent decree (“Consent Decree”) with the United States of America (on behalf of the National Oceanic and Atmospheric Administration, the United States Department of the Interior, and the United States Fish and Wildlife Service), the State of Washington through the Washington Department of

Port/Boeing Agreement

Ecology, the Muckleshoot Indian Tribe and the Suquamish Tribe (the "Trustees"). Pursuant to the terms of the Consent Decree, Boeing will, among other things, implement a habitat restoration project (the "Boeing Habitat Project") to restore and/or create off-channel and riparian habitats in the Lower Duwamish Waterway in an area where they have been largely eliminated, and facilitate the Port's grant of a conservation easement to the Trustees related to the portion of the Boeing Habitat Project occurring on the Port Property.

**WHEREAS**, as part of the redevelopment of Plant 2, Boeing is upgrading its stormwater system, including modifying existing storm drain lines/outfalls and installing new storm drain lines/outfalls. One of the storm drain lines/outfalls Boeing intends to modify is on Port Property. Three of the storm drain lines/outfalls Boeing intends to install are on Port Property.

**WHEREAS**, the Port is considering whether to conduct a habitat restoration project ("Port Habitat Project") in the LDW adjacent to Boeing's South Park property. Access on the South Park property would facilitate completion of the Port Habitat Project.

**NOW, THEREFORE, IT IS AGREED:**

1. **Site Access Agreement**: The Parties will execute concurrently with this Agreement a site access agreement, attached hereto as EXHIBIT 3, under which the Port provides access to the Port Property for Boeing and its contractors and agents to perform the DSOA and Southwest Bank Corrective Measure.



2. **Habitat Restoration Easement Agreement:** The Parties will execute concurrently with this Agreement a Habitat Restoration Easement Agreement, attached hereto as EXHIBIT 4, under which the Port grants to Boeing a perpetual easement to construct, maintain, monitor, replace and restore the portion of the Boeing Habitat Project located on the Port Property.

3. **Declaration of Conservation Easement:** The Port will execute concurrently with this Agreement a Declaration of Conservation Easement, a draft of which is attached hereto as EXHIBIT 5, under which the Port grants to the United States Department of Commerce acting through the National Oceanic and Atmospheric Administration, a conservation easement to ensure the permanent preservation of the Boeing Habitat Project located on the Port Property. 4. **Stormwater Outfall**

**Easement Agreement:** The Parties will execute concurrently with this Agreement a Stormwater Outfall Easement Agreement, attached hereto as EXHIBIT 6, under which the Port grants to Boeing temporary and perpetual easements to construct, modify, maintain, monitor, replace and restore Boeing's storm drain lines and outfalls on Port Property.

5. **Port Access through the Boeing South Park Property:** If the Port determines that it will proceed with the Port Habitat Project, Boeing will allow access to the adjacent Boeing South Park Property under the general terms and conditions set forth in the draft access agreement attached hereto as EXHIBIT 7. Prior to executing the applicable access agreement, the specific terms and conditions, such as locations, times,

and manner of access, will be negotiated in good faith by the Parties once more details are known about the Port's Port Habitat Project and access needs.

6. **Release and Covenant Not to Sue:**

a. **Mutual Release and Covenant Not to Sue:** The Parties agree to release and covenant not to sue each other from and against any claims, suits, actions, causes of action, or demands, whether known or unknown, related to (i) all past and future remedial action costs, response costs, and payments to third parties (including without limitation all reasonable consultant fees and attorney fees), incurred or to be incurred in the areas addressed by or related to the DSOA and Southwest Bank Corrective Measure actions; and (ii) all past and future natural resource damage liabilities, assessment and restoration costs, and payments to the Trustees, incurred or to be incurred in the area of or related to the Boeing Habitat Project. The Parties' hold harmless and indemnity obligations as set forth in the attachments shall be unaffected by this paragraph. To the extent the Parties' hold harmless and indemnity obligations set forth in the attachments are inconsistent with this paragraph, the obligations in the attachments shall govern.

b. **Reservation of rights:** Except for those claims, suits, actions, causes of action, or demands expressly released above in subsection 6(a), the Parties reserve all other claims, suits, actions, causes of action, or demands they may have against each other.

7. **Payment to the Port:** Within thirty (30) days of the Effective Date, Boeing shall pay to the Port the sum of One Million Five Hundred Thousand and Zero

Cents (\$1,500,000.00). Boeing shall make this payment to the Port by way of bank check payable to the "Port of Seattle."

8. **Notice:**

a. Any notices or other communications under this Agreement shall be directed to the following party representatives:

**To the Port:**  
Kathy Bahnick

Port of Seattle  
P.O. Box 1209.  
Seattle, WA 98111  
Phone: (206) 787-3128  
Email: Bahnick.K@portseattle.org

Thomas H. Tanaka  
Port of Seattle  
P.O. Box 1209 3600  
Seattle, WA 98111  
Phone: (206) 787-3007  
Email: Tanaka.T@portseattle.org

**To Boeing:**

Leah Krider  
EHS, Boeing Law Department  
2710 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008  
Phone: (425) 373-7123  
Email: Leah.M.Krider@boeing.com

Mark Schneider  
Perkins Coie LLP  
1201 Third Avenue, Suite 4800

Seattle, WA 98101-3099  
Phone: (206) 359-8000  
Email: MWSchneider@perkinscoie.com

b. Any party may change the person or address to which communication may be directed by giving written notice to the representatives provided above.

9. **Successor and Assigns**: This Agreement shall be binding upon successors and assigns of the Parties. No assignment or delegation of the obligations to make any payment or reimbursement hereunder shall release the assigning Party without the prior written consent of the other party. Prior to entry into any contract with a third party concerning the property where the DSOA and Southwest Bank Corrective Measure and the Boeing Habitat Project will be constructed, the Port shall first provide a copy of this Agreement to the third party.

10. **No Third-Party Beneficiaries**: This Agreement is intended by the Parties for their sole and exclusive benefit. The Parties expressly do not intend to benefit any other party, and expressly do not intend to create any third-party beneficiaries to this Agreement.

11. **Unenforceable Provisions**: If any provision of this Agreement is held to be unenforceable for any reason, it shall be adjusted, rather than voided, if possible, to achieve the intent of the Parties. If any portion of this Agreement becomes unenforceable, null, or void, the balance of this Agreement shall remain in full force and effect.

12. **Governing Law**: All rights and obligations of the Parties to this Agreement will be construed and enforced in accordance with, and governed by, the laws of the State of Washington. With respect to any disagreement, dispute, controversy, or

claim arising out of or relating to this Agreement or any interpretation of this Agreement, and solely for the purposes of this Agreement, each of the Parties irrevocably submits to the jurisdiction of the United States District Court for the Western District of Washington (unless federal jurisdictional requirements cannot be met, in which case each of the Parties irrevocably submits to the jurisdiction of the King County Superior Court).

13. **Entire Agreement:** This Agreement and all attachments constitute the entire agreement between the Parties. This Agreement and its attachments may not be modified or amended, except by writing signed by the Parties.

14. **Execution in Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

15. **Authority to Sign:** Each person signing this Agreement represents and warrants that he or she is duly authorized to enter into this Agreement by the entity on whose behalf the person is signing.

Accepted:

Port of Seattle

The Boeing Company

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Port/Boeing Agreement

8

12/5/11

03008-0337/LEGAL22259687.1

## MAIN AGREEMENT EXHIBITS



EXHIBIT 1 TO  
AGREEMENT  
PORT PROPERTY

APPROXIMATE SCALE IN FEET  
0 325 650

PORT PROPERTY

11/20/2017 11:27:39 AM

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11/20/2017 11:27:39 AM

Output  
Weathering Sludge Zone  
NAD 83  
North  
50' per foot



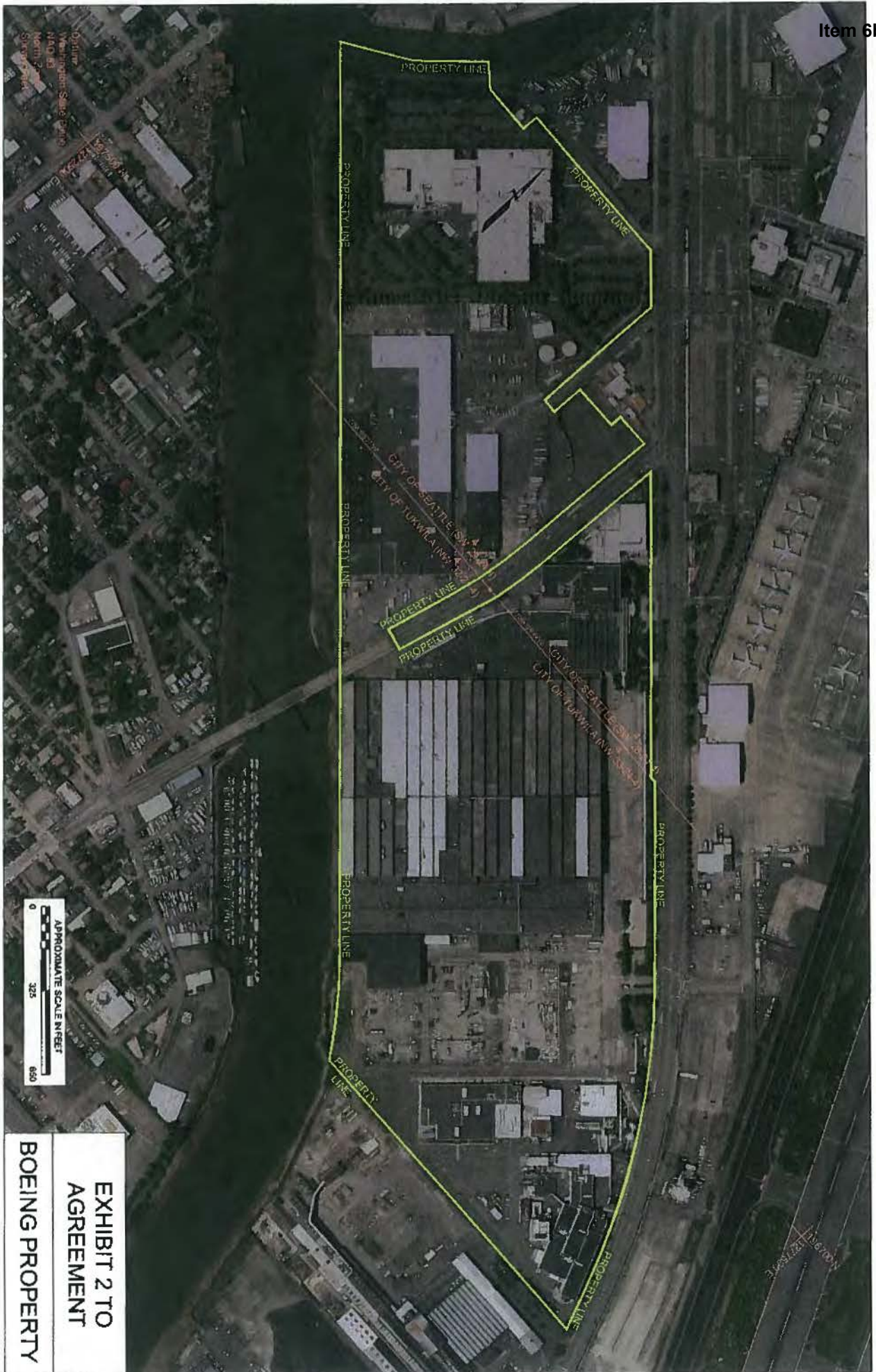
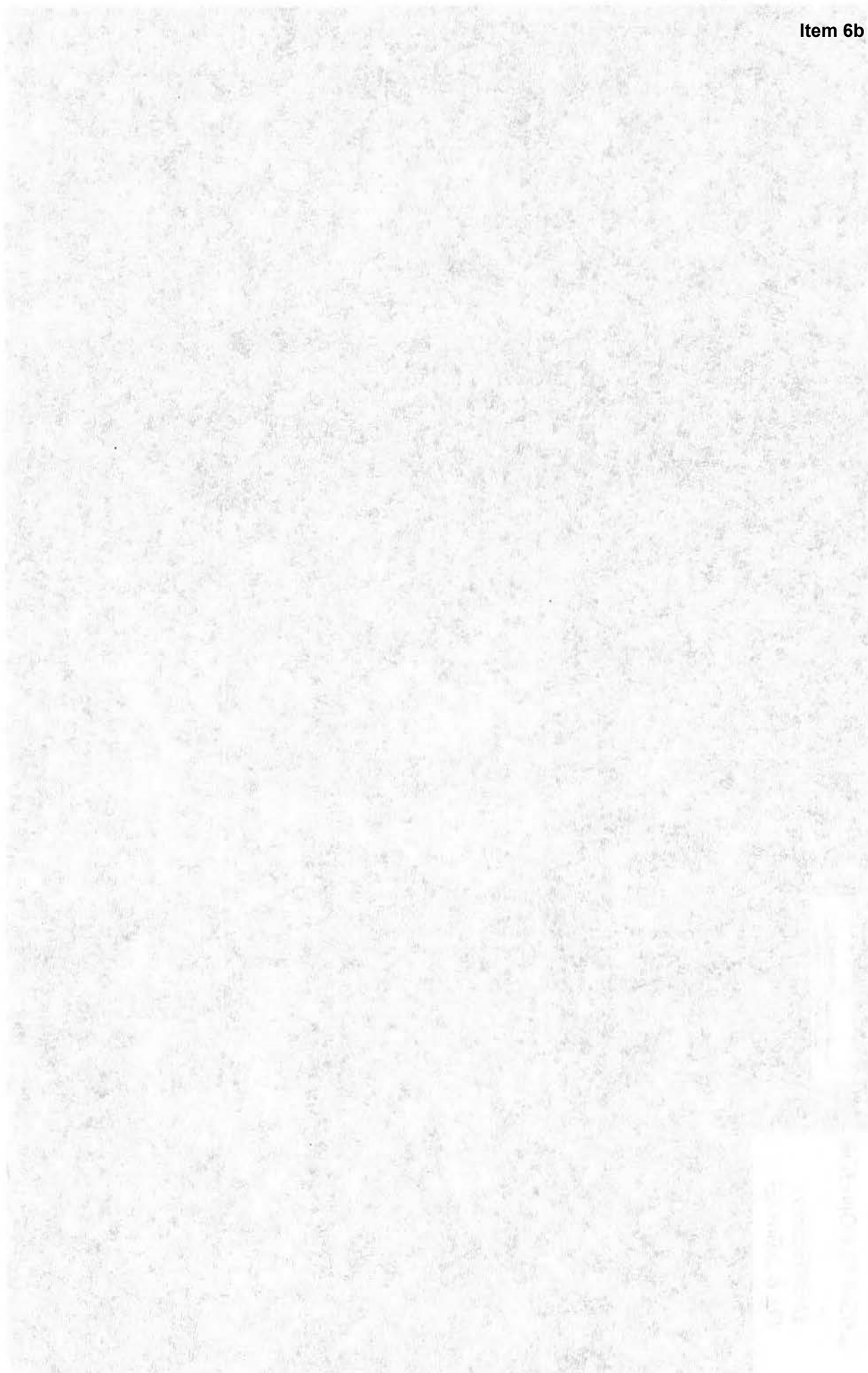


EXHIBIT 2 TO  
AGREEMENT  
BOEING PROPERTY



"DUWAMISH SEDIMENT AND OTHER AREA"  
AND  
SOUTHWEST BANK INTERIM MEASURE

**SITE ACCESS AGREEMENT**

This Site Access Agreement ("SAA") is made between Port of Seattle ("Port") and The Boeing Company ("Boeing") (hereinafter the "Parties").

**RECITALS**

A. The Port is the successor in interest to Commercial Waterway District No. 1 of certain real King County, which acquired interests in certain real property located in King County, Washington, lying along and including a portion of the shoreline and submerged lands on the Lower Duwamish Waterway and generally shown on EXHIBIT A (the "Port Property").

B. Boeing owns certain real property adjacent to the Port Property and generally shown on EXHIBIT B (the "Boeing Property").

C. Boeing intends to complete the Duwamish Sediment Other Area ("DSOA") and Southwest Bank Corrective Measure pursuant to the Administrative Order on Consent [RCRA Docket No 1092-01-22-3008(h)] ("Order"), issued to Boeing in 1994 by the United States Environmental Protection Agency ("EPA") under RCRA Section 3008(h), as amended by 42 U.S.C. 6928(h). The approximate location of the DSOA and Southwest Bank Corrective Measure is shown on EXHIBIT C. The proposed elements for the DSOA and Southwest Bank Corrective Measure are more fully described in EXHIBIT D, and are hereinafter referred to as the "Work." A portion of the Work is to occur on the Port Property.

D. The Parties have agreed to enter into this SAA to provide access to the Port Property for Boeing and its contractors and agents to perform the Work.

E. Concurrent with the Parties' entry into this SAA, Boeing and the Port are entering into a Habitat Restoration Easement Agreement, under which the Port is granting to Boeing an exclusive, perpetual easement to construct, maintain, monitor, replace and restore the portion of a habitat restoration project located on the Port Property.

F. Concurrent with the Parties' entry into this SAA, Boeing and the Port are entering into a Stormwater Outfall Easement Agreement, under which the Port is granting to Boeing a non-exclusive, perpetual easement to construct, operate, maintain, repair, modify, monitor, and replace storm water drain lines and outfalls on a portion of the Port Property.

In consideration of the mutual covenants and agreement herein, the Parties agree as follows:

#### **AGREEMENT**

The Port hereby grants to Boeing and its contractors and agents a non-exclusive license for access to the Port Property to conduct the Work. Boeing agrees that it will provide a copy of this SAA to any contractor or agent retained to assist in the Work, and that all contractors and agents must agree in writing to be bound by its terms.

The time and manner of such access shall be pursuant to the terms of this SAA:

1. **Time/Schedule.**

a. This SAA shall remain in full force and effect until the Work is completed. Boeing shall coordinate with the Port to ensure that the Work is done in a timely manner.

b. Boeing and its contractors and agents shall have twenty-four (24)hour access, seven (7) days per week, 365/366 days per year to the Port Property starting on the Effective Date of this SAA.

c. Boeing, through its contractors or agents, shall conduct the Work in accordance with the Order.

2. The Port's Cooperation with the Work; No Conflicting 3<sup>rd</sup> Party Agreements. The Port, including its representatives, contractors, or agents, shall cooperate in the performance of the Work by Boeing, including its representatives, contractors, or agents. At all times while this Agreement remains in place, the Port shall refrain from entering into any agreements with third parties concerning the Port Property that would be detrimental to Boeing's efforts to conduct and complete the Work in a timely and diligent manner.

3. Work Standards. Boeing, through its contractors and agents, shall perform all Work consistent with the requirements mandated by the EPA, including those set forth in the Order.

4. Hold Harmless and Indemnification.

4.1 Boeing's Hold Harmless and Indemnification Agreement: Boeing shall indemnify and hold the Port harmless from and against (i) any and all claims, losses, costs, expenses, liabilities or damages (collectively, "Claims") arising out of Boeing's negligent or willful failure to perform its obligations under this Agreement, (ii) any and all Claims related to the release of hazardous substances at, on, under or from the Port Property caused by Boeing's use of the Port Property after the Effective Date of this Agreement until the Work is complete, and (iii) any and all claims or liability for bodily injury to or death of any person or loss of or damage to any property, including reasonable attorneys' fees and costs, arising out of Boeing's or its contractors', consultants', or agents' negligence or willful misconduct associated with Boeing's use of the Port Property after the Effective Date of this Agreement until the Work is complete,

except to the extent such Claims are caused by the negligence or willful misconduct of the Port or the Port's agents, employees, contractors or invitees.

4.2 The Port's Hold Harmless and Indemnification Agreement: The Port will indemnify, defend, and hold Boeing harmless from and against (i) any and all Claims arising out of the Port's negligent or willful failure to perform its obligations under this Agreement, and (ii) any and all Claims for bodily injury to or death of any person or loss of or damage to any property, including reasonable attorneys' fees and costs, arising out of the Port's or its contractors', consultants', or agents' negligence or willful misconduct associated with the Port's use of the Port Property after the Effective Date of this Agreement until the Work is complete, except to the extent such Claims are caused by the negligence or willful misconduct on the part of Boeing, its agents, employees, contractors or invitees.

4.3 No Effect on Allocation of Responsibility for Prior Releases. This Agreement shall not be interpreted to have any effect on the Parties' liability with respect to actions or activities that occurred prior to the Effective Date of this Agreement, including without limitation, liability for past releases of hazardous substances to the Duwamish Waterway.

5. Party Representatives. Communication under this Agreement shall be directed to the following party representatives:

To the Port:

Kathy Bahnick  
 Port of Seattle  
 P.O. Box 1209  
 Seattle, WA 98111  
 Phone: (206) 787-3128  
 Email: Bahnick.K@portseattle.org

Tom Tanaka  
Port of Seattle  
P.O. Box 1209  
Seattle, WA 98111  
Phone: (206) 787-3007  
Email: [tanaka.t@portseattle.org](mailto:tanaka.t@portseattle.org)

To Boeing:

Mike Gleason  
The Boeing Company  
P.O. Box 3707  
M/C 1W-12  
Seattle, WA 98124-2207  
Phone: (206) 290-6576  
Email: [michael.j.gleason@boeing.com](mailto:michael.j.gleason@boeing.com)

Leah Krider  
EHS, Boeing Law Department  
2710 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008  
Phone: (425) 373-7123  
Email: [Leah.M.Krider@boeing.com](mailto:Leah.M.Krider@boeing.com)

Any party may change the person or address to which communication may be directed by giving written notice to the representatives provided above.

6. Authority to Execute. Each person executing this SAA on behalf of another person or entity represents and warrants that he or she is fully authorized to execute and deliver this SAA on behalf of such person or entity. The Parties each represent and warrant to each other that no consent of any person or entity not a party to this SAA is necessary in order for this SAA to be fully and completely binding upon the Parties.

7. Entire Agreement. Except for the Boeing/Port Agreement, this SAA contains the entire understanding between the Parties related to the Work and supersedes any prior or contemporaneous understandings and agreements between the Parties with respect to the Work. There are no other representations, agreements, arrangements or understandings, verbal or written, between and among the parties hereto, or any of them, relating to the Work. No amendment or supplement to this SAA shall be valid or effective unless made in writing and executed by the Parties hereto.

8. No Waiver of Remedy for Breach. A failure by any party to this SAA to enforce a term or condition of this SAA does not constitute a waiver of that party's remedies for any breach of this SAA. Waiver by a party to this SAA of one or more terms or conditions of this SAA does not constitute a waiver of any other terms or conditions of this SAA.

9. Applicable Law. This SAA shall be governed by the laws of the State of Washington, exclusive of its choice of law rules. Venue for all disputes shall be King County, Washington.

10. Successors and Assigns. This SAA shall inure to the benefit of and be binding upon the Parties' respective successors and assigns.

11. Effective Date. The Effective Date of this SAA is the first date upon which the SAA has been executed by all Parties.

12. Miscellaneous. This SAA may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original document, but all of which together shall constitute one and the same document. Neither Party shall record this SAA, nor any memorandum of this SAA. This SAA is solely for the benefit of the Parties and their successors and assigns, and no third party beneficiaries are intended to result herefrom.



Accepted:

Port of Seattle

The Boeing Company

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



# SITE ACCESS AGREEMENT EXHIBITS



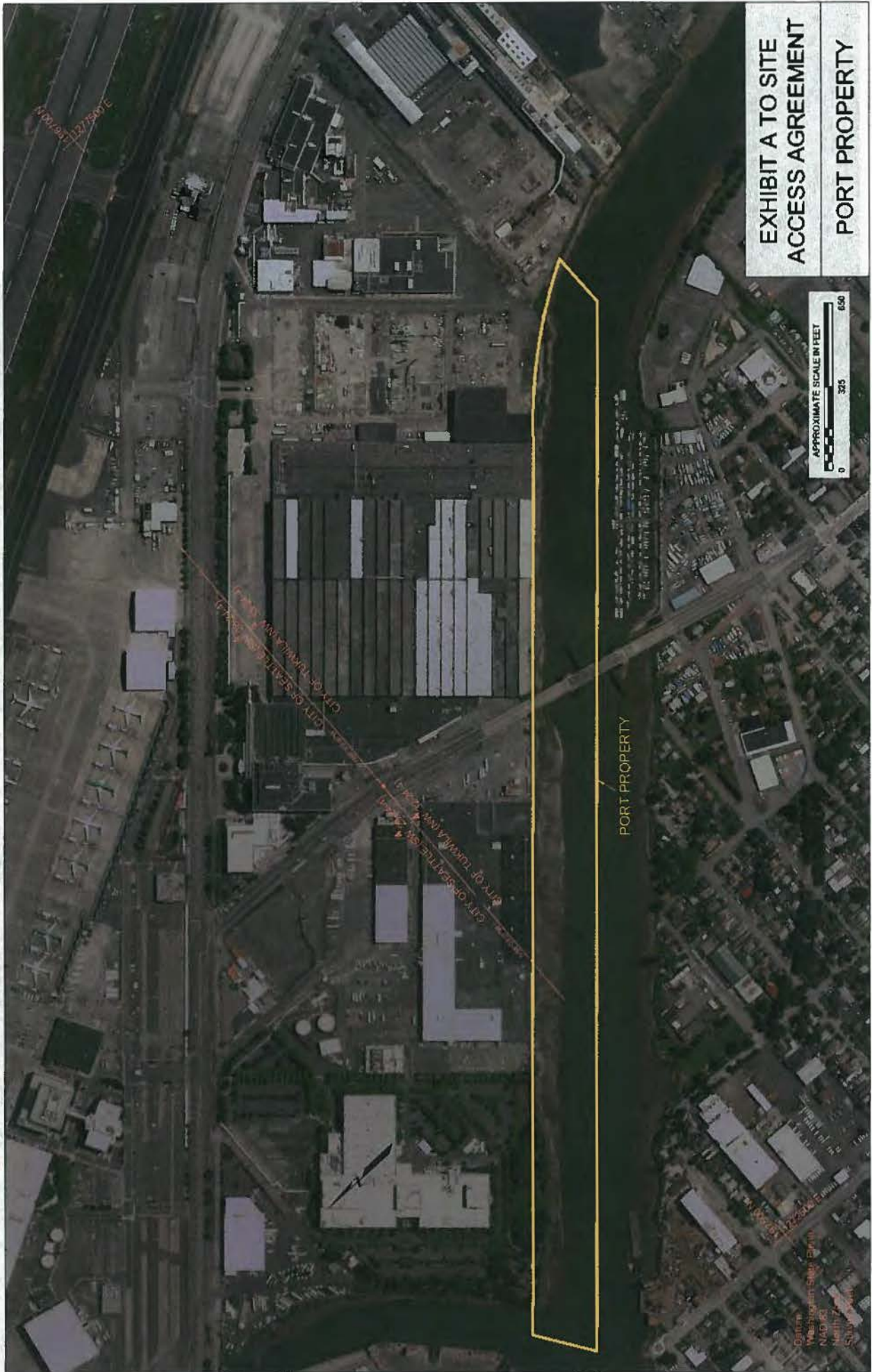


EXHIBIT A TO SITE  
ACCESS AGREEMENT  
PORT PROPERTY



112775001E

CITY OF TUMWATER  
CITY OF TUMWATER

PORT PROPERTY

City of Tumwater  
Washington State  
NAD 83  
North  
State Plane





**EXHIBIT C TO SITE  
ACCESS AGREEMENT**

**DSOA AND SOUTHWEST  
BANK CORRECTIVE MEASURE**

## **EXHIBIT D**

### **To Site Access Agreement**

Boeing's proposed project consist of the following primary components: design data collection sampling, sediment/soil remediation, temporary construction structure installation, and maintenance and monitoring. Each project component is described below.

#### **1.0 DESIGN DATA COLLECTION**

During design of the corrective measure, Boeing may have a requirement to collect additional environmental and/or geotechnical data within the project area. All design data collection activities will be conducted pursuant to Boeing's Administrative Order on Consent (Order) with EPA.

#### **2.0 SEDIMENT/SOIL REMEDIATION**

The Duwamish Sediment Other Area (DSOA) and Southwest Bank Corrective Measure includes the following project elements:

- Dredging with subsequent backfilling of the DSOA open-water areas,
- Dredging with backfilling of the 2-40s Under-building area,
- Removal of sediment and subsequent backfilling of the Outfall 12 area,
- Removal of contaminated bank fill material from the Southwest Bank area with subsequent reconstruction of the bank, and
- Removal of sediment from 4 areas with subsequent backfilling within the Boeing-owned portion of Slip 4.

##### **2.1 DREDGING OF THE DSOA OPEN-WATER AREAS**

The area of the DSOA (excluding the Under-building Area) is 13.96 acres. The northern boundary of the DSOA extends to the opening of Slip 4, while the southern boundary extends approximately 150 feet south of the Boeing Plant 2/Jorgensen Forge property line. The eastern boundary of the DSOA open-water area is the toe of the slope along the shoreline or building faces and the western boundary extends at least to the Federal Navigation Channel along the length of the Facility. The final configuration of the DSOA Corrective Measure relative to the Navigation Channel will be determined as part of the final design of the dredge cuts.

The corrective measure for the DSOA is a variable-depth dredge and backfill design. Over about 50% of the DSOA, elevated concentrations of polychlorinated biphenyls (PCBs) are confined to the top 4 feet below the existing mudline; however, in about 10% of the DSOA elevated concentrations of PCBs extend beyond 12 feet below mudline. The minimum proposed dredge cut over the entire DSOA



would be 2 feet with deeper dredge cuts in areas where there are concentrations of PCBs above the Sediment Management Standards (SMS) Sediment Quality Standards SQS; WAC 173-204-320) at depth. After dredging, the DSOA will be backfilled with clean material (no detectable PCBs and other SMS analytes will be below the SQS) to restore elevations, except that fill within the navigation channel and 10 feet inshore of the channel above -17 feet mean lower low water (MLLW), is not required.

The total dredge volume of the DSOA open-water area is estimated to be approximately 200,000 cy. Dredged material from this corrective measure will be transported to a permitted Subtitle D facility for disposal except for a small volume of sediment (approximately 400 cy) that may require Subtitle C disposal.

Water management equipment will be staged upland to handle the dredge return water (water from the barges and water that comes in contact with the stockpiled sediment at the Site). That equipment may include holding tanks, pumps, flocculent dispensing equipment, and Geotubes®, and will be used as appropriate, to remove sediment from the dredge return water prior discharge to the Lower Duwamish Waterway (LDW).

## **2.2 THE 2-40s UNDER-BUILDING AREA**

The 2-40s Under-building area is an approximate 1,000-foot-long section of Buildings 2-41, 2-44, and 2-49 that overhang the Duwamish Waterway shoreline bank. The overhanging portion is approximately 50 feet wide and is supported by wooden piles. It is physically separated from the uplands by a continuous bulkhead wall. Running underneath the overhang are a number of pipes, foundations, and other utility infrastructure that once supported the former manufacturing operations within the buildings. The surface beneath the overhang is covered with riprap extending to a scalloped sediment interface that is only exposed during low tide.

Boeing is currently removing the over-water portion of the buildings. This project includes the removal of the concrete slab, piling, riprap, foundations, and bulkheaded areas with subsequent excavation of sediments in the under-building area. The sediments in the Under-building area contain elevated concentrations of PCBs and other constituents which are, with a couple of exceptions, limited to 6 feet below the existing sediment surface.

The proposed excavation area of approximately 10,000 cy. The excavation will then be backfilled with clean sand (no detectable PCBs and other SMS analytes will be below the SQS).

### **2.3      OUTFALL 12 AREA**

Outfall 12 is in the intertidal zone located on the bank at the south end of the Building 2-49 adjacent to the Southwest Bank. An interim measure was conducted in this area to remove sediment and soils with elevated concentrations of PCBs (Weston 1998). Approximately 20 cy of sediment were removed at Outfall 12. Sediments with concentrations of PCBs above the SQS still remain in place below the backfilled interim measure excavation.

The Outfall 12 action will be designed to remove sediments with elevated concentrations of PCBs. Within the footprint of the prior interim measure, sediment will be removed to a depth of approximately 6 feet below mudline. After excavation, the Outfall 12 area will be backfilled with clean sand material (i.e., no detectable PCBs and other SMS analytes will be below the SQS) to restore elevations. This excavation is expected to be less than 100 cy.

### **2.4      SOUTHWEST BANK**

The Southwest Bank refers to the southern-most portion of Plant 2 fronting the LDW, specifically that section of riverbank located between the Plant 2 southern border and the 2-49 Building located approximately 400 feet to the north. The current bank is steep (on the order of 1.5 to 1 H:1V) and consists of riprap and miscellaneous debris fill. Elevated metals concentrations (primarily cadmium, copper, lead, and zinc) found in Southwest Bank soils appear to be related to large amounts of debris found within the upper deposits of the Southwest Bank fill. PCBs were also occasionally detected in the Southwest Bank. The proposed excavation is approximately 7,000 cy.

### **2.5      SLIP 4**

Based on review of existing sediment data in Slip 4, there are four areas within the Boeing-owned portion of Slip 4 that will be excavated and backfilled. Within these areas, sediments will be excavated to a nominal depth of 2, 3, or 4 feet and subsequently backfilled with clean sand. The estimated volume of the sediment to be removed is approximately 650 cy. The cleanup in Slip 4 will be conducted at the same time as the DSOA corrective measure.

## **3.0   TEMPORARY CONSTRUCTION STRUCTURES**

To support the Boeing Plant 2 sediment remediation project, a number of temporary mooring points for floating equipment (barges, tug boats, dredge equipment, etc.) will be required. These mooring points will provide locations where equipment can be temporarily moored during the project. These mooring points may be installed, removed and reinstalled within the project area during the course of the project.

Mooring points may consist of single steel piling or 3 piling clusters (dolphins). The pile used will typically be steel, 12 to 24 inches in diameter. They will be installed and removed using vibratory equipment to the extent practicable.

It is anticipated that up to 10 individual mooring points (single piles or three pile dolphins) may be installed at any one time, and that each of these could be removed and reinstalled several times during the course of the project.

#### **4.0 MONITORING**

As part of the Order with EPA, monitoring may be required to periodically collect sediment samples to determine if recontamination of the remedy is occurring.

# RESTORATION EASEMENT EXHIBITS

**Return Address****Document Title(s) (or transactions contained therein):**

1. HABITAT RESTORATION EASEMENT AGREEMENT
- 2.
- 3.

**Reference Number(s) of Documents assigned or released:**  
(on page \_\_\_ of documents(s))**Grantor(s) (Last name first, then first name and initials):**

1. Port of Seattle, a Washington municipal corporation
- 2.
- 3.

**Grantee(s) (Last name first, then first name and initials):**

1. The Boeing Company, a Delaware corporation
- 2.
- 3.

**Legal description (abbreviated: i.e. lot, block, plat or section, township, range)**

Portion of SE 1/4 of Sec. 29, T. 24N, R. 4E, W.M. AND portion of NW 1/4 of Sec. 33, T. 24N, R. 4E, W.M.

Full legal is on page \_\_\_ of document.

**Assessor's Property Tax Parcel/Account Number**

INSERT

## HABITAT RESTORATION EASEMENT AGREEMENT

THIS HABITAT RESTORATION EASEMENT AGREEMENT (“**Agreement**”) is made this \_\_\_\_\_, day of \_\_\_\_\_, 2011 (the “**Effective Date**”), by and between the PORT OF SEATTLE, a Washington municipal corporation (the “**Port**”) and THE BOEING COMPANY, a Delaware corporation (“**Boeing**”) (hereinafter the “**Parties**”).

### RECITALS

A. The Port is the successor in interest to Commercial Waterway District No. 1 of King County, which acquired interests in certain real property located in King County, Washington, lying along and including a portion of the shoreline and submerged lands on the Lower Duwamish Waterway and more particularly described on EXHIBIT A (the “**Port Property**”).

B. Boeing owns certain real property adjacent to the Port Property and more particularly described on EXHIBIT B (the “**Boeing Property**”).

C. Boeing has entered into a consent decree (as the same may be modified from time to time, the “**Consent Decree**”) with the United States of America (on behalf of the National Oceanic and Atmospheric Administration, the United States Department of the Interior, and the United States Fish and Wildlife Service), the State of Washington through the Washington Department of Ecology, the Muckleshoot Indian Tribe and the Suquamish Tribe (collectively the “**Trustees**”). Pursuant to the terms of the Consent Decree, Boeing will implement a habitat restoration project (the “**Habitat Project**”) to restore and/or create off-channel and riparian habitats in the Lower Duwamish Waterway in an area where they have been largely eliminated. The Habitat Project will include, but not be limited to, removal of certain over-water structures, reduction of slopes, cutback of banks, softening of banks, creation of new intertidal habitat, creation of brackish marsh fringe and addition of large woody debris. A portion of the Habitat Project is to occur on the Port Property.

D. The Consent Decree requires Boeing to take all necessary actions to obtain an easement on behalf of the Trustees so that the Habitat Project will be protected in perpetuity and the Trustees will be permitted access to the Port Property on which the Habitat Project will be constructed at the times and under the circumstances described in the Consent Decree.

F. The Parties now desire to enter into an agreement to grant to Boeing a perpetual easement to construct, maintain, monitor, replace and restore the portion of the Habitat Project located on the Port Property, together with certain other rights, all subject, however, to the terms and conditions set forth in this Agreement. The Parties intend for the Port to grant Boeing the same degree of control over the Port Property as the Port is legally entitled to exercise over the Port Property to the extent necessary for Boeing to satisfy its obligations under the Consent Decree.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

## **AGREEMENT**

### **1. Easement for Habitat Project**

#### **1.1 Grant of Easement**

The Port does hereby grant, convey and quitclaim to Boeing, for the benefit of Boeing and of the Boeing Property, an exclusive, perpetual easement (the “**Easement**”) on, across, under, in and through the Port Property to excavate, remove, construct, reconstruct, install, use, operate, repair, replace, monitor, restore, maintain, relocate and alter (collectively, “**Construct and Maintain**”) portions of the Habitat Project, together with all appurtenant fixtures and equipment that are necessary or convenient and that are directly related to the Habitat Project, including without limitation, the right to excavate and remove soil and the right to use the subsurface area in connection with the Habitat Project, and together with such rights of access as may be necessary or desirable for the full use and enjoyment of the rights granted in this Agreement. The exclusive purposes of this grant of easement are to provide for the establishment, maintenance and operation of portions of the Habitat Project on the Port Property, and to establish the Habitat Project as the exclusive use of the Port Property, subject only to the rights of the public to use of the Lower Duwamish Waterway as required by law or as otherwise provided in Section 1.11 below. The Parties expressly agree that there is no intent to convey any rights other than those that are granted in this Agreement. The Parties do not intend for this Agreement to convey fee title in any form or any other interest other than an easement subject to the conditions described in this Agreement.

#### **1.2 Trustee Access and Use Under the Consent Decree**

The Trustees and each of them, and their respective contractors, shall have the right to enter onto the Port Property for purposes of inspecting and monitoring the Habitat Project,

and, provided each Trustee that enters onto the Port Property agrees to each of the terms and conditions of this Agreement, including without limitation, the obligation to indemnify and hold the Port harmless as set forth in Section 6.1 below, to conduct such further work on the Habitat Project as it deems necessary or desirable so long as that work complies in all respects with the terms of the Consent Decree.

### **1.3 Establishment of Restrictive Covenant**

The Port further declares that the Port Property shall be held, conveyed, hypothecated, encumbered, leased, used, occupied and improved subject to this Agreement and to all of its terms, which are declared and agreed to be equitable servitudes in furtherance of a plan for the improvement and use of the Port Property, and are established and agreed upon for the purposes set forth in this Section 1. The Parties agree, however, that under no circumstances will the Port's underlying interest in the Port Property be subordinated or otherwise made subject to any security interest. All such covenants, conditions and restrictions shall run with the Port Property and each part of it, and shall be binding upon, and shall be for the benefit of, the Parties to this Agreement and their respective successors and assigns. The Port hereby relinquishes forever, for itself and for its successors and assigns, the right to develop or use the Port Property in any manner that would be inconsistent with the Habitat Plan or Boeing's obligations under the Consent Decree.

### **1.4 Exclusive Rights**

Commencing on the Effective Date, Boeing will have the sole and exclusive right to enter onto the Port Property and to take such actions as are necessary to Construct and Maintain the Habitat Project, subject only to the rights of the Trustees set forth in Section 1.2 above. Without limiting the generality of the foregoing, subject to the rights of the public to navigation as established by law and those rights set forth below in Section 1.11, Boeing shall have all of the Port's right to exclude all persons from the Port Property during construction, reconstruction, maintenance, and other activities related to the Habitat Project, and to take such other actions for the safety and protection of Boeing and its employees, contractors and agents as Boeing may elect in its sole discretion.

### **1.5 Water Rights; Plant Material**

To the extent permitted by law, Boeing shall have the sole and exclusive right to use and appropriate all water rights appurtenant to the Port Property for the Habitat Project. The Port grants, conveys and transfers to Boeing all of the Port's right, title and interest in and to



those water rights; provided, however, that they shall be used and applied solely for the purposes of constructing, maintaining and operating the Habitat Project.

The Port further grants, conveys and transfers to Boeing all of the Port's right, title and interest in and to all trees and other plants and plant materials that are located on the Port Property on the Effective Date, and grants to Boeing the right to remove and dispose of any or all of them, to make any or all of them a part of the Habitat Project, and to allow any or all of them to remain as a part of the Port Property, all in Boeing's sole discretion.

#### **1.6 Plans and Specifications for Habitat Project**

The Port approves the preliminary conceptual design for the Habitat Project as described in the project description and scope of work attached as EXHIBIT C. The Habitat Project shall be constructed, installed and maintained in accordance with final plans and specifications approved by Boeing pursuant to the Consent Decree. Boeing shall cooperate with the Port to the extent reasonably practicable to take into account the Port's comments to the proposed final plans and specifications. The Port acknowledges and agrees, however, that final plans and specifications for the Habitat Project shall be those that are approved by Boeing pursuant to the Consent Decree.

#### **1.7 Utilities**

Boeing will pay for all utilities used in connection with the Habitat Project during the term of this Agreement, including all utility service during construction of the Habitat Project and all utilities used in the operation and maintenance of the Habitat Project.

#### **1.8 Termination by Boeing**

Boeing shall have the right to terminate the easement granted in this Section 1 if the easement is no longer needed by Boeing in order to fulfill its obligations under the Consent Decree. The easement, and all of Boeing's rights under the easement, may be terminated pursuant to this Section 1.8 by written notice given by Boeing to the Port, stating the date on which the easement will terminate. The Parties' obligations under Section 6 shall survive termination of the easement.

#### **1.9 Port Cooperation**

The Port shall cooperate with Boeing in Boeing's exercise of the easement rights granted in this Agreement and shall refrain from entering into any agreements with third

parties concerning the Port Property, or otherwise taking actions, that would be detrimental to the free and unfettered exercise by Boeing of those rights.

### **1.10 Stormwater Control**

The Port and Boeing acknowledge the presence of certain stormwater control facilities on the Port Property. The Port and Boeing further anticipate that they will enter into one or more easement agreements for installing and maintaining existing and/or new stormwater control facilities, provided that there shall be no interference with the Habitat Project as a result of the installation and maintenance of such facilities.

### **1.11 Access Rights under 1991 Easement**

The Port and Boeing acknowledge the existence of the Access Easement granted by the Port to Boeing in June 1991 for the purpose of facilitating public access through the Port Property to the Duwamish River shoreline as part of the City of Seattle's permitting requirements for Boeing's construction of the North Duwamish Campus ("1991 Easement"). The access rights granted under the 1991 Easement are not superseded by this Agreement and will remain in effect until the City of Seattle approves alternate shoreline public access for the North Duwamish Campus.

## **2. Notices**

Notices required to be given under this Agreement shall be in writing, via United States mail, electronic mail, or hand delivery, and shall be given as follows:

If to the Port:                   Port of Seattle  
   P.O. Box 1209  
   Seattle, WA 98111  
   Attn: Kathy Bahnick  
   Email: Bahnick.K@portseattle.org

If to Boeing:                   Boeing  
   The Boeing Company  
   P.O. Box 3707  
   M/C 1W-12  
   Seattle, WA 98124-2207  
   Attn: Mike Gleason  
   Email: michael.j.gleason@boeing.com

Notices shall be deemed effective, if mailed, on the fifth day following deposit thereof in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or upon delivery thereof if given in any other manner. Either party may change the address and recipient to which notices may be given by giving notice in the manner provided in this Section 2.

### **3. Compliance with Laws and Rules**

The rights granted to Boeing in this Agreement shall be exercised in accordance with the requirements of all applicable statutes, orders, rules and regulations of any public authority having jurisdiction.

### **4. Work Standards**

All work performed by Boeing on the Port Property shall be completed in a careful, competent and workmanlike manner, free of all claims of liens. Following any construction, Boeing shall replace any property corner monuments, survey references or hubs which were disturbed or destroyed by activities conducted by Boeing or at Boeing's direction.

### **5. Port's Use of Easement Area**

The Port retains the right to fully use and enjoy the Port Property to the extent not inconsistent with the rights granted to Boeing in this Agreement. The Port shall not construct or maintain any buildings or other permanent structures on or over the Port Property without Boeing's prior written consent.

### **6. Hold Harmless and Indemnity Agreement**

#### **6.1 Boeing's Hold Harmless and Indemnity Agreement**

Boeing shall indemnify and hold the Port harmless from and against (i) any and all claims, losses, costs, expenses, liabilities or damages (collectively, "Claims") arising out of Boeing's negligent or willful failure to perform its obligations under this Agreement, (ii) any and all Claims related to the release of hazardous substances at, on, under or from the Port Property caused by Boeing's use of the Port Property after the Effective Date of this Agreement, and (iii) any and all Claims for bodily injury to or death of any person or loss of or damage to any property arising out of Boeing's or its contractors' consultants', or agents' negligence or willful misconduct associated with Boeing's use of the Port Property after the Effective Date of this Agreement, except to the extent such Claims are caused by the

negligence or willful misconduct of the Port, ~~any Trustee exercising its right to conduct work on the Port Property~~, or any other person or entity seeking indemnification under this Section 6, or their agents, employees, contractors or invitees.

## **6.2 The Port's Hold Harmless and Indemnity Agreement**

The Port shall indemnify and hold Boeing and its affiliates and officers, directors, members, employees, agents, contractors, successors and assigns harmless from and against (i) any and all Claims arising out of the Port's negligent or willful failure to perform its obligations under this Agreement, and (ii) any and all Claims for bodily injury to or death of any person or loss of or damage to any property arising out of the Port's or its contractors' consultants', or agents' negligence or willful misconduct associated with Port's use of the Port Property, except to the extent such Claims are caused by the negligence or willful misconduct on the part of Boeing, any Trustee exercising its right to conduct work on the Port Property, or any other person or entity seeking indemnification under this Section 6, its agents, employees, contractors or invitees.

## **6.3 No Effect on Allocation of Responsibility for Prior Releases**

This Agreement shall not be interpreted to have any effect on the Parties' liability with respect to actions or activities that occurred prior to the Effective Date of this Agreement, including without limitation, liability for past releases of hazardous substances to the Duwamish Waterway.

## **7. Attorneys' Fees**

In the event either party brings a legal action against the other party to enforce its rights under this Agreement, the substantially prevailing party shall be entitled to receive reimbursements from the other party for such prevailing party's costs incurred in such legal action (including the costs of appeal), including the reasonable fees and disbursement of the prevailing party's attorneys, in addition to all other rights and remedies available to the prevailing party at law or in equity.

## **8. Complete Agreement**

Except for the Boeing/Port Agreement and the 1991 Easement described in Section 1.11 above, this Agreement contains the entire agreement of the Parties with respect to the Habitat Project and supersedes all prior or contemporaneous writings or discussions relating to any easement to the Port Property and agreements provided for therein. This Agreement

may not be amended except by a written document executed after the date hereof by the duly authorized representatives of Boeing and the Port.

#### **9. Choice of Law; Invalidity**

This Agreement shall be governed by the laws of the State of Washington, exclusive of its choice of law rules. In the event any term, covenant, condition, provision or easement contained in this Agreement is held to be invalid, voided or otherwise unenforceable by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any other term, covenant, condition, provision or easement contained herein.

#### **10. Successors and Assigns**

The rights herein granted and the duties hereby agreed to shall inure to the benefit of and be binding upon the Parties' respective successors and assigns. Notwithstanding the foregoing, Boeing expressly reserves the sole and exclusive right to modify or terminate the this Agreement and the easement granted in it on behalf of the grantee and holder of the easement rights without the agreement or joinder of any other party, other than the Port, including without limitation any successor to Boeing as owner of the Boeing Property or any part of it.

#### **11. Exhibits**

The following exhibits attached to this Agreement are incorporated into it by this reference and made a part of it as though fully set forth:

Exhibit A	Port Property
Exhibit B	Boeing Property
Exhibit C	Project Description and Scope of Work

IN WITNESS WHEREOF, the Parties have executed this Agreement through their appropriate officials and representatives.

**The Port:**

PORT OF SEATTLE, a Washington  
municipal corporation

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Boeing:**

THE BOEING COMPANY,  
a Delaware corporation

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of PORT OF SEATTLE, the Washington municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was duly elected, qualified and acting as said officer of the municipal corporation, that \_\_\_\_\_ was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

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

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

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of THE BOEING COMPANY, the Delaware corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was duly elected, qualified and acting as said officer of the corporation, that \_\_\_\_\_ was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

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



**EASEMENT AREA – PORT OF SEATTLE AREA #2 (LEGAL DESCRIPTION)**

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 24 NORTH, RANGE 04 EAST, W.M., CITY OF SEATTLE, IN KING COUNTY, WASHINGTON, LYING WITHIN THE DUWAMISH COMMERCIAL WATERWAY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST BOUNDARY CORNER OF THE AMENDED BOEING PLANT 2 BOUNDARY SURVEY, AS RECORDED IN VOLUME 131 OF SURVEYS, PAGE 189, RECORDS OF KING COUNTY, WASHINGTON. SAID CORNER BEING THE INTERSECTION OF THE NORTH LINE OF THE BOEING PLANT 2 BOUNDARY, WITH THE NORTHEASTERLY RIGHT OF WAY LINE OF THE DUWAMISH COMMERCIAL WATERWAY, THENCE ALONG SAID RIGHT OF WAY AND WEST BOUNDARY, SOUTH 47°51'38" EAST, A DISTANCE OF 101.85 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 30°07'21" WEST, A DISTANCE OF 31.98 FEET; THENCE CONTINUING ALONG SAID EASEMENT THE FOLLOWING COURSES AND DISTANCES;

SOUTH 07°02'42" EAST, 46.57 FEET; SOUTH 17°05'43" EAST, 44.51 FEET; SOUTH 64°43'14" EAST, 49.83 FEET; SOUTH 15°59'13" EAST, 42.22 FEET; SOUTH 33°14'53" EAST, 40.87 FEET; SOUTH 53°56'58" EAST, 92.82 FEET; SOUTH 40°57'51" EAST, 53.07 FEET; SOUTH 49°58'37" EAST, 137.84 FEET; SOUTH 48°05'03" EAST, 70.13 FEET; SOUTH 62°38'47" EAST, 56.43 FEET; SOUTH 52°14'10" EAST, 63.03 FEET; NORTH 62°18'23" EAST, 48.94 FEET; NORTH 35°42'13" WEST, 20.00 FEET; NORTH 17°33'22" WEST, 20.83 FEET; NORTH 00°44'18" EAST, 21.95 FEET; THENCE NORTH 47°51'38" WEST, A DISTANCE OF 637.76 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 58,380 SQUARE FEET, OR ± 1.340 ACRES, MORE OR LESS.

**EASEMENT AREA – PORT OF SEATTLE AREA #1 (LEGAL DESCRIPTION)**

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 24 NORTH, RANGE 04 EAST, W.M., CITY OF TUKWILA, IN KING COUNTY, WASHINGTON, LYING WITHIN THE DUWAMISH COMMERCIAL WATERWAY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST BOUNDARY CORNER OF THE AMENDED BOEING PLANT 2 BOUNDARY SURVEY, AS RECORDED IN VOLUME 131 OF SURVEYS, PAGE 189, RECORDS OF KING COUNTY, WASHINGTON. SAID CORNER BEING THE INTERSECTION OF THE SOUTH LINE OF SAID BOEING PLANT 2 BOUNDARY, WITH THE NORTHEASTERLY RIGHT OF WAY LINE OF THE DUWAMISH COMMERCIAL WATERWAY, SAID INTERSECTION BEING A POINT ON A CURVE TO THE LEFT FROM WHENCE THE CENTER BEARS SOUTH 53°50'05" WEST, A DISTANCE OF 1,969.12 FEET; THENCE ALONG SAID CURVE, AND WESTERLY BOUNDARY, THROUGH A CENTRAL ANGLE OF 01°10'05", AN ARC LENGTH OF 40.14 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 10°31'38", AN ARC LENGTH OF 381.78 FEET TO THE POINT OF TANGENCY; THENCE NORTH 47°51'38" WEST, ALONG SAID WATERWAY, A DISTANCE OF 94.13 FEET; THENCE SOUTH 05°45'56" EAST, A DISTANCE OF 9.55 FEET; THENCE CONTINUING ALONG SAID EASEMENT, THE FOLLOWING COURSES AND DISTANCES; SOUTH 42°36'42" EAST, 18.88 FEET; SOUTH 03°58'52" EAST, 28.05 FEET; SOUTH 17°36'34" EAST, 43.73 FEET; SOUTH 27°21'52" EAST, 21.95 FEET; SOUTH 09°57'51" EAST, 29.80 FEET; SOUTH 52°11'05" EAST, 72.34 FEET; SOUTH 46°19'11" EAST, 142.66 FEET; SOUTH 43°38'35" EAST, 101.48 FEET; SOUTH 57°12'20" EAST, 13.26 FEET; THENCE NORTH 39°48'19" EAST, A DISTANCE OF 44.81 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 24,433 SQUARE FEET, OR ± 0.561 ACRES, MORE OR LESS.

**EASEMENT AREA - PORT OF SEATTLE AREA #3- (LEGAL DESCRIPTION)**

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 24 NORTH, RANGE 04 EAST, W.M., CITY OF SEATTLE, IN KING COUNTY, WASHINGTON, LYING WITHIN THE DUWAMISH COMMERCIAL WATERWAY,

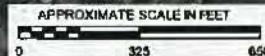
COMMENCING AT THE NORTHWEST BOUNDARY CORNER OF THE AMENDED BOEING PLANT 2 BOUNDARY SURVEY, AS RECORDED IN VOLUME 131 OF SURVEYS, PAGE 189, RECORDS OF KING COUNTY, WASHINGTON. SAID CORNER BEING THE INTERSECTION OF THE NORTH LINE OF THE BOEING PLANT 2 BOUNDARY, WITH THE NORTHEASTERLY RIGHT OF WAY LINE OF THE DUWAMISH COMMERCIAL WATERWAY, THENCE ALONG SAID RIGHT OF WAY AND WEST BOUNDARY, SOUTH 47°51'38" EAST, A DISTANCE OF 926.80 FEET; THENCE SOUTH 42°08'24" WEST, A DISTANCE OF 13.19 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 48°53'35" EAST, A DISTANCE OF 29.99 FEET; THENCE SOUTH 41°05'39" WEST, A DISTANCE OF 30.00 FEET; THENCE NORTH

CONTAINING 900 SQUARE FEET, OR ± 0.021 ACRES, MORE OR LESS.



**EXHIBIT A TO HABITAT RESTORATION EASEMENT AGREEMENT**

**PORT PROPERTY**



LEGAL DESCRIPTION (PLAT 3 - CONSOLIDATED)

APN: 022200005, 022200015, 022200018, 252404008, 254040208, 216000205  
 APN: 342404-9005, 132404-8002, 284040912 & 021510202

A TRACT OF LAND BETWEEN THE DUMWASH WATERWAY AS ESTABLISHED BY COMMERCIAL WATERWAY DISTRICT NO. 1 OF KING COUNTY, WASHINGTON AND EAST MARGINAL WAY SOUTH IN SECTIONS 25, 26, 32 AND 33, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M. DESCRIBED AS FOLLOWS:  
 BEGINNING AT THE INTERSECTION OF THE SOUTH MARGIN OF SOUTH WEBSTER STREET, BEING 12 FEET SOUTH OF THE CENTERLINE THEREOF, AND THE SOUTHWESTERLY MARGIN AT EAST MARGINAL WAY SOUTH, BEING 95 FEET SOUTHWESTERLY OF THE CENTERLINE THEREOF;  
 THENCE SOUTH 4° 52' 17" EAST, ALONG THE SOUTHWESTERLY MARGIN OF EAST MARGINAL WAY SOUTH, 221.87 FEET, TO THE WEST MARGIN OF 14TH AVENUE SOUTH; THENCE SOUTH 67° 36' 43" WEST, ALONG THE WEST MARGIN OF 14TH AVENUE SOUTH BEING 80 FEET IN WIDTH, 543.85 FEET, TO A POINT THAT IS 837.11 FEET NORTH OF THE SOUTH LINE OF GOVERNMENT LOT 13 IN SAID SECTION 25; THENCE SOUTH 8° 05' 51" EAST, PARALLEL WITH SAID SOUTH LINE, 80.91 FEET TO THE EAST MARGIN OF 14TH AVENUE SOUTH; THENCE NORTH 09° 58' 47" EAST, ALONG SAID EAST MARGIN, 131.36 FEET; THENCE SOUTH 89° 18' 47" EAST, A DISTANCE OF 162.88 FEET; THENCE NORTH 00° 47' 48" EAST, A DISTANCE OF 45.88 FEET; THENCE SOUTH 89° 12' 41" EAST, A DISTANCE OF 137.92 FEET TO THE WEST MARGIN OF 18TH AVENUE SOUTH; THENCE SOUTH 01° 37' 02" WEST, ALONG THE SAID WEST MARGIN OF 18TH AVENUE SOUTH, 865.85 FEET, TO A POINT OF CURVE; THENCE CONTINUING ALONG SAID WEST MARGIN ON A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 190.08 FEET, THROUGH A CENTRAL ANGLE OF 11° 02' 53" AN ARC LENGTH OF 368.87 FEET TO THE POINT OF TANGENCY; THENCE CONTINUING ALONG SAID WEST MARGIN, SOUTH 12° 09' 40" WEST 283.75 FEET, TO THE NORTHEAST CORNER OF A PORTION OF 18TH AVENUE SOUTH, AS VACATED BY KING COUNTY ORDINANCE NO. 858 AND FILED IN KING COUNTY RECORDS UNDER RECORDING NO. 711109048, THENCE SOUTH 78° 09' 48" EAST, TO THE SOUTHEAST CORNER THERE OF A DISTANCE OF 88.03 FEET; THENCE NORTH 13° 05' 46" EAST, A DISTANCE OF 121.88 FEET; THENCE NORTH 14°08'08" EAST, A DISTANCE OF 369.82 FEET TO THE INTERSECTION WITH THE SOUTH LINE OF SAID SECTION 28; THENCE THE SOUTHWEST SECTION CORNER 8 EARLY SOUTH 8° 09' 40" EAST, A DISTANCE OF 25.82 FEET; SAID POINT BEING ON A CURVE ON THE EASTERLY MARGIN OF 18TH AVENUE SOUTH FROM WHENCE THE CENTER BEARS NORTH 81° 04' 48" WEST 198.98 FEET, THENCE NORTHERLY ALONG SAID EASTERLY MARGIN AND SAID CURVE THROUGH A CENTRAL ANGLE OF 96° 32' 22" AN ARC LENGTH OF 236.12 FEET TO THE POINT OF TANGENCY; THENCE CONTINUING ALONG SAID EASTERLY MARGIN NORTH 01° 57' 52" EAST 34.85 FEET TO A POINT OF INTERSECTION WITH THE SOUTHWESTERLY MARGIN OF SAID EAST MARGINAL WAY SOUTH, BEING 85 FEET DISTANT FROM, AS MEASURED AT RIGHT ANGLES TO, THE CENTERLINE OF SAID EAST MARGINAL WAY SOUTH, THENCE ALONG SAID SOUTHWESTERLY MARGIN OF EAST MARGINAL WAY SOUTH ON THE FOLLOWING COURSES: SOUTH 47° 52' 17" EAST 1188.40 FEET TO THE SOUTH LINE OF SAID SECTION 28; THENCE SOUTH 88° 09' 46" EAST ALONG SAID SOUTH LINE, 23.20 FEET; THENCE SOUTH 47° 52' 17" EAST 781.50 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2814.87 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 22° 38' 47" AN ARC LENGTH 1245.10 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 25° 32' 08" EAST 136.28 FEET TO AN INTERSECTION WITH A LINE PARALLEL WITH AND 825 FEET SOUTHERLY OF MEASURED AT RIGHT ANGLES TO, THE NORTH LINE OF THE JOHN BUCKLEY DONATION LAND CLAIM NO. 42, THENCE LEAVING SAID SOUTHWESTERLY MARGIN OF EAST MARGINAL WAY SOUTH AND, PROCEEDING ALONG SAID PARALLEL LINE NORTH 81° 52' 23" WEST 1385.87 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SAID DUMWASH WATERWAY, SAID POINT BEING ON A CURVE FROM WHENCE THE CENTER BEARS SOUTH 53° 02' 00" WEST 988.13 FEET; THENCE NORTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE AND SAID CURVE, THROUGH A CENTRAL ANGLE OF 11° 41' 41" AN ARC LENGTH OF 401.82 FEET TO THE POINT OF TANGENCY; THENCE NORTH 02° 54' 38" WEST ALONG SAID RIGHT-OF-WAY LINE 188.63 FEET TO A POINT ON THE EASTERLY LINE OF THAT 11 FOOT VACATION OF 18TH AVENUE SOUTH AS RECORDED IN VOLUME 38 PAGE 455 OF KING COUNTY COUNCIL RECORDS DATED JUNE 24, 1940, THENCE CONTINUING NORTH 47° 51' 38" WEST, ALONG SAID EASTERLY LINE OF THE WATERWAY 101.81 FEET, TO THE WESTERLY LINE OF SAID VACATED 18TH AVENUE SOUTH; THENCE CONTINUING NORTH 47° 51' 38" WEST, ALONG SAID EASTERLY LINE OF SAID WATERWAY 2340.00 FEET TO THE MEDIAN LINE OF BLUP NO. 4 AS DEFINED IN AN AGREEMENT RECORDED UNDER RECORDING NO. 647730, IN KING COUNTY RECORDS; THENCE NORTH 88° 28' 42" EAST, ALONG SAID MEDIAN LINE, 250.45 FEET TO AN ANGLE POINT IN SAID MEDIAN LINE; THENCE NORTH 03°08'08" EAST, ALONG SAID MEDIAN LINE, 150.28 FEET; THENCE SOUTH 51° 05' 05" EAST, PERPENDICULAR TO VACATED IN-TRUSIVE AVENUE, 107.60 FEET, TO THE INTERSECTION WITH THE EXTENSION OF THE SOUTH LINE OF LOT 7 BLOCK 63 OF ROVER PARK, AS FILED IN KING COUNTY RECORDS, IN VOLUME 7 OF PLATS PAGE 41; THENCE SOUTH 81° 14' 56" EAST, ALONG SAID SOUTH LINE EXTENDED, 108.86 FEET, TO THE WEST LINE OF ABRAMS ADDITION AS FILED IN KING COUNTY RECORDS, IN VOLUME 11 OF PLATS PAGE 30; THENCE NORTH 91° 01' 17" EAST, ALONG SAID WEST LINE, 88.25 FEET, TO THE NORTHWEST CORNER OF BLOCK 5 OF ABRAMS ADDITION AS PLATTED; THENCE NORTH 88°14'51" EAST, ALONG THE NORTH LINE OF SAID BLOCK 5, 367.83 FEET TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH 01°40'38" WEST, ALONG THE EAST LINE OF SAID BLOCK 5, 238.00 FEET, TO THE SOUTHEAST CORNER THEREOF; THENCE CONTINUING SOUTH 91°40'38" WEST, 34.00 FEET, TO THE NORTHEAST CORNER OF BLOCK 4 OF SAID ABRAMS ADDITION; THENCE SOUTH 88°14'51" EAST, PARALLEL WITH SOUTH AUSTIN STREET 3.54 FEET, TO A PARCEL OF LAND DEEDED TO THE CITY OF SEATTLE, FILED UNDER RECORDING NO. 880219031, RECORDED IN KING COUNTY; THENCE SOUTH 48°18'54" EAST, 89.38 FEET; THENCE NORTH 42°25'28" EAST, 45.24 FEET; THENCE NORTH 02°22'08" EAST, 23.38 FEET TO THE SOUTH MARGIN OF SOUTH AUSTIN STREET; THENCE SOUTH 88°14'51" EAST, ALONG THE SOUTH MARGIN OF SOUTH STREET 14.28 FEET TO THE WEST LINE OF CITY OF SEATTLE VACATION ORDINANCE 11482; THENCE NORTH 01°40'38" EAST, ALONG THE WEST LINE, 248.8 FEET TO THE SOUTHEAST CORNER OF LOT 1 BLOCK 8 OF SAID ABRAMS ADDITION; THENCE NORTH 88°14'51" WEST, ALONG THE SOUTH LINE OF LOT 1, 82.81 FEET TO THE SOUTHWEST CORNER OF LOT 1 BLOCK 8; THENCE NORTH 01°40'38" EAST ALONG THE WEST LINE OF BLOCK 8, 238.00 FEET TO THE NORTHWEST CORNER OF LOT 8, BLOCK 8 AND THE SOUTH MARGIN OF SOUTH WEBSTER STREET; THENCE SOUTH 88° 14' 51" EAST, ALONG THE SOUTH MARGIN OF SOUTH WEBSTER STREET, 284.45 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 4,777,835 SQUARE FEET, OR 4.168,878 ACRES MORE OR LESS.



EXHIBIT B TO HABITAT  
 RESTORATION  
 EASEMENT  
 AGREEMENT  
 BOEING PROPERTY

## Exhibit C

Presented in this exhibit is the Scope of Work (SOW) for the Boeing habitat restoration projects which is an appendix to a Consent Decree between Boeing and the Natural Resource Trustees. The habitat projects are:

- The Building 2-41 and Southwest Bank Project involves the removal of the over-water portion of the Building 2-41 complex at the south end of Plant 2 with subsequent restoration of shoreline along the Southwest Bank and Building 2-41 complex; and
- The Building 2-122 Project involves the creation of a blind channel at the north end of Plant 2 adjacent to Boeing's Building 2-122 along with shoreline restoration and creation.

The two proposed restoration projects will restore and/or create off-channel and riparian habitats in the Lower Duwamish Waterway in an area where they have been largely eliminated due to the channelization and industrialization of the Waterway.

Between the two projects:

- approximately 4.8 acres of intertidal and riparian area will be restored/created;
- approximately 2,400 linear feet of shoreline will be restored (at elevation +10 feet mean lower low water; MLLW); and
- approximately 700 linear feet of new shoreline will be created (at elevation +10 feet MLLW).

It is anticipated that pile-supported herbivore control systems will be installed at each of the two restoration project sites. Up to 30 12- to 16-inch steel piles will be placed in the intertidal area of the projects to support the herbivore control systems.

Based on a requirement of the Consent Decree with the Natural Resource Trustees, Boeing will provide net attachment points for the Muckleshoot Tribal fishers. The location of the net attachment piles have not been determined; however, the piles will be located in the intertidal zone adjacent to Plant 2 between the shoreline and the federal navigation channel. Some of the steel piles for the herbivore control systems may be left in place after the herbivore control system is removed to serve as the net attachment points. If the herbivore control system piles do not meet the requirements of Tribal fishers, additional piles may be installed elsewhere in the intertidal area adjacent to Plant 2.

The SOW also includes monitoring and long-term maintenance requirements for the habitat projects. The monitoring and maintenance requirements will be specified plans that will be developed during design.

<p><b>Return Address</b></p> <p>National Oceanic and Atmospheric Administration 7600 Sand Point Way NE Seattle, WA 98115</p> <p>Attention:</p>
<p>Document Title(s) (or transactions contained therein):</p> <p>1. Declaration of Conservation Easement</p>
<p>Reference Number(s) of Documents assigned or released: (on page <u>N/A</u> of document(s))</p>
<p>Grantor(s) (Last name first, then first name and initials):</p> <p>I. Port of Seattle, a municipal corporation</p>
<p>Grantee(s) (Last name first, then first name and initials):</p> <p>I. United States Department of Commerce acting through the National Oceanic and Atmospheric Administration</p>
<p>Legal description (abbreviated: i.e. Lot, block, plat or section, township, range)</p> <p>Portion of SE 1/4 of Sec. 29, T. 24N, R. 4E, W.M. AND portion of NW 1/4 of Sec. 33, T. 24N, R. 4E, W.M.</p> <p><input type="checkbox"/> Full legal is on page ___ of document.</p>
<p>Assessor's Property Tax Parcel/Account Number</p> <p>INSERT</p>

Port Conservation Easement Agreement -- Exhibit 5 to Boeing/Port Agreement

12/5/11

03008-0337/LEGAL22259620.1

## Declaration of Conservation Easement

This Declaration of Conservation Easement (“Declaration”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by the Port of Seattle (“Grantor”) for the benefit of the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration (“NOAA”), for itself and on behalf of the Trustees named in the Consent Decree described below (“Trustees”).

### Recitals

A. This Declaration is made pursuant to and in accordance with the Consent Decree by and among The Boeing Company (“Boeing”) as Defendant and NOAA, the United States Department of the Interior, the Washington State Department of Ecology, the Muckleshoot Indian Tribe and the Suquamish Tribe, Civil No. CV-10-758 RSM, December 14, 2010 (the “Consent Decree”).

B. Grantor is the successor in interest to Commercial Waterway District No. 1 of King County, which acquired interests in certain real property located in King County, Washington, lying along and including a portion of the shoreline and submerged lands on the Lower Duwamish Waterway ~~the fee owner of certain real property~~ (the “Port Easement Areas”) ~~located in the County of King, State of Washington that are~~ is the subject of the Boeing Habitat Project Scope of Work (“Scope of Work”) attached to the Consent Decree as Appendix A. The Port Easement Areas are legally described in Exhibit A attached to and made a part of this Declaration by this reference. The Port Easement Areas are also depicted on Exhibit A for reference purposes only. Pursuant to the Consent Decree, Boeing will implement a habitat restoration project (the “Habitat Restoration Project”) on the Port Easement Areas to restore and/or create off-channel and riparian habitats in the Lower Duwamish Waterway.

C. Grantor desires to make this declaration of conservation easement in accordance with the terms of the Consent Decree.

### Declaration

NOW THEREFORE, Grantor declares that, to the extent permitted by law, the Port Easement Areas shall be held, conveyed, hypothecated, encumbered, leased, used, occupied and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be equitable servitudes in furtherance of a plan for the improvement and use of the Port Easement Areas, and are established and agreed upon for the purpose of Port Conservation Easement Agreement – Exhibit 5 to Boeing/Port Agreement

12/5/11

enhancing and protecting the values of the Port Easement Areas for the purposes set forth in the Consent Decree. All such covenants, conditions and restrictions shall run with the Port Easement Areas and each part of them, and shall be binding upon, and shall be for the benefit of, Grantor, NOAA and each ~~owner of fee title to all or any portion of the Port Easement Areas and their successors in interest or assigns successors in ownership of fee title.~~

Section 1. The Port Easement Areas shall, ~~, ,~~ to the extent permitted by law, be used only for the Habitat Restoration Project and for such traditional industrial uses (including, but are not limited to, navigation for commercial purposes), stormwater facilities, and utility installations as are consistent with the Habitat Project, and shall not be used for any purpose or activity that interferes with the Habitat Restoration Project.

Section 2. Authorized representatives of the Trustees shall have the right to enter the Port Easement Areas at the times, ~~and~~ under the circumstances, and in compliance with the obligations described in the Consent Decree. The Trustees waive any and all claims, losses, costs, expenses, liabilities or damages against the Port arising from the Trustees' access to the Port Easement Areas. [NNI]

Section 3. This Declaration may not be modified or amended except by a writing signed by Grantor and NOAA.

Section 4. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Port Easement Areas is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and provision contained in this Declaration.

Section 5. This Declaration may be enforced by any Trustee which is acting on behalf of all of the Trustees.

Section 6. This Declaration shall be governed by the laws of the State of Washington.

Section 7. This Agreement may be executed in a number of identical counterparts. Each of the counterparts will be deemed an original for all purposes and all counterparts will collectively constitute one Agreement.

Section 8. The sole remedy for breach of this Declaration shall be specific performance, and damages shall not be recoverable against the Port or any successor in interest ~~in ownership~~

of the Port Easement Area; provided, however, that nothing in this Declaration shall limit the remedies that are available to NOAA and the Trustees under the Consent Decree.

Section 10. If any covenant, condition, provision, term or agreement of this Declaration is to any extent held invalid or unenforceable, the remaining portion thereof and all othe

PORT OF SEATTLE

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

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

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

UNITED STATES DEPARTMENT OF COMMERCE ACTING THROUGH THE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

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

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

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



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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of The Port of Seattle, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was duly elected, qualified and acting as said officer of the corporation, that \_\_\_\_\_ was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_  
(Signature of Notary)  
\_\_\_\_\_  
(Print or stamp name of Notary)  
NOTARY PUBLIC in and for the State of \_\_\_\_\_, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

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

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of the National Oceanic and Atmospheric Administration, the United States Department of the Interior, the agency that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said agency for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said agency.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of \_\_\_\_\_, residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

# CONSERVATION EASEMENT EXHIBITS



**EASEMENT AREA – PORT OF SEATTLE AREA #2 (LEGAL DESCRIPTION)**

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 24 NORTH, RANGE 04 EAST, W.M., CITY OF SEATTLE, IN KING COUNTY, WASHINGTON, LYING WITHIN THE DUWAMISH COMMERCIAL WATERWAY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST BOUNDARY CORNER OF THE AMENDED BOEING PLANT 2 BOUNDARY SURVEY, AS RECORDED IN VOLUME 131 OF SURVEYS, PAGE 189, RECORDS OF KING COUNTY, WASHINGTON. SAID CORNER BEING THE INTERSECTION OF THE NORTH LINE OF THE BOEING PLANT 2 BOUNDARY, WITH THE NORTHEASTERLY RIGHT OF WAY LINE OF THE DUWAMISH COMMERCIAL WATERWAY, THENCE ALONG SAID RIGHT OF WAY AND WEST BOUNDARY, SOUTH 47-51-36 EAST, A DISTANCE OF 101.65 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 38-07-21 WEST, A DISTANCE OF 31.96 FEET; THENCE CONTINUING ALONG SAID EASEMENT THE FOLLOWING COURSES AND DISTANCES;

SOUTH 07-02-42 EAST, 48.57 FEET; SOUTH 17-05-43 EAST, 44.51 FEET; SOUTH 64-43-14 EAST, 49.83 FEET; SOUTH 15-59-13 EAST, 42.22 FEET; SOUTH 33-14-53 EAST, 40.87 FEET; SOUTH 53-58-58 EAST, 92.82 FEET; SOUTH 40-57-51 EAST, 53.87 FEET; SOUTH 48-50-37 EAST, 137.84 FEET; SOUTH 41-05-03 EAST, 70.13 FEET; SOUTH 62-38-47 EAST, 56.43 FEET; SOUTH 52-14-10 EAST, 63.03 FEET; NORTH 62-19-23 EAST, 46.94 FEET; NORTH 35-42-13 WEST, 20.00 FEET; NORTH 17-33-22 WEST, 20.83 FEET; NORTH 00-44-18 EAST, 21.95 FEET; THENCE NORTH 47-51-36 WEST, A DISTANCE OF 637.76 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 58,380 SQUARE FEET, OR ± 1.340 ACRES, MORE OR LESS.

**EASEMENT AREA – PORT OF SEATTLE AREA #1 (LEGAL DESCRIPTION)**

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 24 NORTH, RANGE 04 EAST, W.M., CITY OF TUKWILA, IN KING COUNTY, WASHINGTON, LYING WITHIN THE DUWAMISH COMMERCIAL WATERWAY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST BOUNDARY CORNER OF THE AMENDED BOEING PLANT 2 BOUNDARY SURVEY, AS RECORDED IN VOLUME 131 OF SURVEYS, PAGE 189, RECORDS OF KING COUNTY, WASHINGTON. SAID CORNER BEING THE INTERSECTION OF THE SOUTH LINE OF SAID BOEING PLANT 2 BOUNDARY, WITH THE NORTHEASTERLY RIGHT OF WAY LINE OF THE DUWAMISH COMMERCIAL WATERWAY, SAID INTERSECTION BEING A POINT ON A CURVE TO THE LEFT FROM WHENCE THE CENTER BEARS SOUTH 53°50'05" WEST, A DISTANCE OF 1,969.12 FEET; THENCE ALONG SAID CURVE, AND WESTERLY BOUNDARY, THROUGH A CENTRAL ANGLE OF 01°10'05", AN ARC LENGTH OF 40.14 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 10°31'36", AN ARC LENGTH OF 361.78 FEET TO THE POINT OF TANGENCY; THENCE NORTH 47°51'36" WEST, ALONG SAID WATERWAY, A DISTANCE OF 94.13 FEET; THENCE SOUTH 05°45'56" EAST, A DISTANCE OF 9.55 FEET; THENCE CONTINUING ALONG SAID EASEMENT, THE FOLLOWING COURSES AND DISTANCES; SOUTH 42°38'42" EAST, 18.88 FEET; SOUTH 03°58'52" EAST, 28.05 FEET; SOUTH 17°36'34" EAST, 43.73 FEET; SOUTH 27°21'52" EAST, 21.85 FEET; SOUTH 09°57'51" EAST, 29.60 FEET; SOUTH 52°11'05" EAST, 72.34 FEET; SOUTH 48°19'11" EAST, 142.86 FEET; SOUTH 43°38'35" EAST, 101.46 FEET; SOUTH 57°12'20" EAST, 13.26 FEET; THENCE NORTH 30°46'19" EAST, A DISTANCE OF 44.81 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 24,433 SQUARE FEET, OR + 0.561 ACRES, MORE OR LESS.

**EASEMENT AREA - PORT OF SEATTLE AREA #3 - (LEGAL DESCRIPTION)**

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 24 NORTH, RANGE 04 EAST, W.M., CITY OF SEATTLE, IN KING COUNTY, WASHINGTON, LYING WITHIN THE DUWAMISH COMMERCIAL WATERWAY,

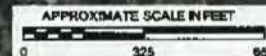
COMMENCING AT THE NORTHWEST BOUNDARY CORNER OF THE AMENDED BOEING PLANT 2 BOUNDARY SURVEY, AS RECORDED IN VOLUME 131 OF SURVEYS, PAGE 189, RECORDS OF KING COUNTY, WASHINGTON. SAID CORNER BEING THE INTERSECTION OF THE NORTH LINE OF THE BOEING PLANT 2 BOUNDARY, WITH THE NORTHEASTERLY RIGHT OF WAY LINE OF THE DUWAMISH COMMERCIAL WATERWAY, THENCE ALONG SAID RIGHT OF WAY AND WEST BOUNDARY, SOUTH 47°51'36" EAST, A DISTANCE OF 926.80 FEET; THENCE SOUTH 42°08'24" WEST, A DISTANCE OF 13.19 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 48°33'35" EAST, A DISTANCE OF 29.99 FEET; THENCE SOUTH 41°05'39" WEST, A DISTANCE OF 30.00 FEET; THENCE NORTH

CONTAINING 900 SQUARE FEET, OR ± 0.021 ACRES, MORE OR LESS.

 Port Property

EXHIBIT A TO  
CONSERVATION  
AGREEMENT

PORT PROPERTY



Outside  
Washington State  
NAD83  
North Zone  
Spheroid

**Return Address**

Perkins Coie LLP

1201 Third Avenue, Suite 4800

Seattle, Washington 98101

Attn: \_\_\_\_\_

**Document Title(s)** (or transactions contained therein):

1. STORMWATER OUTFALL EASEMENT AGREEMENT

**Reference Number(s) of Documents assigned or released:**

(on page \_\_\_ of documents(s))

**Grantor(s)** (Last name first, then first name and initials):

1. Port of Seattle, a Washington municipal corporation
- 2.

**Grantee(s)** (Last name first, then first name and initials):

1. The Boeing Company, a Delaware corporation
- 2.

**Legal description** (abbreviated: i.e. lot, block, plat or section, township, range)

Portion of [INSERT COMPLETE LEGAL DESCRIPTION OF PORT PROPERTY ADJACENT TO PLANT 2]

Full legal is on page \_\_\_ of document.

**Assessor's Property Tax Parcel/Account Number**

**INSERT**

STORMWATER OUTFALL EASEMENT AGREEMENT - Exhibit 6 to Port/Boeing Agreement

1

12/5/11

03008-0337/LEGAL22259694.1

## STORMWATER OUTFALL EASEMENT AGREEMENT

THIS STORMWATER OUTFALL EASEMENT AGREEMENT (this “**Agreement**”) is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the PORT OF SEATTLE, a Washington municipal corporation (the “**Port**”), and THE BOEING COMPANY, a Delaware corporation (“**Boeing**”) (hereinafter the “**Parties**”).

### RECITALS

A. The Port is the successor in interest to Commercial Waterway District No. 1 of King County, which acquired interests in certain real property located in King County, Washington lying along and including a portion of the shoreline and submerged lands adjacent to the Lower Duwamish Waterway and more particularly described on EXHIBIT A (the “**Port Property**”). Boeing intends to construct a habitat restoration project (the “**Habitat Project**”) pursuant to a consent decree along the southern portion of the Port Property.

B. Boeing owns certain real property adjacent to the Port Property that is commonly known as Plant 2 and more particularly described on EXHIBIT B (the “**Boeing Property**”).

C. Various stormwater facilities and systems are located throughout the Boeing Property, including a storm drain line that runs from the Boeing Property across the southern portion of the Port Property and discharges stormwater through an outfall pipe located on the Port Property.

D. As part of redeveloping the Boeing Property, Boeing intends to upgrade the stormwater system located within the Boeing Property by, among other things, installing new storm drain lines and outfall pipes to route stormwater runoff to three (3) new outfall locations on the Port Property and modifying an existing outfall on the Port Property (the “**Stormwater Upgrades**”). Boeing will obtain all required National Pollution Discharge Elimination System permits and approvals for the Stormwater Upgrades.

E. The Port has agreed to grant Boeing various easements on, over, across, under, in and through the Port Property for the purpose of locating, constructing and maintaining the Stormwater Upgrades. The Parties now desire to enter into this Agreement to set forth the terms and conditions under which the Port will grant the foregoing easements to Boeing.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

## AGREEMENT

### 1. Easements

**1.1 Grant of Permanent Easements.** The Port does hereby grant, convey and quitclaim to Boeing, for the benefit of Boeing and of the Boeing Property, four (4) nonexclusive, perpetual easements (each a “**Permanent Easement**” and collectively the “**Permanent Easements**”) on, over, across, under, in and through the Port Property for the purpose of excavating, locating, constructing, reconstructing, installing, using, operating, maintaining, repairing, modifying, monitoring, replacing and removing (collectively, “**Construct and Maintain**”) four (4) storm drain lines and outfall pipes within those portions of the Port Property generally shown on EXHIBIT A (the “**Outfall Easement Locations**”), together with all necessary or convenient appurtenances to such lines and pipes, including, but not limited to, pads, armoring and similar improvements, and together with, in each case, such rights of access as may be necessary or desirable for the full use and enjoyment of the rights granted in this Agreement. Each Permanent Easement shall extend to twenty-one (21) feet on either side of the centerline of the storm drain line and outfall pipe as located in that Permanent Easement.

The Parties acknowledge that the Outfall Easement Locations shown on EXHIBIT A are approximate locations. The final locations of the Stormwater Upgrades as constructed shall determine the final locations of the Easements. The Parties expressly agree that there is no intent to convey any rights other than those that are granted in this Agreement. The Parties do not intend for this Agreement to convey fee title in any form or any other interest other than an easement subject to the conditions described in this Agreement.

**1.2 Grant of Temporary Construction-Period Easements.** The Port does hereby grant, convey and quitclaim to Boeing, for the benefit of Boeing and of the Boeing Property, nonexclusive, temporary easements (each a “**Temporary Construction-Period Easement**” and collectively the “**Temporary Construction Period Easements**”) on, across, under, in and through the Port Property for the purpose of excavating, locating, constructing, reconstructing, installing, using, operating, maintaining, repairing, modifying, monitoring, replacing and removing one or more temporary storm drain lines and outfall pipes (“**Temporary Improvements**”) during construction of the Stormwater Upgrades, together with, in each case, such rights of access as may be necessary or desirable for the full use and enjoyment of the rights granted in this Agreement. Each Temporary Construction Period

Easement shall extend to twenty-one (21) feet on either side of the centerline of the storm drain line and outfall pipe as located in that Temporary Construction-Period Easement. The parties anticipate that the Temporary Construction-Period Easements will lie generally in the area of the Permanent Easements. Boeing shall remove the Temporary Improvements promptly upon completion of the Stormwater Upgrades, and upon such removal the Temporary Construction Period Easements shall cease and terminate.

**1.3 Duration and Termination.** Commencing on the Effective Date, Boeing will have the right to enter onto the Port Property and to take such actions as are necessary to Construct and Maintain the Temporary Improvements and the Stormwater Upgrades. Boeing shall have the right to terminate any one or more of the Easements granted in this Section 1 and all of Boeing's rights and obligations with respect to those Easements by giving written notice to the Port, stating the date on which the easement will terminate. Prior to giving written notice of termination to the Port, if required by the Port, Boeing shall have first removed or properly abandoned to the Port's reasonable satisfaction all improvements placed on the Port Property. The Parties' obligations under Section 8 shall survive termination of any easement.

## **2. Construction and Final Location of Improvements**

**2.1 Plans and Specifications for Stormwater Upgrades.** Boeing shall, at its sole cost and expense, prepare plans and specifications for all of the Temporary Improvements and Stormwater Upgrades on the Port Property (the "**Plans**"). Boeing shall submit such Plans to the Port for review. The Port shall review and provide comments on the Plans, if any, in writing, within twenty (20) business days of the Port's receipt of the Plans. Boeing shall cooperate with the Port to the extent reasonably practicable to take into account the Port's comments to the proposed Plans. The Port acknowledges and agrees, however, that the final Plans shall be those that are approved by Boeing. All Temporary Improvements and Stormwater Upgrades shall be constructed and installed in accordance with the final Plans. Boeing will notify the Port before making any material modifications of the final Plans; provided, however, that Boeing shall have the right to make nonmaterial modifications to the Plans in Boeing's reasonable judgment without providing advance notice to the Port.

**2.2 Construction Schedule.** The Parties anticipate that construction of any Temporary Improvements and the Stormwater Upgrades will take place concurrently with the construction of the Habitat Project.



### 3. Maintenance and Upgrades

Except where damage to the Stormwater Upgrades is caused by the Port, its employees, agents, contractors or invitees, Boeing shall maintain and repair all Easement Areas (and Stormwater Upgrades thereon and thereunder) at its own cost and expense as necessary to keep the same in a neat, clean and good and safe condition. Boeing shall have the right to modify, replace, improve, upgrade or remove the Stormwater Upgrades or install any reasonable ancillary appurtenances for the same at any time.

### 4. Notices

Notices required to be given under this Agreement shall be in writing, via United States mail, electronic mail or hand delivery, and shall be given as follows:

If to the Port:                   Port of Seattle  
   P.O. Box 1209  
   Seattle, WA 98111  
   Attn: Kathy Bahnick  
   Email: Bahnick.K@portseattle.org

If to Boeing:                    The Boeing Company  
   P.O. Box 3707  
   M/C 1W-12  
   Seattle, WA 98124-2207  
   Attn: Mike Gleason  
   Email: michael.j.gleason@boeing.com

Notices shall be deemed effective, if mailed, on the fifth day following deposit thereof in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or upon delivery thereof if given in any other manner. Either party may change the address and recipient to which notices may be given by giving notice in the manner provided in this Section 4.

### 5. Compliance with Laws and Rules

The rights granted to Boeing in this Agreement shall be exercised in accordance with the requirements of all applicable statutes, orders, rules and regulations of any public authority having jurisdiction.

**6. Work Standards.** All work performed by Boeing on the Port Property shall be completed in a careful, competent and workmanlike manner, free of all claims of liens. Upon completion of the Stormwater Upgrades, Boeing shall remove the Temporary Improvements and restore the Port Property to a good and safe condition.

**7. Port's Use of Easement Areas**

The Port retains the right to fully use and enjoy the Port Property to the extent not inconsistent with the rights granted to Boeing in this Agreement. The Port shall not construct or maintain any buildings or other permanent structures on or over Easement Areas without Boeing's prior written consent.

**8. Hold Harmless and Indemnity Agreement**

**8.1 Boeing's Hold Harmless and Indemnification Agreement.**

Boeing shall indemnify and hold the Port harmless from and against (i) any and all claims, losses, costs, expenses, liabilities or damages (collectively, "Claims") arising out of Boeing's negligent or willful failure to perform its obligations under this Agreement, (ii) any and all Claims related to the release of hazardous substances at, on, under or from the Port Property due to Boeing's use of the Port Property after the Effective Date of this Agreement, and (iii) any and all Claims for bodily injury to or death of any person or loss of or damage to any property arising out of Boeing's or its contractors' consultants', or agents' negligence or willful misconduct associated with Boeing's use of the Port Property after the Effective Date of this Agreement except to the extent such Claims are caused by the negligence or willful misconduct on the part of the Port or the Port's agents, employees, contractors or invitees.

**8.2 The Port's Hold Harmless and Indemnification Agreement.**

The Port shall indemnify and hold Boeing and its affiliates and officers, directors, members, employees, agents, contractors, successors and assigns harmless from and against (i) any and all Claims arising out of the Port's negligent or willful failure to perform its obligations under this Agreement, and (ii) any and all Claims for bodily injury to or death of any person or loss of or damage to any property arising out of the Port's or its contractors' consultants', or agents' negligence or willful misconduct associated with Port's use of the Port Property, except to the extent such Claims are caused by the negligence or willful misconduct on the part of Boeing its agents, employees, contractors or invitees.

**8.3 No Effect on Allocation of Responsibility for Prior Releases**

This Agreement shall not be interpreted to have any effect on the Parties' liability with respect to actions or activities that occurred prior to the Effective Date of this Agreement, including without limitation, liability for past releases of hazardous substances to the Duwamish Waterway.

#### **9. Attorneys' Fees**

In the event either party brings a legal action against the other party to enforce its rights under this Agreement, the substantially prevailing party shall be entitled to receive reimbursements from the other party for such prevailing party's costs incurred in such legal action (including the costs of appeal), including the reasonable fees and disbursement of the prevailing party's attorneys, in addition to all other rights and remedies available to the prevailing party at law or in equity.

#### **10. Complete Agreement**

This Agreement contains the entire agreement of the Parties with respect to the Stormwater Upgrades and supersedes all prior or contemporaneous writings or discussions relating to any easement to the Port Property and agreements provided for therein. This Agreement may not be amended except by a written document executed after the date hereof by the duly authorized representatives of Boeing and the Port.

#### **11. Choice of Law; Invalidity**

This Agreement shall be governed by the laws of the State of Washington, exclusive of its choice of law rules. In the event any term, covenant, condition, provision or easement contained in this Agreement is held to be invalid, voided or otherwise unenforceable by any court of competent jurisdiction, such holding shall in no way affect the validity or enforceability of any other term, covenant, condition, provision or easement contained herein.

#### **12. Successors and Assigns**

The rights herein granted and the duties hereby agreed to shall inure to the benefit of and be binding upon the Parties' respective successors and assigns. Notwithstanding the foregoing, Boeing expressly reserves the sole and exclusive right to modify or terminate the this Agreement and the easement granted in it on behalf of the grantee and holder of the easement rights without the agreement or joinder of any other party other than the Port, including without limitation any successor to Boeing as owner of the Boeing Property or any part of it.

**13. Exhibits**

The following exhibits attached to this Agreement are incorporated into it by this reference and made a part of it as though fully set forth herein:

- Exhibit A Port Property, Approximate Locations of Outfall Easement Locations
- Exhibit B Boeing Property

IN WITNESS WHEREOF, the Parties have executed this Agreement through their appropriate officials and representatives.

**The Port:**

PORT OF SEATTLE,  
a Washington municipal corporation

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Boeing:**

THE BOEING COMPANY,  
a Delaware corporation

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of PORT OF SEATTLE, the Washington municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he/she was duly elected, qualified and acting as said officer of the municipal corporation, that he/she was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

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

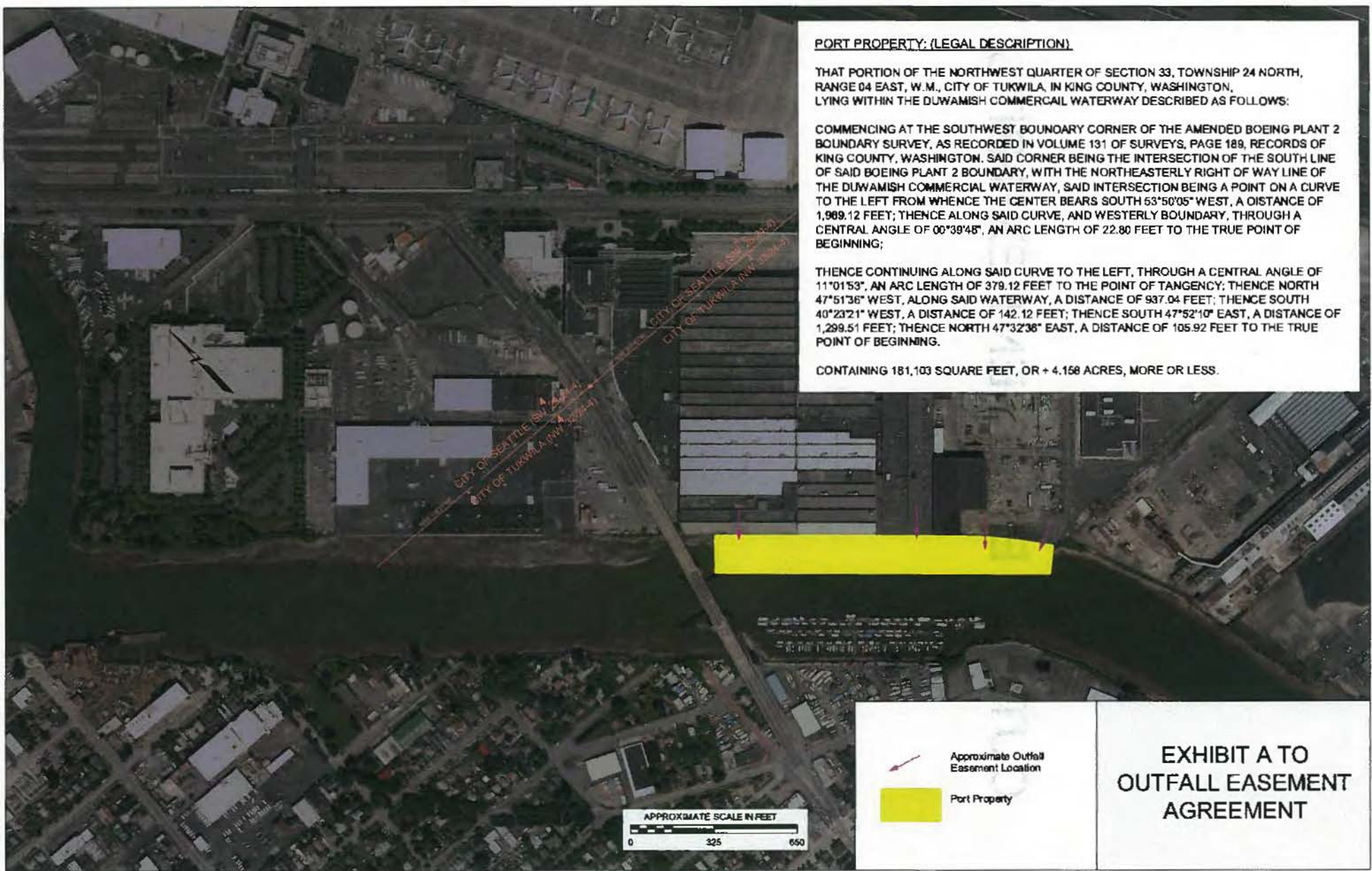
STATE OF WASHINGTON     )  
                                      ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who signed as \_\_\_\_\_ of THE BOEING COMPANY, the Delaware corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ was duly elected, qualified and acting as said officer of the municipal corporation, that \_\_\_\_\_ was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

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

# OUTFALL EASEMENT EXHIBITS




**PORT PROPERTY: (LEGAL DESCRIPTION)**

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 24 NORTH, RANGE 04 EAST, W.M., CITY OF TUKWILA, IN KING COUNTY, WASHINGTON, LYING WITHIN THE DUWAMISH COMMERCIAL WATERWAY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST BOUNDARY CORNER OF THE AMENDED BOEING PLANT 2 BOUNDARY SURVEY, AS RECORDED IN VOLUME 131 OF SURVEYS, PAGE 189, RECORDS OF KING COUNTY, WASHINGTON. SAID CORNER BEING THE INTERSECTION OF THE SOUTH LINE OF SAID BOEING PLANT 2 BOUNDARY, WITH THE NORTHEASTERLY RIGHT OF WAY LINE OF THE DUWAMISH COMMERCIAL WATERWAY, SAID INTERSECTION BEING A POINT ON A CURVE TO THE LEFT FROM WHENCE THE CENTER BEARS SOUTH 53°50'05" WEST, A DISTANCE OF 1,909.12 FEET; THENCE ALONG SAID CURVE, AND WESTERLY BOUNDARY, THROUGH A CENTRAL ANGLE OF 00°39'48", AN ARC LENGTH OF 22.80 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 11°01'53", AN ARC LENGTH OF 379.12 FEET TO THE POINT OF TANGENCY; THENCE NORTH 47°51'36" WEST, ALONG SAID WATERWAY, A DISTANCE OF 937.04 FEET; THENCE SOUTH 40°23'21" WEST, A DISTANCE OF 142.12 FEET; THENCE SOUTH 47°52'10" EAST, A DISTANCE OF 1,299.51 FEET; THENCE NORTH 47°32'36" EAST, A DISTANCE OF 105.92 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 181,103 SQUARE FEET, OR + 4.168 ACRES, MORE OR LESS.

	<p><b>EXHIBIT A TO OUTFALL EASEMENT AGREEMENT</b></p>
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LEGAL DESCRIPTION (PLANT 2 - CONSOLIDATED)

APN: 0022000005, 0022000165, 0022000195, 2924040008, 2834040006, 2190020005  
 APN: 282404-0008, 332404-0002, 2824040112 & 00160-0020

A TRACT OF LAND BETWEEN THE DUWAMISH WATERWAY AS ESTABLISHED BY COMMERCIAL WATERWAY DISTRICT NO. 1 OF KING COUNTY, WASHINGTON AND EAST MARGINAL WAY SOUTH IN SECTIONS 28, 29, 30 AND 33, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M. DESCRIBED AS FOLLOWS:  
 BEGINNING AT THE INTERSECTION OF THE SOUTH MARGIN OF SOUTH WEBSTER STREET, BEING 12 FEET SOUTH OF THE CENTERLINE THEREOF, AND THE SOUTHWESTERLY MARGIN AT EAST MARGINAL WAY SOUTH, BEING 80 FEET SOUTHWESTERLY OF THE CENTERLINE; THENCE  
 THENCE SOUTH 47° 52' 12" EAST, ALONG THE SOUTHWESTERLY MARGIN OF EAST MARGINAL WAY SOUTH, 221.97 FEET, TO THE WEST MARGIN OF 14TH AVENUE SOUTH; THENCE SOUTH 90° 58' 43" WEST, ALONG THE WEST MARGIN OF 14TH AVENUE SOUTH BEING 80 FEET IN WIDTH, 343.85 FEET, TO A POINT THAT IS 632.11 FEET  
 NORTH OF THE SOUTH LINE OF GOVERNMENT LOT 13 IN SAID SECTION 28; THENCE SOUTH 89° 35' 51" EAST, PARALLEL WITH SAID SOUTH LINE, 80.61 FEET TO THE EAST MARGIN OF 14TH AVENUE SOUTH; THENCE NORTH 09° 56' 49" EAST, ALONG SAID EAST MARGIN, 138.36 FEET; THENCE SOUTH 87° 17' 41" EAST, A DISTANCE OF 162.88 FEET;  
 THENCE NORTH 05° 47' 18" EAST, A DISTANCE OF 68.85 FEET; THENCE SOUTH 89° 12' 41" EAST, A DISTANCE OF 137.82 FEET TO THE WEST MARGIN OF 18TH AVENUE SOUTH; THENCE SOUTH 91° 57' 32" WEST, ALONG THE SAID WEST MARGIN OF 18TH AVENUE SOUTH, 285.85 FEET, TO A POINT OF CURVE; THENCE CONTINUING ALONG SAID  
 WEST MARGIN ON A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 188.08 FEET, THROUGH A CENTRAL ANGLE OF 11° 02' 52" AN ARC LENGTH OF 368.87 FEET TO THE POINT OF TANGENCY; THENCE CONTINUING ALONG SAID WEST MARGIN, SOUTH 13° 04' 45" WEST 260.75 FEET, TO THE NORTHEAST CORNER OF A PORTION OF  
 18TH AVENUE SOUTH, AS VACATED BY KING COUNTY ORDINANCE NO. 852 AND FILED IN KING COUNTY RECORDS UNDER RECORDING NO. 711189489; THENCE SOUTH 78° 58' 15" EAST, TO THE SOUTHEAST CORNER THEREOF A DISTANCE OF 89.93 FEET; THENCE NORTH 13° 05' 45" EAST, A DISTANCE OF 121.06 FEET; THENCE NORTH 14° 06" EAST,  
 A DISTANCE OF 343.85 FEET TO THE INTERSECTION WITH THE SOUTH LINE OF SAID SECTION 28, WHENE THE SOUTHWEST SECTION CORNER BEARS SOUTH 88° 09' 49" EAST, A DISTANCE OF 26.93 FEET; SAID POINT BEING ON A CURVE ON THE EASTERLY MARGIN OF 18TH AVENUE SOUTH FROM WHENCE THE CENTER BEARS  
 NORTH 81° 09' 48" WEST 198.12 FEET; THENCE NORTHERLY ALONG SAID EASTERLY MARGIN AND SAID CURVE THROUGH A CENTRAL ANGLE OF 08° 52' 22" AN ARC LENGTH OF 235.12 FEET TO THE POINT OF TANGENCY; THENCE CONTINUING ALONG SAID EASTERLY MARGIN NORTH 00° 37' 52" EAST 58.88 FEET TO A POINT OF INTERSECTION  
 WITH THE SOUTHWESTERLY MARGIN OF SAID EAST MARGINAL WAY SOUTH, BEING 85 FEET DISTANT FROM AN MEASURED AT RIGHT ANGLES TO THE CENTERLINE OF SAID EAST MARGINAL WAY SOUTH; THENCE ALONG SAID SOUTHWESTERLY MARGIN OF EAST MARGINAL WAY SOUTH ON THE FOLLOWING COURSE: SOUTH 47° 52' 12" EAST 1189.40 FEET TO THE SOUTH LINE  
 OF SAID SECTION 28; THENCE SOUTH 89° 48' 45" EAST ALONG SAID SOUTH LINE 23.20 FEET; THENCE SOUTH 47° 52' 12" EAST 781.89 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 284.87 FEET; THENCE SOUTH-EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29° 37' 43" AN  
 ARC LENGTH 1248.19 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 22° 32' 36" EAST 165.28 FEET TO AN INTERSECTION WITH A LINE PARALLEL WITH AND 825 FEET SOUTHERLY OF, MEASURED AT RIGHT ANGLES TO, THE NORTH LINE OF THE JOHN BUCKLEY DONATION LAND CLAIM NO. 42; THENCE LEAVING SAID SOUTHWESTERLY  
 MARGIN OF EAST MARGINAL WAY SOUTH AND PROCEEDING ALONG SAID PARALLEL LINE NORTH 88° 12' 25" WEST 1385.97 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SAID DUWAMISH WATERWAY; SAID POINT BEING ON A CURVE FROM WHENCE THE CENTER BEARS SOUTH 57° 30' 50" WEST 1988.12 FEET;  
 THENCE NORTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE AND SAID CURVE, THROUGH A CENTRAL ANGLE OF 11° 41' 41" AN ARC LENGTH OF 461.53 FEET TO THE POINT OF TANGENCY; THENCE NORTH 47° 51' 38" WEST ALONG SAID RIGHT-OF-WAY LINE 1385.97 FEET TO A POINT ON THE EASTERLY LINE OF THAT 11 FOOT  
 VACATION OF 18TH AVENUE SOUTH AS RECORDED IN VOLUME 36 PAGE 455 OF KING COUNTY COUNCIL RECORDS DATED JUNE 24, 1940; THENCE CONTINUING NORTH 47° 51' 38" WEST, ALONG SAID EASTERLY LINE OF THE WATERWAY 161.81 FEET, TO THE WESTERLY LINE OF SAID VACATED 18TH AVENUE SOUTH; THENCE  
 CONTINUING NORTH 47° 51' 38" WEST, ALONG SAID EASTERLY LINE OF SAID WATERWAY 2030.00 FEET TO THE MEDIAN LINE OF SLIP NO. 4 AS DEFINED IN AN AGREEMENT RECORDED UNDER RECORDING NO. 447207, IN KING COUNTY RECORDS;  
 THENCE NORTH 36° 29' 43" EAST, ALONG SAID MEDIAN LINE, 299.46 FEET TO AN ANGLE POINT IN SAID MEDIAN LINE; THENCE NORTH 43° 07' 07" EAST, ALONG SAID MEDIAN LINE, 293.88 FEET; THENCE SOUTH 51° 08' 09" EAST, PERPENDICULAR TO VACATED RIVERSIDE AVENUE, 107.30 FEET, TO THE  
 INTERSECTION WITH THE EXTENSION OF THE SOUTH LINE OF LOT 7 BLOCK 43 OF RIVER PARK, AS FILED IN KING COUNTY RECORDS, IN VOLUME 11 OF PLATS PAGE 41; THENCE SOUTH 85° 14' 29" EAST, ALONG SAID SOUTH LINE EXTENDED, 199.89 FEET, TO THE WEST LINE OF ABRAMS ADDITION AS FILED IN KING COUNTY RECORDS,  
 IN VOLUME 11 OF PLATS PAGE 30; THENCE NORTH 91° 51' 19" EAST, ALONG SAID WEST LINE, 85.26 FEET, TO THE NORTHWEST CORNER OF BLOCK 5 OF ABRAMS ADDITION AS PLATTED; THENCE SOUTH 86° 14' 54" EAST, ALONG THE NORTH LINE OF SAID BLOCK 5, 367.82 FEET TO THE NORTHEAST CORNER THEREOF;  
 THENCE SOUTH 61° 42' 38" WEST, ALONG THE EAST LINE OF SAID BLOCK 5, 238.00 FEET, TO THE SOUTHEAST CORNER THEREOF; THENCE CONTINUING SOUTH 61° 42' 38" WEST, 24.00 FEET, TO THE NORTHEAST CORNER OF BLOCK 4 OF SAID ABRAMS ADDITION; THENCE SOUTH 88° 14' 51" EAST, PARALLEL WITH  
 SOUTH ALBION STREET 356 FEET, TO A POINT OF LAND OCEDED TO THE CITY OF SEATTLE FILED UNDER RECORDING NO. 880219301 RECORDS OF KING COUNTY; THENCE SOUTH 48° 18' 59" EAST, 88.38 FEET; THENCE NORTH 42° 25' 28" EAST, 46.24 FEET; THENCE NORTH 02° 22' 38" EAST, 23.08 FEET TO THE SOUTH MARGIN OF  
 SOUTH ALBION STREET; THENCE SOUTH 88° 14' 51" EAST, ALONG THE SOUTH MARGIN OF SOUTH ALBION STREET 14.38 FEET TO THE WEST LINE OF CITY OF SEATTLE VACATION ORDINANCE 11482; THENCE NORTH 61° 43' 09" EAST, ALONG THE WEST LINE, 248.26 FEET TO THE SOUTHWEST CORNER OF  
 LOT 1 BLOCK 8 OF SAID ABRAMS ADDITION; THENCE NORTH 88° 14' 51" WEST, ALONG THE SOUTH LINE OF LOT 1, 89.01 FEET TO THE SOUTHWEST CORNER OF LOT 1 BLOCK 8; THENCE NORTH 61° 43' 09" EAST ALONG THE WEST LINE OF BLOCK 8, 328.18 FEET TO THE NORTHWEST CORNER OF LOT 1 BLOCK 8 AND  
 THE SOUTH MARGIN OF SOUTH WEBSTER STREET; THENCE SOUTH 88° 14' 51" EAST, ALONG THE SOUTH MARGIN OF SOUTH WEBSTER STREET, 284.85 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 4,777,635 SQUARE FEET OR 109.879 ACRES MORE OR LESS



EXHIBIT B TO  
 OUTFALL EASEMENT  
 AGREEMENT  
 BOEING PROPERTY





**SITE ACCESS AGREEMENT**  
**FOR PORT OF SEATTLE**  
**ON BOEING PROPERTY**

This Site Access Agreement (“SAA”) is made between Port of Seattle (“Port”) and The Boeing Company (“Boeing”) (hereinafter the “Parties”).

**RECITALS**

A. The Port is the successor in interest to Commercial Waterway District No. 1 of King County which acquired interests in certain real property located in King County, Washington, lying along and including a portion of the shoreline and submerged lands on the Lower Duwamish Waterway and generally shown on EXHIBIT A (the “Port Property”).

B. Boeing owns certain real property adjacent to the Port Property and generally shown on EXHIBIT B (the “Boeing Property”).

C. The Port intends to carry out certain shoreline restoration work (“Work”) on the Port Property adjacent to the Boeing Property. The Port requires access to the Boeing Property in order to carry out the Work.

D. The Parties have agreed to enter into this SAA to provide access to the Boeing Property for the Port and its contractors and agents to perform the Work.

In consideration of the mutual covenants and agreement herein, the Parties agree as follows:

**AGREEMENT**

Boeing hereby grants to the Port and its contractors and agents a non-exclusive license for access to the Boeing Property to conduct the Work. The Port agrees that it will provide a copy of this SAA to any contractor or agent retained to assist in the Work, and that all contractors and agents must agree in writing to be bound by its terms.

The time and manner of such access shall be pursuant to the terms of this SAA:  
 Site Access Agreement - Exhibit 3 to Port/Boeing Agreement

1. Time/Schedule.

a. This SAA shall remain in full force and effect until the Work is completed. The Port shall coordinate with Boeing to ensure that the Work is done in a timely manner.

b. The Port and its contractors and agents shall have twenty-four (24) hour access, seven (7) days per week, 365/366 days per year to the Boeing Property starting on the Effective Date of this SAA.

2. Boeing's Cooperation with the Work; No Conflicting 3<sup>rd</sup> Party Agreements. Boeing, including its representatives, contractors, or agents, shall cooperate in the performance of the Work by the Port, including its representatives, contractors, or agents. At all times while this Agreement remains in place, Boeing shall use reasonable efforts to refrain from entering into any agreements with third parties concerning the Boeing Property that would be detrimental to the Port's efforts to conduct and complete the Work in a timely and diligent manner.

3. Hold Harmless and Indemnification.

3.1 The Port's Hold Harmless and Indemnification Agreement: The Port shall indemnify and hold Boeing harmless from and against (i) any and all claims, losses, costs, expenses, liabilities or damages (collectively, "Claims") arising out of the Port's negligent or willful failure to perform its obligations under this SAA, (ii) any and all Claims related to the release of hazardous substances at, on, under or from the Boeing Property due to the Port's use of the Boeing Property after the Effective Date of this SAA, and (iii) any and all claims or liability for bodily injury to or death of any person or loss of or damage to any property, including reasonable attorneys' fees and costs, arising out of the Port's or its contractors, consultants, or agents negligence or willful misconduct

associated with the Port's use of the Boeing Property after the Effective Date of this SAA, except to the extent such Claims are caused by the negligence or willful misconduct of Boeing or Boeing's agents, employees, contractors or invitees.

3.2 Boeing's Hold Harmless and Indemnification Agreement: Boeing will indemnify, defend, and hold the Port harmless from and against (i) any and all Claims arising out of Boeing's negligent or willful failure to perform its obligations under this SAA, and (ii) any and all Claims for bodily injury to or death of any person or loss of or damage to any property, including reasonable attorneys' fees and costs, arising out of the Boeing's use of the Boeing Property after the Effective Date of this SAA, or from any activity, work or thing done or permitted by Boeing or Boeing's employees, agents, contractors or invitees in or about the Boeing Property after the Effective Date of this SAA, except to the extent such Claims are caused by the negligence or willful misconduct on the part of the Port, its agents, employees, contractors or invitees.

3.3 No Effect on Allocation of Responsibility for Prior Releases. This Agreement shall not be interpreted to have any effect on the Parties' liability with respect to actions or activities that occurred prior to the Effective Date of this Agreement, including without limitation, liability for past releases of hazardous substances to the Duwamish Waterway.

4. Party Representatives. Communication under this Agreement shall be directed to the following party representatives:

To the Port:

Kathy Bahnick  
Port of Seattle  
P.O. Box 1209

Seattle, WA 98111  
Phone: (206) INSERT  
Email: Bahnick.K@portseattle.org

Tom Newlon  
Stoel Rives, LLP  
600 University Street, Suite 3600  
Seattle, WA 98101  
Phone: (206) 386-7677  
Email: tanewlon@stoel.com

To Boeing:

Mike Gleason  
The Boeing Company  
P.O. Box 3707  
M/C 1W-12  
Seattle, WA 98124-2207  
Phone: (206) 290-6576  
Email:

[michael.j.gleason@boeing.com](mailto:michael.j.gleason@boeing.com)

Leah Krider  
EHS, Boeing Law Department  
2710 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008  
Phone: (425) 373-7123  
Email: [Leah.M.Krider@boeing.com](mailto:Leah.M.Krider@boeing.com)

Mark Schneider  
Perkins Coie LLP  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Phone: (206) 359-8000  
Email:

[MWSchneider@perkinscoie.com](mailto:MWSchneider@perkinscoie.com)

Any party may change the person or address to which communication may be directed by giving written notice to the representatives provided above.

5. Authority to Execute. Each person executing this SAA on behalf of another person or entity represents and warrants that he or she is fully authorized to execute and deliver this SAA on behalf of such person or entity. The Parties each represent and warrant to each other that no consent of any person or entity not a party to this SAA is necessary in order for this SAA to be fully and completely binding upon the Parties.

6. Entire Agreement. This SAA contains the entire understanding between the Parties hereto and supersedes any prior or contemporaneous understandings and agreements between the Parties with respect to the subject matter hereof. There are no other representations, agreements, arrangements or understandings, verbal or written, between and among the parties hereto, or any of them, relating to the subject matter of this SAA. No amendment or supplement to this SAA shall be valid or effective unless made in writing and executed by the Parties hereto.

7. No Waiver of Remedy for Breach. A failure by any party to this SAA to enforce a term or condition of this SAA does not constitute a waiver of that party's remedies for any breach of this SAA. Waiver by a party to this SAA of one or more terms or conditions of this SAA does not constitute a waiver of any other terms or conditions of this SAA.

8. Applicable Law. This SAA shall be governed by the laws of the State of Washington, exclusive of its choice of law rules. Venue for all disputes shall be King County, Washington.

9. Successors and Assigns. This SAA shall inure to the benefit of and be binding upon the Parties' respective successors and assigns.

10. Effective Date. The Effective Date of this SAA is the first date upon which the SAA has been executed by all Parties.

11. Miscellaneous. This SAA may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original document, but all of which together shall constitute one and the same document. Neither Party shall record this SAA, nor any memorandum of this SAA. This SAA is solely for the benefit of the Parties and their successors and assigns, and no third party beneficiaries are intended to result herefrom.

Accepted:

Port of Seattle

The Boeing Company

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_