

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

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

RECITALS

- A. The City is a non-charter code city organized pursuant to Chapter 35A.13 RCW of the laws of the State of Washington having authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens, and thereby control the use and development of property within its jurisdiction.
- B. The Port is a municipal corporation, with authority under Title 53 RCW, and Title 14 RCW of the laws of the State of Washington, and other federal, state and local laws, to enter into agreements concerning use and disposition of Port-owned real property.
- C. The City has designated an approximately 158-acre area located northwest of Sea-Tac Airport as its Northeast Redevelopment Area (“NERA”).
- D. The NERA includes about 55 acres of Port-owned property, most of which is “noise property” acquired under the Federal Aviation Administration’s (“FAA”) Part 150 regulations. Consequently, the FAA must review and approve use, lease, disposal actions related to Port owned noise property.
- E. The City wishes to make improvements in NERA to facilitate current and future development. In particular, the City wishes to complete road improvements to improve commercial truck access and pedestrian safety along S. 144th Way.
- F. In addition, the Parties have agreed to relocate and lengthen Miller Creek to improve riparian and fish habitat conditions.
- G. The City and the Port jointly prepared a redevelopment strategy for the NERA in April, 2010. The City and the Port now desire to further implement that strategy through collaborative planning and other mutual actions to facilitate private sector investment in redevelopment of the NERA.

H. The City and the Port are entering into this Agreement pursuant to the authority granted in Chapter 39.33 Revised Code of Washington, (Intergovernmental Disposition of Property Act) which permits a political subdivision of the State of Washington to sell real property interests to the State or any municipality or any political subdivision thereof on such terms and conditions as may be mutually agreed upon by the proper authority of the state and/or the subdivisions concerned, and pursuant to the authority granted in Chapter 39.34 Revised Code of Washington, (Interlocal Cooperation Act).

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

AGREEMENT

SECTION 1. DEFINED TERMS

1.1 Agreement. This Interlocal Agreement between the City and the Port.

1.2 BMC. The Burien Municipal Code.

1.3 City. The City of Burien, a municipality of the State of Washington, which exercises governmental functions and powers pursuant to the laws of the State of Washington and the BMC. The principal office of the City is located at 400 152nd Street, Suite 300, Burien, Washington 98166.

1.4 Master Drainage Plan. The comprehensive plan for managing stormwater throughout the NERA, including regional Stormwater Facilities #3, #4, #5 and #6, prepared by Otak and dated December, 2013.

1.5 NERA. The Northeast Redevelopment Area, an approximately 158-acre area bounded by South 138th Street on the north, Des Moines Memorial Drive to the east and south, and 8th Avenue South to the west,

1.6 Port. The Port of Seattle, a municipal corporation, which exercises governmental functions and powers pursuant to the laws of the State of Washington. The principal office of the Port is located at 2711 Alaskan Way, Seattle, Washington 98121.

1.7 Roadway Improvements. S. 144th Way Roadway Improvement Project – S. 146th Street to Des Moines Memorial Drive.

1.8 Stream Improvements. Miller Creek Stream Restoration Project.

1.9 Pilot Program. A program administered by the Federal Aviation Administration purposed for engineering and design services, with the Port of Seattle as sponsor, and the City of Burien as a partner.

SECTION 2. PURPOSE

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

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

2.2.1 Roadway Improvements. The City will construct the S 144th Way Roadway Improvement Project as designed under the Pilot Program. The City will convey certain property to the Port and the Port will grant certain easements to the City to provide property rights needed to construct, own and maintain the roadway improvements.

2.2.2 Stream Improvements. The City will construct the Miller Creek Stream Restoration Project as designed under the Pilot Program. The Port will convey to the City certain easements needed by the City to construct and maintain the restored stream channel until monitoring requirements have been fully met.

SECTION 3 PROPERTY TRANSFERS AND EASEMENTS NECESSARY FOR S. 144TH WAY ROADWAY IMPROVEMENTS AND MILLER CREEK STREAM RESTORATION

3.1 General. The City is the owner in fee simple of the right-of-way depicted as Areas D and E in Exhibit 1 attached hereto and incorporated by this reference. Areas D and E collectively total 13,854 square feet and will be transferred to the Port by quit claim deed pursuant to the schedule set forth in paragraph 3.4. The Port is the owner in fee simple of real property depicted as Areas A, B, and C as set forth in Exhibit 1. Areas A, B, and C collectively total 7,847 square feet. The Port will convey a street use easement to the City in accordance with paragraph 3.3 herein and other easements as set forth in paragraphs 3.5, 3.6, and 3.7.

3.2 Consideration. The Parties agree that the City's conveyance by deed of 13,854 square feet of real property to the Port constitutes adequate consideration for the Port's

conveyance to the City of a street use easement totaling 7,847 square feet, a slope easement totaling 12,370 square feet, a reduction to an existing trail easement of 1,342 square feet, and the Port's conveyance to the City of a temporary construction easement totaling of 253,509 square feet. The Parties further agree that the determination of adequate consideration takes into account previous fair market appraisals of City right-of-way obtained in support of the Port's request for vacation of City streets located in the vicinity, as documented by City Ordinance No.650. The Parties further agree that requiring fair-market appraisals of the real property depicted as Areas D, and E in Exhibit 1, the value of the easements depicted as Areas A, B, and C in Exhibit 1, and the value of all easements depicted in Exhibit 2 would add undesirable delays and costs to the improvements contemplated by this Agreement. Accordingly, the Parties agree that the benefits to each party from the conveyances by the other are equivalent and therefore constitute adequate consideration.

3.3 Street Use Easement. On or before May 15, 2018, the Port shall record Street Use Easements for the City's benefit for Areas A, B, and C depicted in Exhibit 1.

3.3.1 Area B encumbered by Stormwater Facility #4 Easement. Because Area B as depicted in Exhibit 1 is currently the location of Stormwater Facility #4 Easement, the Street Use Easement referred to in Paragraph 3.3 shall include the Stormwater Facility #4 use within such Street Use Easement.

3.4 Transfer of City Property to Port. Upon completion of Roadway Improvements, the City will convey to the Port by quit claim deed Areas D and E as depicted in Exhibit 1 subject to the following easements:

3.4.1 Slope Easement: The City shall reserve for itself a slope easement depicted as Area 2 in Exhibit 2, and located within Area D being conveyed to the Port.

3.4.2 Utility Easements: Prior to conveyance of Area E to the Port, the City shall reserve utility easements for Seattle City Light, Verizon, and Comcast.

3.4.3 Trail Easement: The City shall reserve for itself a trail easement as depicted Area 10 in Exhibit 2, and located within the Area D being conveyed to the Port. Area 10 represents the future alignment of the trail.

3.4.4 Temporary Construction Easement: The City shall reserve for itself a temporary construction easement as depicted in Area 12 in Exhibit 2, and located within Area D being conveyed to the Port. The purpose of the

temporary construction easement is to construct **Stream Improvements**. The stream in its future configuration may not require a permanent easement in favor of the City. In the event it does, the Parties commit to entering into such easement at a later date.

3.5 Temporary Construction Easement: On or before May 15, 2018, the Port shall grant a temporary construction easement in favor of the City for the area depicted as Area 11 in Exhibit 2. The temporary construction easement is necessary for construction activities including revising connections to Stormwater Facility #4; stream re-channelization/floodplain construction; grading and restoration adjacent to stream re-channelization and road construction; contractor staging areas for both the stream re-channelization and road construction, and for possible adjustment of the location of utilities that cross Area 11.

3.6 Slope Easements. On or before May 15, 2018, the Port shall record a slope easement in favor of the City for the area depicted as Area 1 in Exhibit 2. There is currently located within Area 1 an easement for Stormwater Facility #6.

3.7 Trail Easements. On or before May 15, 2018, the Port shall record an amendment to the Shared-Use Path Easement Agreement dated January 31, 2014, memorialized by Memorandum of Easement dated January 31, 2014, and recorded under King County Recording #20140211000941 to add the area depicted as Area 9 in Exhibit 2. There is currently recorded on Port property in favor of the City an easement as depicted in Area 14 in Exhibit 2. Upon completion of **Stream Improvements**, the Port shall amend the Area 14 in Exhibit 2 to remove the language granting the easement for Area 14, and grant a trail easement to the City for the area depicted as Area 13 on Exhibit 2.

SECTION 4. GENERAL PROVISIONS

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

City:
City Manager
City of Burien
400 152nd Street, Suite 300
Burien, WA 98166

Port:
Director Real Estate and Economic
Development
Port of Seattle
2711 Alaskan Way
Seattle, WA 98121
If Mailed: P.O. Box 1209
Seattle, WA 98111

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

4.3 Other Government Approvals. Should the Port at any time require the approval of the Federal Aviation Administration to proceed with the transfers/conveyances in this Agreement, the Port shall bear the sole cost and responsibility for obtaining needed approvals. The City, upon request by the Port, shall lend its full cooperation and affirmative support if it deems such would be in the interest of timely performance under this Agreement, and such cooperation and support would not compromise the responsibilities of the City, including its responsibilities to the Port as set forth in this Agreement.

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

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

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

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

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

satisfy the same to the extent that such judgment was due to the Port's negligent acts or omissions.

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

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

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

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

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

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

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

4.16 Warranties. Neither Party expresses a warranty or other representation to the other or any other Party as to the fitness or condition of the property interests to be conveyed pursuant to this Agreement, other than those expressed within this Agreement.

4.17 Reasonable Approvals. The approval of a party of any documentation or submissions herein called for that do not require action by the legislative body of either Party, shall not be unreasonably withheld unless the text clearly indicates a different standard. All such approvals shall be given or denied in a timely and expeditious fashion.

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

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

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

4.20.1 Exhibit 1 – Property Transfer Exhibit

4.20.2 Exhibit 2 – Easement Exhibit

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

CITY OF BURIEN

PORT OF SEATTLE

Brian Wilson
City Manager
By direction of the Burien City Council
in Open Public Meeting on _____, 2018

Stephen P. Metruck
Executive Director
By direction of the Port Commission
in Open Public Meeting on _____2018

Dated: _____

Dated: _____

Approved as to Form:

Approved as to Form:

City of Burien Attorney

Port of Seattle Attorney

STATE OF WASHINGTON)
) ss
COUNTY OF _____)

On this _____ day of _____, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Brian Wilson to me known as the City Manager, for the City of Burien, the corporation who executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said City of Burien, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of said municipal corporation.

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

NAME

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

STATE OF WASHINGTON)
) ss
COUNTY OF _____)

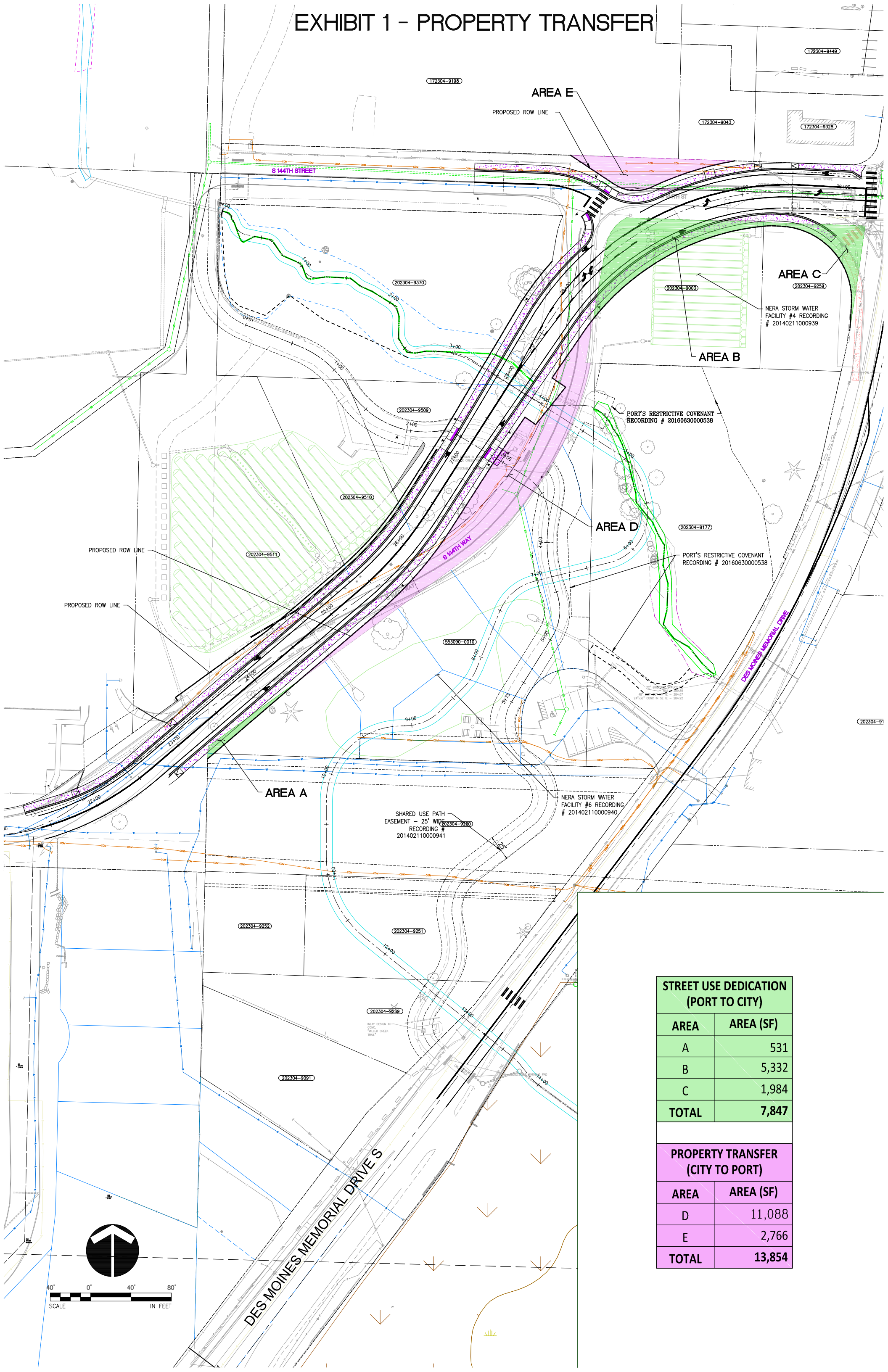
On this _____ day of _____, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Stephen Metruck to me known as the Executive Director of the Port of Seattle, the corporation who executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said Port of Seattle, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of said municipal corporation.

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

NAME

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

EXHIBIT 1 - PROPERTY TRANSFER



STREET USE DEDICATION (PORT TO CITY)	
AREA	AREA (SF)
A	531
B	5,332
C	1,984
TOTAL	7,847
PROPERTY TRANSFER (CITY TO PORT)	
AREA	AREA (SF)
D	11,088
E	2,766
TOTAL	13,854

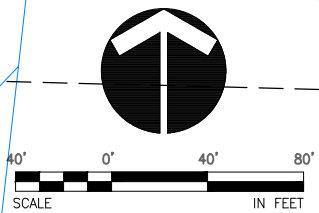
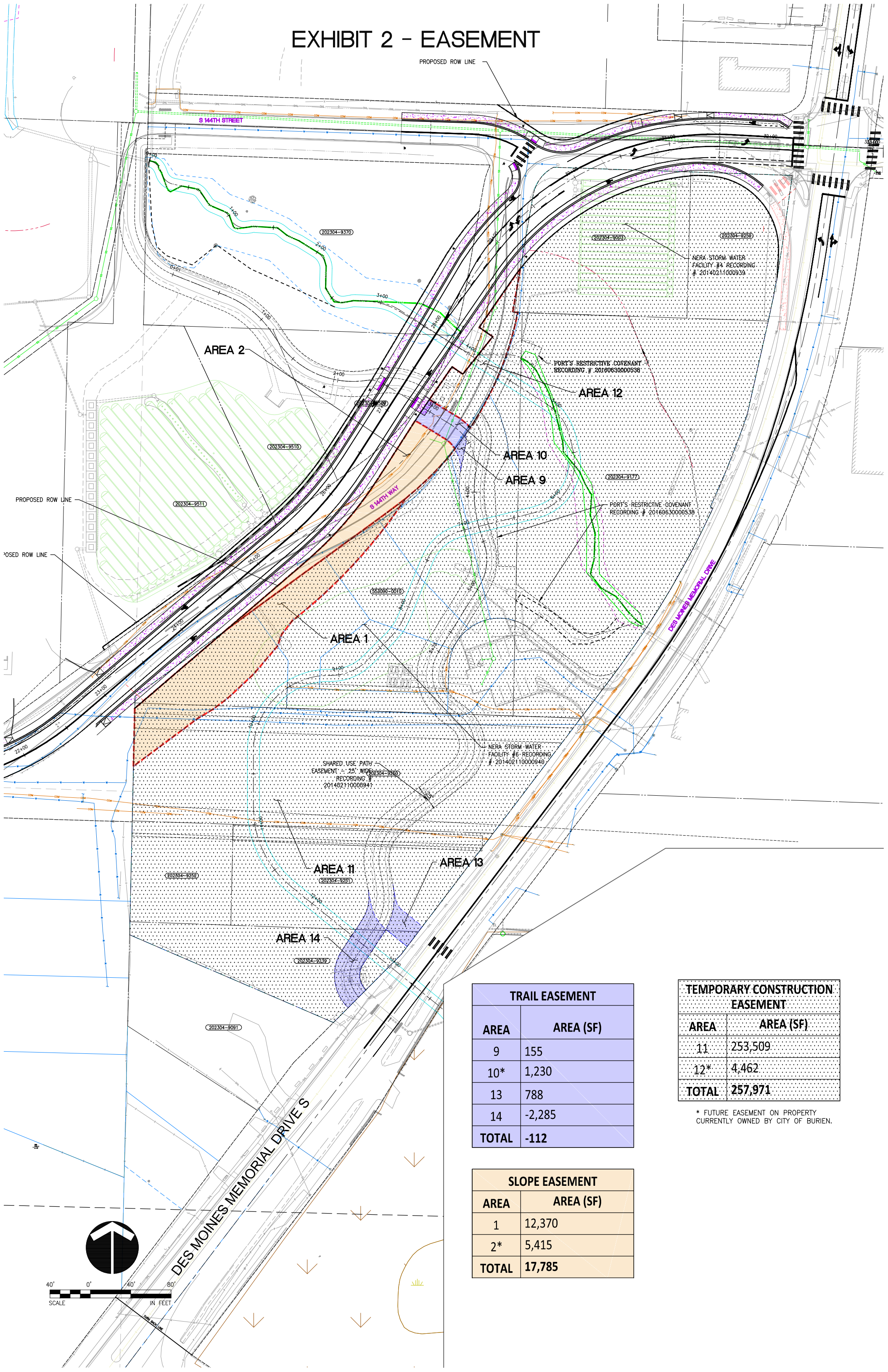


EXHIBIT 2 - EASEMENT



TRAIL EASEMENT	
AREA	AREA (SF)
9	155
10*	1,230
13	788
14	-2,285
TOTAL	-112

TEMPORARY CONSTRUCTION EASEMENT	
AREA	AREA (SF)
11	253,509
12*	4,462
TOTAL	257,971

* FUTURE EASEMENT ON PROPERTY CURRENTLY OWNED BY CITY OF BURIEN.

SLOPE EASEMENT	
AREA	AREA (SF)
1	12,370
2*	5,415
TOTAL	17,785

