

**TRANSMITTAL COVERSHEET
COMPLETE SET OF BXWA POSTED DOCUMENTS**



Project	Test Project
Contractor	Name: TIMCO Construction
	Street Address: 123 1 st Street
	City, State, Zip: Edmonds, WA 98023
Bid Opening Date	July 11, 2023
Date FTP Link for PDF of Bidding Documents Was Emailed to Contractor	July 20, 2023
Contractor Email Address(es) Used for Sending FTP Link	tdbenedict@email.com
PDF Digital Certification Stamp	
The PDF as transmitted may contain some items that are not Contract Documents. Contract Documents are as defined in the General Conditions.	

**FIRST AMENDMENT
TO JOINT USE AGREEMENT
(CITY ASSUMPTION OF CONTROL OF JOINT USE FACILITIES)**

This First Amendment to Joint Use Agreement (this "**Amendment**") is dated as of August 31, 2015 by and between the City of Everett, a municipal corporation of the State of Washington (the "**City**") and Kimberly-Clark Worldwide, Inc., a Delaware corporation, an affiliate and successor of Kimberly-Clark Tissue Company and Scott Paper Company with respect to their interests in the Joint Use Facilities and the site generally known as the Everett Mill ("**K-C**").

RECITALS

A. The City and K-C are parties to the Port Gardner Bay Outfall Replacement Agreement dated June 2, 1999 by and between the City and K-C (the "**Joint Use Agreement**"). K-C owns real property in Everett, Washington, on which it operated a mill and associated facilities, which property is legally described in Exhibit A to this Amendment (the "**K-C Mill Property**"). Terms used but not defined in this Amendment shall have the meanings ascribed to them in the Joint Use Agreement unless otherwise provided in this Amendment.

B. Under the Joint Use Agreement, K-C owns the Joint Use Facilities and has the obligation, as set forth in the Joint Use Agreement, to operate and maintain the Joint Use Facilities. K-C owns 50.5% of the Capacity of the Joint Use Facilities, while the City owns 49.5% of the Capacity of the Joint Use Facilities. The Capacity of Joint Use Facilities is approximately 90 million gallons per day.

C. Besides the Joint Use Agreement, the City and K-C have other agreements regarding the Joint Use Facilities (the "**Third Party Agreements**") which include, without limitation:

- K-C, the City, and the Port of Everett are parties to the Port Gardner Outfall Replacement and Project Agreement, dated June 5, 2003 (the "**Tri-Party Agreement**").
- The Port of Everett granted K-C and the City an easement for the Joint Use Facilities, recorded in Snohomish County on November 18, 2004 under file number 200411180634 (the "**Port Easement**").
- The State of Washington, acting through the Department of Natural Resources, granted K-C and the City Aquatic Lands Outfall Easement No. 51-072799 for the Joint Use Facilities, dated April 28, 2003 and recorded in Snohomish County on May 13, 2003 under file number 200305131822 and re-recorded under 200411180633, as amended by the "Aquatic Lands Easement Agreement" and the "Notice and Consent to Assignment of Easement" dated _____ (the "**DNR Easement**").
- Burlington Northern and Santa Fe Railway Company granted K-C a License dated January 20, 2004, in connection with the Joint Use Facilities (the "**BNSF License**").
- The City assigned the right to use 10 million gallons per day of Capacity to City of Marysville ("**Marysville**") pursuant to the Agreement for Conveyance and Discharge of Treated Wastewater (undated) between Marysville and the City (the "**City Marysville Capacity Agreement**").
- K-C assigned the right to use 10 million gallons per day of Capacity to Marysville pursuant to the Contract for Capacity in the Port Gardner Outfall (Outfall 100) dated November 30, 2004 (the "**K-C Marysville Capacity Agreement**").

D. Since 2012, K-C has closed and demolished its Everett Mill. At the time of entering into the Joint Use Agreement, K-C and the City intended that the City would have the right to assume control from K-C of the operation of the Joint Use Facilities at such time as the K-C site ceases to be used as manufacturing facilities, or otherwise by mutual agreement between K-C and the City. Accordingly, the purpose of this Amendment is to formalize the City's assumption of control of the Joint Use Facilities pursuant to Section 17.5 of the Joint Use Agreement. In order to allow the City to assume from K-C the operation of the Joint Use Facilities, K-C and the City have agreed to transfer the ownership of the Joint Use Facilities and the Capacity owned by K-C (the "**K-C Capacity**") to the City.

AGREEMENT

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

1. City Assumption of Control of Joint Use Facilities. As of the Transfer Effective Date (which is defined in Section 4 below), the City hereby assumes control of the Joint Use Facilities pursuant to Section 17.5 of the Joint Use Agreement. K-C hereby consents to the City assuming such control and K-C and the City agree as follows:

A. Transfer of Ownership of Joint Use Facilities and Capacity. In consideration for the City's assumption of control of the operation of the Joint Use Facilities and as required by Sections 17 and 21.5 of the Joint Use Agreement, K-C hereby transfers and conveys to the City, and the City accepts and assumes, all of K-C's right, title, and interest in the K-C Capacity and the Joint Use Facilities. The transfer and conveyance of the K-C Capacity and Joint Use Facilities to the City shall be effective as of the Transfer Effective Date. Concurrently with the execution of this Amendment, K-C shall execute and deliver to the City a Bill of Sale in the form attached hereto as Exhibit B and such other documents as K-C and the City agree may be necessary to transfer and convey the K-C Capacity and the Joint Use Facilities and all existing property rights known at the time of the execution of this Amendment to vest in the City the ownership of, and all rights to operate, the Joint Use Facilities.

B. Amendment of Joint Use Agreement. In accordance with Section 21.4 of the Joint Use Agreement and in addition to the other amendments to the Joint Use Agreement set forth in this Amendment, K-C and the City agree as of the Transfer Effective Date to the amendments to the Joint Use Agreement set forth in Exhibit C to this Amendment.

C. Assignment and Assumption of K-C Marysville Agreement. As of the Transfer Effective Date, K-C assigns and delegates to the City, and the City accepts and assumes, all of K-C's rights and obligations under the K-C Marysville Agreement.

D. Assignment and Assumption of Tri-Party Agreement. As of the Transfer Effective Date, K-C assigns and delegates to the City, and the City accepts and assumes, all of K-C's rights and obligations under the Tri-Party Agreement.

E. Assignment and Assumption of BNSF License. As of the Transfer Effective Date, K-C assigns and delegates to the City, and the City accepts and assumes, all of K-C's rights and obligations under the BNSF License.

F. Assignment and Assumption of DNR Easement. As of the Transfer Effective Date, K-C assigns and delegates to the City, and the City accepts and assumes, all of K-C's rights and obligations under the DNR Easement.

2. Coordination with Third Parties. The Joint Use Agreement and the Third Party Agreements have been structured to enable the City to assume control of the Joint Use Facilities, as provided herein and in accordance with the parties' original intent as described in Recital D, in an expeditious and efficient manner with very limited costs and requirements for consents and approvals from third parties. K-C and the City agree to coordinate all dealings with third parties in connection with the transfer of control to minimize disruption to the continued ownership and use of the Joint Use Facilities and minimize additional costs to K-C and the City. Without limitation, K-C and the City shall do the following:

A. Marysville. The City and K-C will jointly coordinate with Marysville with respect to the City's exercise of its right to assume control of the Joint Use Facilities and the City's assumption of K-C's rights and obligations under the K-C Marysville Agreement, as was anticipated in Section 5.3 of the City Marysville Capacity Agreement and Section 5.4 of the K-C Marysville Capacity Agreement.

B. Port of Everett. The City and K-C will jointly inform the Port of Everett that K-C has conveyed the Joint Use Facilities to the City and that the City will assume K-C's rights and obligations under the Tri-Party Agreement, as was anticipated in Section 11.E of the Port Easement.

C. Department of Natural Resources. K-C will cooperate with the City regarding the City's assumption of control of the Joint Use Facilities and the transfer of the K-C Capacity to the City.

D. BNSF. K-C and the City will use commercially reasonable efforts to obtain BNSF's consent to the assignment of the BNSF License to the City pursuant to Section 30 thereof.

3. Operations and Maintenance Costs. K-C shall have no further obligation to reimburse the City for any operation or maintenance costs for the Joint Use Facility arising after the Transfer Effective Date. The City shall pay K-C \$71,687.01 within 30 days after receipt of an invoice from K-C for such amount, which the City and K-C agree is full payment for all outstanding amounts due to K-C related to the sediment sampling in 2013 and the beach repair work as originally outlined in the memorandum dated July 19, 2012 from Anchor QEA, LLC to K-C and the City. Upon receipt of such payment, K-C and City agree that they have paid each other in full for all operation and maintenance costs arising prior to the Transfer Effective Date.

4. Transfer Effective Date. The "**Transfer Effective Date**" for the purposes of this Amendment shall be the first business day after the full execution of this Amendment by the parties hereto.

5. Satisfactory Performance of Prior Construction Obligations. K-C and the City agree that (i) K-C has designed and constructed the Joint Use Facilities and the Facilities have been finally accepted and placed in service all in accordance Sections 10.4 and 11 and the other provisions of the Joint Use Agreement and (ii) the City has paid, in full, all amounts payable by the City under Sections 4 and 5 of the Joint Use Agreement. To the extent it has not already done so, K-C hereby assigns as of the Transfer Effective Date to the City all warranties, rights and claims against any engineering firms, designers, architects, suppliers, environmental and other consultants, Construction Contractors and other third parties relating to the design, engineering, construction and operation of the Joint Use Facilities. The provisions of Section 11.3.2 of the Joint Use Agreement shall remain in full force and effect after the Transfer Effective Date.

6. Project Review Team. As of the Transfer Effective Date, K-C shall not have the right to participate on the PRT or have any representatives on the PRT and actions by the PRT after such date shall not be subject to the agreement of K-C. The City shall have the sole right to select the representatives on the PRT, set the agenda for the PRT and, in its discretion, terminate the PRT and select a different method or body to provide policy and management coordination and oversight of the Joint Use Facilities.

7. K-C Mill Property. If a successor-in-interest to K-C with respect to the ownership of K-C Mill Property or a portion thereof (such person, a "**K-C Successor**") desires to connect directly to the Joint Use Facilities and use all or a portion of the former K-C Capacity of the Joint Use Facilities, such K-C Successor shall notify the City. Although the City does not agree by this Section 7 to reserve Capacity for a K-C Successor, the City hereby agrees to negotiate with such K-C Successor, in good faith, the terms for the use of the portion of available Capacity that the new owner desires, including treatment requirements, potential participation on the PRT, and the K-C Successor's responsibility for a *pro rata* share of the Annual O&M Budget. The City may impose such conditions on the approval of such K-C Successor and the use of the Capacity as it deems reasonably necessary to protect the interests of the City and the Joint Use Facilities, including, without limitation, those conditions set forth in Section 15.1.2 of the Joint Use Agreement. If the City and such K-C Successor reach agreement on the use of Capacity, the City agrees that the connection charge to such K-C Successor will not include any capacity charge for the portion of capital construction costs of the Joint Use Facilities which shall be deemed to have been paid by K-C. This Section 7 runs with the K-C Mill Property. K-C may record notice of this Section 7 by recording a memorandum of the same.

8. Release and Indemnity.

A. Section 19 of the Joint Use Agreement shall remain in full force and effect between the City and K-C for all costs, losses, claims for damages, liabilities and expenses, including but not limited to legal fees and court costs ("**Claims**") relating to the Joint Use Facilities and defaults under the Joint Use Agreement, in each case arising prior to the Transfer Effective Date and including, without limitation, Claims made based on the environmental condition of, or any hazardous substances (including petroleum and its by-products) on, in or under, the Joint Use Facilities or the property on which they are located prior to the Transfer Effective Date including, without limitation, such Claims arising under the Model Toxics Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, and the Federal Insecticide, Fungicide, and Rodenticide Act, or any other laws.

B. The City shall indemnify, defend and hold harmless K-C from (a) all Claims arising after the Transfer Effective Date relating to the obligations assumed by the City pursuant to Section 1 of this Amendment, and (b) all Claims arising from the City's negligent acts or omissions or willful misconduct after the Transfer Effective Date, except neither (a) nor (b) apply to the extent such Claims are caused by the negligent, willful or unlawful acts or omissions of K-C or its agents, employees, representatives, consultants, contractors and subcontractors or arise from the environmental condition of, or any hazardous substances (including petroleum and its by-products) on, in or under, the Joint Use Facilities or the property on which they are located, in each case prior to the Transfer Effective Date and including, without limitation, such Claims arising under the Model Toxics Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, and the Federal Insecticide, Fungicide, and Rodenticide Act, or any other laws.

C. Each indemnitee agrees to give the other party written notice within ninety (90) days after notice of a Claim and to give the other party the option to assume the defense of the Claim to the extent of the other's potential exposure thereunder. If necessary to enforce the terms of this Section 8 and for the limited purpose of enforcing this indemnification, the parties waive their immunity to suit under Washington's Industrial Insurance Act. The indemnity and waiver provisions contained in this Section 8 have been expressly and mutually negotiated by the parties.

9. Joint Use Agreement in Full Force and Effect. In accordance with Section 21.5 of the Joint Use Agreement, K-C and the City shall execute any other documents that are reasonably required to effect the terms of this Amendment. Except as amended by this Amendment, the Joint Use Agreement remains in

full force and effect, but K-C shall have no further rights or obligations thereunder except for the rights and obligations of K-C set forth in this Amendment.

10. Notices. Any notice or other communications required or permitted by this Amendment shall be in writing and shall be deemed properly given when personally delivered or sent by: (a) first class mail, certified or registered postage prepaid; (b) a recognized courier service; or (c) facsimile transmission with a confirmation of receipt followed by first-class mail addressed as follows:

If to K-C:

Kimberly-Clark Corporation
Office of General Counsel
351 Phelps Drive
Irving, TX 75038

If to the City:

The City of Everett
3200 Cedar Street
Everett, Washington 98201
Attention: Director of Public Works.

[Signature page follows]

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered by a duly authorized officer or representative of each party as of the date set forth above.

CITY OF EVERETT

By:

Ray Stephenson
Name
Its

Date: 8-31-2015

**KIMBERLY-CLARK WORLDWIDE, INC. (as
successor in interest to Kimberly-Clark Tissue
Company)**



By:

Susan M. Bickel
Name
Its

Date: 8/10/15

ATTEST:

Sharon Jull
City Clerk

APPROVED AS TO FORM

James D. Iles
JAMES D. ILES, City Attorney

EXHIBIT A
LEGAL DESCRIPTION OF K-C MILL PROPERTY

PARCEL 1:

LOT 1 OF CITY OF EVERETT BOUNDARY LINE ADJUSTMENT 11-93 RECORDED UNDER AUDITOR'S FILE NUMBER 9310180299 AND RELATED SURVEY UNDER AUDITOR'S FILE NUMBER 9310185002, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACTS 6, 7, AND 8 OF EVERETT TIDE LANDS AS SHOWN ON THE MAP THEREOF FILED IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIC, WASHINGTON; ALSO THAT PORTION OF GOVERNMENT LOTS 2 AND 3 OF SECTION 19, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M., RECORDS OF SNOHOMISH COUNTY, WASHINGTON, AND TIDELANDS OF THE FIRST CLASS LYING IN FRONT THEREOF, TOGETHER WITH VACATED FEDERAL STREET, NASSAU STREET, NORTON AVENUE EXTENSION, 25TH STREET, AND 26TH STREET, ALL BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE MEANDER CORNER COMMON TO SECTIONS 19 AND 30, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M., RECORDS OF SNOHOMISH COUNTY, WASHINGTON; THENCE ALONG THE MEANDER LINE THE FOLLOWING 4 COURSES AND DISTANCES: NORTH 21°33'44" EAST, A DISTANCE OF 686.30 FEET; THENCE NORTH 29°03'44" EAST, A DISTANCE OF 297.00 FEET; THENCE NORTH 19°03'44" EAST, A DISTANCE OF 461.99 FEET; THENCE NORTH 24°03'44" EAST, A DISTANCE OF 88.06 FEET TO A POINT WHICH INTERSECTS THE SOUTHERLY LINE OF SAID TRACT 6 PROJECTED SOUTHEASTERLY AND THE POINT OF BEGINNING; THENCE ALONG SAID PROJECTED LINE NORTH 74°18'48" WEST, A DISTANCE OF 459.30 FEET TO THE MOST SOUTHERLY CORNER OF SAID TRACT 6; THENCE ALONG THE EASTERLY LINE THEREOF NORTH 16°06'36" EAST, A DISTANCE OF 595.87 FEET TO THE MOST SOUTHERLY CORNER OF THE SAID TRACT 7; THENCE ALONG THE EASTERLY LINE THEREOF NORTH 02°18'07" EAST, A DISTANCE OF 513.03 FEET TO THE MOST EASTERLY CORNER OF SAID TRACT 8; THENCE ALONG THE EASTERLY LINE THEREOF NORTH 27°39'47" WEST, TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH 89°52'00" EAST, A DISTANCE OF 913.27 FEET TO A POINT 24 FEET WEST OF THE WEST LINE OF THE NORTHERN PACIFIC RAILWAY COMPANY RIGHT-OF-WAY AND ON THE WEST BOUNDARY OF A TRACT OF LAND CONVEYED TO THE CITY OF EVERETT ON FEBRUARY 24, 1900, BY DEED RECORDED IN VOLUME 50 OF DEEDS AT PAGE 552, UNDER AUDITOR'S FILE NUMBER 55695, RECORDS OF SNOHOMISH COUNTY, WASHINGTON; THENCE ALONG THE WESTERLY LINE OF SAID TRACT SOUTH 03°03'00" WEST, A DISTANCE OF 84.92 FEET TO THE SOUTHWEST CORNER OF SAID TRACT; THENCE ALONG THE SOUTH LINE THEREOF SOUTH 89°53'09" EAST, A DISTANCE OF 24.03 FEET TO AN INTERSECTION WITH THE WEST LINE OF THE NORTHERN PACIFIC RAILWAY COMPANY'S RIGHT-OF-WAY; THENCE ALONG SAID LINE SOUTH 03°03'00" WEST, A DISTANCE OF 937.57 FEET TO THE

NORTHEAST CORNER OF A TRACT OF LAND CONVEYED TO DETREVE CORPORATION BY DEED RECORDED DECEMBER 7, 1959, UNDER AUDITOR'S FILE NUMBER 1372648; THENCE ALONG THE NORTH LINE OF SAID TRACT AND PROJECTION THEREOF NORTH 89°52'00" WEST, A DISTANCE OF 479.83 FEET TO THE CENTER OF VACATED FEDERAL STREET; THENCE ALONG SAID CENTERLINE SOUTH 00°08'41" WEST, A DISTANCE OF 299.84 FEET TO AN INTERSECTION WITH A WESTERLY PROJECTION OF THE SOUTH LINE OF LOT 25, BLOCK 618, PLAT OF FIRST TIDE LAND ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGE 32, RECORDS OF SNOHOMISH COUNTY, WASHINGTON; THENCE NORTH 89°52'20" WEST, A DISTANCE OF 35.00 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF SAID VACATED FEDERAL STREET; THENCE ALONG SAID LINE SOUTH 00°08'40" WEST, A DISTANCE OF 22.73 FEET TO A POINT WHICH BEARS NORTH 89°20'22" EAST FROM THE

POINT OF BEGINNING; THENCE SOUTH 89°20'22" WEST, A DISTANCE OF 22.73 FEET TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION DESCRIBED AS FOLLOWS: COMMENCING AT A MONUMENT AT THE INTERSECTION OF 23RD STREET AND GRAND AVENUE; THENCE ALONG THE MONUMENT LINE NORTH 00°08'01" EAST, A DISTANCE OF 480.13 FEET TO A MONUMENT AT 22ND STREET AND GRAND AVENUE; THENCE NORTH 88°02'51" WEST, A DISTANCE OF 557.96 FEET TO A MONUMENT STAMPED CP-3; THENCE SOUTH 07°43'34" WEST, A DISTANCE OF 1377.59 FEET TO A MONUMENT STAMPED CP-2; THENCE SOUTH 26°31'13" EAST, A DISTANCE OF 165.73 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00°03'35" EAST, A DISTANCE OF 70.00 FEET; THENCE NORTH 89°26'34" WEST, A DISTANCE OF 23.05 FEET; THENCE SOUTH 00°33'26" WEST, A DISTANCE OF 41.14 FEET; THENCE NORTH 89°52'36" WEST, A DISTANCE OF 23.37 FEET; THENCE SOUTH 00°33'26" WEST, A DISTANCE OF 51.09 FEET; THENCE NORTH 89°26'34" WEST, A DISTANCE OF 55.78 FEET; THENCE NORTH 00°33'26" EAST, A DISTANCE OF 92.41 FEET; THENCE NORTH 89°26'34" WEST, A DISTANCE OF 416.88 FEET; THENCE SOUTH 00°06'46" EAST, A DISTANCE OF 37.62 FEET; THENCE SOUTH 89°56'49" WEST, A DISTANCE OF 557.96 FEET TO THE INNER HARBAR LINE AS SHOWN ON THE MAP OF EVERETT TIDE LANDS ON FILE IN OLYMPIA, WASHINGTON; THENCE ALONG SAID LINE NORTH 00°00'10" EAST, A DISTANCE OF 519.98 FEET; THENCE SOUTH 88°43'23" EAST, A DISTANCE OF 240.24 FEET; THENCE SOUTH 01°16'37" WEST, A DISTANCE OF 239.70 FEET;

THENCE SOUTH 88°43'23" EAST, A DISTANCE OF 117.94 FEET; THENCE SOUTH 00°41'15" WEST, A DISTANCE OF 187.47 FEET; THENCE SOUTH 89°54'58" EAST, A DISTANCE OF 199.54 FEET; THENCE NORTH 00°07'02" EAST, A DISTANCE OF 68.62 FEET; THENCE SOUTH 89°50'49" EAST, A DISTANCE OF 34.38 FEET; THENCE NORTH 00°07'02" EAST, A DISTANCE OF 4.95 FEET; THENCE NORTH 89°58'04" WEST, A DISTANCE OF 0.34 FEET; THENCE NORTH 00°03'08" EAST, A DISTANCE OF 115.81 FEET; THENCE SOUTH 89°52'58" EAST, A DISTANCE OF 136.76 FEET; THENCE SOUTH 00°00'50" WEST, A DISTANCE OF 64.78 FEET; THENCE SOUTH 89°52'58" EAST, A DISTANCE OF 7.97 FEET; THENCE SOUTH 00°07'02" WEST, A DISTANCE OF 13.36 FEET; THENCE NORTH 89°52'58" WEST, A DISTANCE OF 7.85 FEET; THENCE SOUTH 00°00'50" WEST, A DISTANCE OF 37.37 FEET; THENCE SOUTH 89°59'10" EAST, A DISTANCE OF 17.79 FEET; THENCE SOUTH 00°00'50" WEST, A DISTANCE OF 4.24 FEET; THENCE NORTH 89°58'48" EAST, A DISTANCE OF 50.21 FEET; THENCE SOUTH 00°03'35" EAST, A DISTANCE OF 65.95 FEET; THENCE NORTH 89°56'25" EAST, A DISTANCE OF 186.00 FEET; THENCE NORTH 65°34'19" EAST, A DISTANCE OF 35.97 FEET; THENCE NORTH 89°56'25" EAST, A DISTANCE OF 68.85 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

LOT 1 OF CITY OF EVERETT BOUNDARY LINE ADJUSTMENT 11-93 RECORDED UNDER AUDITOR'S FILE NUMBER 9310180299 AND RELATED SURVEY UNDER AUDITOR'S FILE NUMBER 9310185002, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACTS 6, AND 7, OF EVERETT TIDE LANDS AS SHOWN ON THE MAP THEREOF FILED IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIC, WASHINGTON; ALSO THAT PORTION OF GOVERNMENT LOTS 2 AND 3 OF SECTION 19, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M., RECORDS OF SNOHOMISH COUNTY, WASHINGTON, AND TIDELANDS OF THE FIRST CLASS LYING IN FRONT THEREOF, ALL BEING DESCRIBED AS FOLLOWS:

COMMENCING AT A MONUMENT AT THE INTERSECTION OF 23RD STREET AND GRAND AVENUE;

THENCE ALONG THE MONUMENT LINE NORTH 00°08'01" EAST, A DISTANCE OF 480.13 FEET TO A MONUMENT AT 22ND STREET AND GRAND AVENUE; THENCE NORTH 88°02'51" WEST, A DISTANCE OF 557.96 FEET TO A MONUMENT STAMPED CP-3;

THENCE SOUTH 07°43'34" WEST, A DISTANCE OF 1377.59 FEET TO A MONUMENT STAMPED CP-2; THENCE SOUTH 26°31'13" EAST, A DISTANCE OF 165.73 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00°03'35" EAST, A DISTANCE OF 70.00 FEET; THENCE NORTH 89°26'34" WEST, A DISTANCE OF 23.05 FEET; THENCE SOUTH 00°33'26" WEST, A DISTANCE OF 41.14 FEET; THENCE NORTH 89°52'36" WEST, A DISTANCE OF 23.37 FEET; THENCE SOUTH 00°33'26" WEST, A DISTANCE OF 51.09 FEET; THENCE NORTH 89°26'34" WEST, A DISTANCE OF 55.78 FEET; THENCE NORTH 00°33'26" EAST, A DISTANCE OF 92.41 FEET; THENCE NORTH 89°26'34" WEST, A DISTANCE OF 416.88 FEET; THENCE SOUTH 00°06'46" EAST, A DISTANCE OF 37.62 FEET; THENCE SOUTH 89°56'49" WEST, A DISTANCE OF 557.96 FEET TO THE INNER HARBAR LINE AS SHOWN ON THE MAP OF EVERETT TIDE LANDS ON FILE IN OLYMPIA, WASHINGTON; THENCE ALONG SAID LINE NORTH 00°00'10" EAST, A DISTANCE OF 519.98 FEET; THENCE SOUTH 88°43'23" EAST, A DISTANCE OF 240.24 FEET; THENCE SOUTH 01°16'37" WEST, A DISTANCE OF 239.70 FEET; THENCE SOUTH 88°43'23" EAST, A DISTANCE OF 117.94 FEET; THENCE SOUTH 00°41'15" WEST, A DISTANCE OF 187.47 FEET; THENCE SOUTH 89°54'58" EAST, A DISTANCE OF 199.54 FEET; THENCE NORTH 00°07'02" EAST, A DISTANCE OF 68.62 FEET; THENCE SOUTH 89°50'49" EAST, A DISTANCE OF 34.38 FEET; THENCE NORTH 00°07'02" EAST, A DISTANCE OF 4.95 FEET; THENCE NORTH 89°58'04" WEST, A DISTANCE OF 0.34 FEET; THENCE NORTH 00°03'08" EAST, A DISTANCE OF 115.81 FEET; THENCE SOUTH 89°52'58" EAST, A DISTANCE OF 136.76 FEET; THENCE SOUTH 00°00'50" WEST, A DISTANCE OF 64.78 FEET; THENCE SOUTH 89°52'58" EAST, A DISTANCE OF 7.97 FEET; THENCE SOUTH 00°07'02" WEST, A DISTANCE OF 13.36 FEET; THENCE NORTH 89°52'58" WEST, A DISTANCE OF 7.85 FEET; THENCE SOUTH 00°00'50" WEST, A DISTANCE OF 37.37 FEET; THENCE SOUTH 89°59'10" EAST, A DISTANCE OF 17.79 FEET; THENCE SOUTH 00°00'50" WEST, A DISTANCE OF 4.24 FEET; THENCE NORTH 89°58'48" EAST, A DISTANCE OF 50.21 FEET; THENCE SOUTH 00°03'35" EAST, A DISTANCE OF 65.95 FEET; THENCE NORTH 89°56'25" EAST, A DISTANCE OF 186.00 FEET; THENCE NORTH 65°34'19" EAST, A DISTANCE OF 35.97 FEET; THENCE NORTH 89°56'25" EAST, A DISTANCE OF 68.85 FEET TO THE POINT OF BEGINNING;

PARCEL 3:

ALL THAT PORTION OF SECTION 19, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M., RECORDS OF SNOHOMISH COUNTY, WASHINGTON, CONTAINED WITHIN THE FOLLOWING DESCRIBED BOUNDARIES:

COMMENCING AT THE CITY MONUMENT AT 24TH AND GRAND AVENUE IN THE CITY OF EVERETT; THENCE NORTH 0°08' EAST FOR 26.0 FEET; THENCE NORTH 89°52' WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF 24TH STREET FOR 567.67 FEET TO AN INTERSECTION WITH THE WESTERLY MARGIN OF NORTON AVENUE; THENCE CONTINUING NORTH 89°52' WEST FOR 617.44 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0°08' EAST FOR 249.83 FEET; THENCE SOUTH 89°52' EAST FOR 80.00 FEET; THENCE NORTH 0°08' EAST FOR 224.18 FEET; THENCE SOUTH 89°52' EAST FOR 320.64 FEET; THENCE NORTH 0°08' EAST FOR 6.00 FEET; THENCE SOUTH 89°52' EAST FOR 260.77 FEET TO AN INTERSECTION WITH THE WESTERLY MARGIN OF NORTON AVENUE; THENCE ALONG THE WESTERLY MARGIN OF NORTON AVENUE NORTH 7°29' EAST FOR 54.52 FEET TO A POINT, SAID POINT BEING THE NORTHEAST CORNER OF PROPERTY DESCRIBED IN DEED RECORDED UNDER AUDITOR'S FILE NUMBER 884618 IN VOLUME 418 OF DEEDS, PAGE 547, RECORDS OF THE AUDITOR'S OFFICE OF SNOHOMISH COUNTY, WASHINGTON; THENCE NORTH

89°52' WEST FOR 857 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF PROPERTY DESCRIBED IN RECORDED DEED PREVIOUSLY REFERRED TO; THENCE APPROXIMATELY SOUTH 8°54' WEST FOR 539 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF PROPERTY DESCRIBED IN PREVIOUSLY DESCRIBED RECORDED DEED; THENCE SOUTH 89°52' EAST FOR 271.27 FEET TO THE TRUE POINT OF BEGINNING;

TOGETHER WITH THAT PORTION OF NORTON AVENUE VACATED BY CITY OF EVERETT ORDINANCE NO. 684-80 RECORDED UNDER AUDITOR'S FILE NUMBER 8709170073, DESCRIBED AS FOLLOWS: BEGINNING AT THE CITY MONUMENT AT 24TH STREET AND GRAND AVENUE, IN THE CITY OF EVERETT, WASHINGTON; THENCE NORTH 0°08'00" EAST, ALONG THE GRAND AVENUE MONUMENT LINE, A DISTANCE OF 26.00 FEET; THENCE NORTH 89°52'00" WEST, ALONG THE NORTH RIGHT-OF-WAY LINE OF 24TH STREET, AND THE PROJECTION THEREOF, A DISTANCE OF 567.67 FEET; THENCE NORTH 3°03'00" EAST FOR 3.99 FEET TO THE POINT OF BEGINNING OF A CURVE, AT WHICH POINT THE RADIUS POINT OF SAID CURVE BEARS SOUTH 86°57'00" EAST;

THENCE ON SAID CURVE, TO THE RIGHT, HAVING A RADIUS OF 5844.65 FEET, AND CONSUMING A CENTRAL ANGLE OF 4°26'00", AN ARC DISTANCE OF 452.24 FEET TO THE POINT OF ENDING OF SAID CURVE BEARS SOUTH 82°32'00" EAST; THENCE NORTH 7°29'00" EAST, A DISTANCE OF 25.93 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUE NORTH 7°29'00" EAST, A DISTANCE OF 54.52 FEET; THENCE SOUTH 25°20'00" EAST A DISTANCE OF 60.70 FEET; THENCE NORTH 89°52'00" WEST A DISTANCE OF 33.0 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 4:

LOT 1 OF CITY OF EVERETT BOUNDARY LINE ADJUSTMENT NO. 93-080 RECORDED UNDER AUDITOR'S FILE NUMBER 9401130444 AND RELATED SURVEY MAP UNDER AUDITOR'S FILE NUMBER 9401135006, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF GOVERNMENT LOTS 1 AND 2 AND TIDELANDS OF THE FIRST CLASS LYING IN FRONT THEREOF, AND OF TRACT 9 OF EVERETT TIDE LANDS AS SHOWN ON THE MAP THEREOF FILED IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON, ALL IN SECTION 19, TOWNSHIP 29 NORTH RANGE 5 EAST, W.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MONUMENT AT THE INTERSECTION OF 21ST STREET AND GRAND AVENUE IN THE CITY OF EVERETT AS SHOWN ON THAT CERTAIN MAP FILED IN VOLUME 19 OF SURVEYS, AT PAGE 246; THENCE NORTH 00°08'00" EAST, ALONG THE MONUMENT LINE OF GRANT AVENUE, 46.00 FEET; THENCE NORTH 89°52'00" WEST, 399.83 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF NORTON AVENUE (MARINE VIEW DRIVE); THENCE NORTH NORTHEASTERLY ALONG THE SAID WESTERLY LINE OF NORTON AVENUE, 39.62 FEET ALONG THE ARC OF A CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 11,344.20 FEET, THE RADIAL LINE OF WHICH BEARS NORTH 83°17'01" WEST, THROUGH A CENTRAL ANGLE OF 00°12'00" TO THE NORTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED AND RECORDED UNDER AUDITOR'S FILE NUMBER 1420536, SNOHOMISH COUNTY RECORDS; THENCE ALONG THE NORTH LINE OF SAID PARCEL NORTH 89°50'04" WEST 57.60 FEET TO THE NORTHWEST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED AND RECORDED UNDER AUDITOR'S FILE NUMBER 9012030271, SNOHOMISH COUNTY RECORDS, SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE CONTINUING ALONG SAID NORTH LINE, NORTH 89°50'04" WEST, 335.05 FEET;

THENCE LEAVING SAID NORTH LINE, SOUTH 00°25'55" EAST, 421.91 FEET; THENCE SOUTH 89°38'03" WEST 382.10 FEET TO THE EAST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN VOLUME 19 OF SURVEYS, PAGE 248; THENCE ALONG THE BOUNDARY LINES OF SAID PARCEL SOUTH 00°25'55" EAST 53.57 FEET TO A CORNER OF SAID PARCEL; THENCE NORTH 89°50'54" WEST 271.07 FEET; THENCE SOUTH 19°04'26" WEST, 946.82 FEET TO THE WEST LINE OF TRACT 9 OF EVERETT TIDELANDS, AS SHOWN ON THAT CERTAIN MAP OF EVERETT HARBOR RECORDED UNDER AUDITOR'S FILE NUMBER 7804260181; THENCE ALONG THE BOUNDARY LINE OF SDAID TRACT 9 SOUTH 00°00'10" WEST, 44.72 FEET TO THE SOUTHWEST CORNER OF TRACT 9; THENCE ALONG THE SOUTH LINE OF TRACT 9 SOUTH 74°18'48" EAST 299.77 FEET TO THE SOUTHEAST CORNER OF TRACT 9; THENCE NORTH 08°53'02" EAST 539.93 FEET ALONG THE EAST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED AND RECORDED UNDER AUDITOR'S FILE NUMBER 1420536 TO THE NORTHWEST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED AND RECORDED UNDER AUDITOR'S FILE NUMBER 884648; THENCE SOUTH 89°52'00" EAST, 855.98 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF NORTON AVENUE; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE NORTH 07°29'00" EAST, 521.63 FEET TO THE SOUTHEAST CORNER OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED AND RECORDED UNDER AUDITOR'S FILE NUMBER 9012030271; THENCE ALONG THE BOUNDARIES OF SAID PARCEL NORTH 82°29'04" WEST, 7.71 FEET; THENCE NORTH 13°59'19" WEST, 127.98 FEET; THENCE NORTH 06°29'10" EAST, 325.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 5:

ALL THAT PORTION OF SECTION 19, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M., AND OF FIRST CLASS TIDELANDS, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, LYING WITHIN THE FOLLOWING DESCRIBED BOUNDARIES:

COMMENCING AT THE CITY MONUMENT AT 24TH AND GRAND AVENUE; THENCE NORTH 0°08' EAST FOR 26.0 FEET; THENCE NORTH 89°52' WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF 24TH STREET FOR 567.67 FEET TO AN INTERSECTION WITH THE WESTERLY MARGIN OF NORTON AVENUE; THENCE CONTINUING WEST 355.39 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING WEST 262.05 FEET; THENCE NORTH 00°08'00" EAST 249.83 FEET; THENCE SOUTH 89°52'00" EAST 80 FEET; THENCE NORTH 00°08'00" EAST 224.18 FEET;

THENCE EAST 320.64 FEET TO THE SOUTHERLY LINE OF SCOTT PAPER EASEMENT UNDER AUDITOR'S FILE NUMBER 1695006; THENCE CONTINUING EAST 260 FEET MORE OR LESS TO THE WEST MARGIN OF NORTON STREET; THENCE SOUTHERLY ALONG SAID WEST MARGIN 46.59 FEET; THENCE WEST 439.78 FEET; THENCE SOUTH 00°08'00" WEST 297.90 FEET TO AN INTERSECTION WITH THE EASTERLY LINE OF EXISTING BULKHEAD LINE; THENCE SOUTH 13°07'00" EAST 139.83 FEET TO THE TRUE POINT OF BEGINNING.

ALSO COMMENCING AT THE CITY MONUMENT AT 24TH AND GRAND AVENUE, PROCEED NORTH 0°08' EAST FOR 26.0 FEET; THENCE PROCEED NORTH 89°52' WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF 24TH STREET FOR 567.67 FEET TO AN INTERSECTION WITH THE WESTERLY MARGIN OF NASSAU STREET (FORMERLY KNOWN AS NORTON AVENUE); THENCE PROCEED NORTH 3°03' EAST ALONG THE WESTERLY MARGIN OF SAID NASSAU STREET FOR 3.99 FEET; THENCE PROCEED TO THE RIGHT FOR A DISTANCE OF 452.24 FEET FOLLOWING THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 5,844.65 AND CONSUMING AN ANGLE OF 4°26'; THENCE PROCEED NORTH 7°29' EAST FOR 19.88 FEET TO THE TRUE POINT OF BEGINNING; THENCE PROCEED NORTH 89°52' WEST FOR 260 FEET; THENCE TURN ANGLE OF 90° AND PROCEED NORTH 0°08' EAST FOR A DISTANCE OF 6.0 FEET; THENCE PROCEED SOUTH 89°52' EAST TO THE WEST LINE OF SAID NASSAU STREET (BEING A DISTANCE OF

260.0 FEET, MORE OR LESS); THENCE PROCEED SOUTH 7°29' WEST FOR A DISTANCE OF 6.05 FEET TO THE TRUE POINT OF BEGINNING, ALL BEING IN SECTION 19, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M., RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

PARCEL 6:

THAT PORTION OF SECTION 19, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M., INCLUDING VACATED NORTON AVENUE PURSUANT TO CITY OF EVERETT ORDINANCE NO. 3390 RECORDED UNDER AUDITOR'S FILE NUMBER 1246833, AND OF FIRST CLASS TIDELANDS, DESCRIBED AS FOLLOWS:

COMMENCING AT CITY MONUMENT AT 24TH AND GRAND AVENUE; THENCE NORTH 0°08' EAST ALONG THE MONUMENT LINE OF GRAND AVENUE FOR 26.0 FEET;

THENCE NORTH 89°52' WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF 24TH STREET FOR A DISTANCE OF 567.67 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 3°03' EAST FOR 3.99 FEET; THENCE FOLLOWING THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 5844.65 FEET AND CONSUMING AN ANGLE OF 4°14' FOR 431.84 FEET; THENCE NORTH 89°52' WEST FOR 439.79 FEET; THENCE SOUTH 0°08' WEST FOR 297.90 FEET TO AN INTERSECTION WITH THE EASTERLY LINE OF AN EXISTING BULKHEAD LINE; THENCE SOUTH 13°07' EAST FOR 139.83 FEET TO AN INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF 24TH STREET PRODUCED WESTERLY; THENCE SOUTH 89°52' EAST ALONG SAID NORTH RIGHT-OF-WAY LINE FOR 355.39 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 7:

LOTS 1, 25 AND "A", BLOCK 618, PLAT OF FIRST TIDE LAND ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGE 32, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

ALSO THOSE PORTIONS OF VACATED ALLEY IN SAID BLOCK 618, THE EAST HALF OF VACATED FEDERAL STREET, AND THE WEST HALF OF VACATED NASSAU STREET AS WOULD ATTACH BY OPERATION OF LAW;

ALSO ALL THAT PORTION OF EVERETT AVENUE, LYING EAST OF FEDERAL AVENUE AND WEST OF BURLINGTON NORTHERN RAILROAD RIGHT-OF-WAY, ALSO LYING NORTH OF BLOCK 619 AND A PORTION OF BLOCK 620, PLAT OF EVERETT DIVISION "C", ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 3 OF PLATS, PAGE 70, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, AND LYING SOUTH OF BLOCK 618, PLAT OF FIRST TIDE LAND ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGE 32, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, ALSO LYING SOUTH OF A PORTION OF BLOCK 617, PLAT OF EVERETT DIVISION "G", ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 4 OF PLATS, PAGE 41, RECORDS OF SNOHOMISH COUNTY, WASHINGTON; EXCEPT THAT PORTION ATTACHING TO LOT 15, BLOCK 617, PLAT OF EVERETT DIVISION "G", ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 4 OF PLATS, PAGE 41, PURSUANT TO CERTAIN LETTER OF UNDERSTANDING BETWEEN SCOTT PAPER CO. AND BURLINGTON NORTHERN RAILROAD COMPANY, A DELAWARE CORPORATION DATED JULY 10, 1990.

EXCEPT ALL OIL, GAS, ASPHALTUM, AND OTHER HYDROCARBONS AND MINERALS BELOW A DEPTH OF 500 FEET AS RESERVED IN DEED RECORDED UNDER AUDITOR'S FILE NUMBER 2045265.

PARCEL 8:

THE NORTH 13 FEET OF LOT 30 AND ALL OF LOTS 31 THROUGH 36 INCLUSIVE, BLOCK 618, FIRST PLAT OF TIDE LANDS ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGE 32, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

TOGETHER WITH THE WEST HALF OF VACATED ALLEY IN SAID BLOCK AND THE EAST HALF OF VACATED FEDERAL STREET ADJOINING SAID LOTS AS WOULD ATTACH BY OPERATION OF LAW.

PARCEL 9:

LOTS 10, 11 AND 12, BLOCK 618, FIRST PLAT OF TIDE LANDS ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGE 32, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

TOGETHER WITH THE EAST HALF OF VACATED ALLEY IN SAID BLOCK AS WOULD ATTACH BY OPERATION OF LAW.

PARCEL 10:

THE NORTH 13 FEET OF LOT 6, ALL OF LOTS 7, 8, AND 9, BLOCK 618, FIRST PLAT OF TIDE LANDS ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGE 32, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

TOGETHER WITH THE EAST HALF OF VACATED ALLEY IN SAID BLOCK AS WOULD ATTACH BY OPERATION OF LAW.

PARCEL 11:

(A) A PORTION OF BLOCK 618, PLAT OF FIRST TIDE LAND ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGE 32, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, (B) A PORTION OF BLOCK 617, PLAT OF EVERETT, DIVISION G, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 4 OF PLATS, PAGE 41, RECORDS OF SNOHOMISH COUNTY, WASHINGTON (C) A VACATED PORTION

OF 26TH STREET LYING NORTHERLY OF SAID BLOCK 617, (D) A VACATED PORTION OF EVERETT AVENUE LYING SOUTHERLY OF SAID BLOCK 617, (E) A VACATED PORTION OF NASSAU STREET LYING EASTERLY OF SAID BLOCK 618 AND (F) A PORTION OF A CERTAIN VACATED ALLEY IN SAID BLOCK 618, AND BEING BOUNDED AND DESCRIBED IN ACCORDANCE WITH A SURVEY PLAN MADE FOR SCOTT PAPER COMPANY BY MODERN HOME BUILDERS, INC., NO. "F944" DATED NOVEMBER, 1958, AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY SIDE OF THE RIGHT OF WAY OF NORTHERN PACIFIC RAILWAY COMPANY, SAID POINT OF BEGINNING BEING LOCATED WITH RESPECT TO THE CITY MONUMENT AT THE INTERSECTION OF 24TH STREET AND GRAND AVENUE, BY THE FOLLOWING THREE (3) COURSES AND DISTANCES MEASURED FROM SAID CITY MONUMENT: (1) ALONG GRAND AVENUE MONUMENT LINE NORTH 0°8' EAST, 26.00 FEET TO A POINT ON THE NORTHERLY SIDE OF 24TH STREET; THENCE (2) ALONG SAID NORTHERLY SIDE OF 24TH STREET NORTH 89°52' WEST 517.61 FEET TO A POINT ON SAID WESTERLY SIDE OF SAID RIGHT OF WAY OF NORTHERN PACIFIC RAILWAY COMPANY; THENCE (3) ALONG SAID RIGHT OF WAY SOUTH 3°3' WEST 1,017.68 FEET TO SAID POINT OF BEGINNING; THENCE FURTHER ALONG SAID RIGHT OF WAY BY THE FOLLOWING TWO (2) COURSES AND DISTANCES: (1) SOUTH 3°3' WEST 87.52 FEET TO A POINT OF CURVE; THENCE (2) IN A SOUTHERLY

DIRECTION ON AN ARC OF A CIRCLE CURVING IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 1,367.69 FEET AND CONSUMING AN ANGLE OF 14°48', AN ARC DISTANCE OF 353.29 FEET TO THE POINT OF INTERSECTION OF (A) SAID WESTERLY SIDE OF SAID RIGHT OF WAY AND (B) THE SOUTHERLY SIDE OF SAID VACATED PORTION OF EVERETT AVENUE; THENCE ALONG SAID SOUTHERLY SIDE OF SAID VACATED PORTION OF EVERETT AVENUE AND ALONG THE SOUTHERLY END OF SAID VACATED PORTION OF NASSAU STREET (AS ORIGINALLY LAID DOWN) NORTH 89°52' WEST 113.32 FEET TO A POINT, THE SOUTHEASTERLY CORNER OF LOT A IN SAID BLOCK 618; THENCE ALONG THE WESTERLY SIDE OF SAID VACATED PORTION OF NASSAU STREET, NORTH 0°8' EAST 159 FEET TO A POINT, THE SOUTHEASTERLY CORNER OF LOT 2 IN SAID BLOCK 618; THENCE ALONG THE SOUTH LINE OF SAID LOT 2, ACROSS SAID VACATED ALLEY, AND ALONG THE SOUTH LINE OF LOT 26, ALL IN SAID BLOCK 618, NORTH 89°52' WEST

264.13 FEET TO A POINT IN THE WESTERLY SIDE OF SAID BLOCK 618, WHICH POINT IS THE SOUTHWEST CORNER OF SAID LOT 26; THENCE ALONG SAID WESTERLY SIDE OF BLOCK 618 NORTH 0°8' EAST 112.00 FEET TO A POINT; THENCE SOUTH 89°52' EAST 264.13 FEET TO SAID WESTERLY SIDE OF SAID VACATED PORTION OF NASSAU STREET;

THENCE ALONG SAID WESTERLY SIDE OF SAID VACATED PORTION OF NASSAU STREET, NORTH 0°8' EAST 163 FEET; THENCE SOUTH 89°52' EAST 180.87 FEET TO THE FIRST MENTIONED POINT AND PLACE OF BEGINNING;

EXCEPT THE WEST HALF OF VACATED NASSAU STREET LYING SOUTHERLY OF THE NORTHERLY LINE OF LOT 1, BLOCK 618, FIRST TIDE LAND ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGE 32, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

AND EXCEPT THAT OF EVERETT AVENUE ATTACHING TO LOT A, BLOCK 618, SAID PLAT OF FIRST TIDE LAND ADDITION TO EVERETT, PURSUANT TO LETTER OF UNDERSTANDING BETWEEN SCOTT PAPER COMPANY AND BURLINGTON NORTHERN RAILROAD COMPANY, A DELAWARE CORPORATION DATED JULY 10, 1990.

ALL SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

EXHIBIT B
FORM OF BILL OF SALE

THIS BILL OF SALE is executed as of [Aug 31, 2015], by Kimberly-Clark Worldwide, Inc., a Delaware corporation, an affiliate and successor of Kimberly-Clark Tissue Company and Scott Paper Company with respect to their interests in the Joint Use Facilities and the site generally known as the Everett Mill ("K-C"), and is made in favor of the City of Everett, a municipal corporation of the State of Washington (the "City"). Any capitalized term used herein and not defined herein shall have the meaning assigned to it in the First Amendment (as defined below).

FOR VALUE RECEIVED, as set forth in that certain First Amendment to Joint Use Agreement by and between K-C and the City (the "**First Amendment**"), receipt of which is hereby acknowledged, and pursuant to the terms of the First Amendment, K-C does hereby grant, bargain, sell, convey, assign, transfer and set over unto the City, and the City does hereby acquire from K-C, all of K-C's right, title and interest in and to the K-C Capacity and the Joint Use Facilities as further set forth in the First Amendment.

This Bill of Sale is intended to evidence the consummation of the transfer and assignment by K-C to the City of the K-C Capacity and the Joint Use Facilities, as contemplated by the First Amendment. Each of K-C, by its execution of this Bill of Sale, and the City, by its acceptance of this Bill of Sale, hereby acknowledges and agrees that nothing in this Bill of Sale, express or implied, is intended to or shall be construed to modify, expand or limit in any way the terms of the First Amendment or the rights and obligations of the parties thereunder or constitute a waiver or release by any party of any rights, liabilities, duties or obligations granted to or imposed upon any of them by the terms of the First Amendment. In the event of any conflict or inconsistency between the terms of the First Amendment and the terms hereof, the terms of the First Amendment shall govern.

This Bill of Sale shall be governed by and construed and enforced according to the laws of the State of Washington without reference to its choice of law rules.

This Bill of Sale may be executed in counterpart signature pages executed and delivered via facsimile transmission or via email with scan or email attachment. Any such counterpart executed and delivered via facsimile transmission or via email with scan or email attachment will be deemed an original for all intents and purposes, and all such counterparts shall together constitute one and the same instrument.

K-C hereby represents and warrants to the City that K-C is the owner of the K-C Capacity and the Joint Use Facilities (as such terms are defined in the First Amendment), that the K-C Capacity and the Joint Use Facilities are free and clear of any encumbrances or liens of any type or nature, and that K-C has the right to grant, bargain, sell, convey, assign, transfer and set over unto the City the K-C Capacity and the Joint Use Facilities. K-C hereby agrees to defend the sale, assignment, transfer and conveyance of the K-C Capacity and the Joint Use Facilities to the City hereunder against any and all persons who may claim title to the K-C Capacity or the Joint Use Facilities.

[Signature page follows]

IN WITNESS WHEREOF, K-C has executed and delivered this Bill of Sale as of the day and year first above written.

**KIMBERLY-CLARK WORLDWIDE, INC. (as
successor in interest to Kimberly-Clark Tissue
Company)**

By Susan M. Bickel
Name
Its.

ACKNOWLEDGED AND ACCEPTED:

CITY OF EVERETT



By Ray Stephenson
Name
Its.

ATTEST:

Sharon Zull
City Clerk

APPROVED AS TO FORM

James D. Iles
JAMES D. ILES, City Attorney

EXHIBIT C
AMENDMENTS TO JOINT USE AGREEMENT

K-C and the City agree to and hereby amend, or amend and restate, certain provisions of the Joint Use Agreement as follows:

Section	Amended Provision (Strikeouts deleted; underlines added)
Definitions	First Amendment The First Amendment to Joint Use Agreement dated as of <u>August 31</u> , 2015.
	Owner-Participant The Participant that is the owner of record of the Joint Use Facilities.
	Non-Owner Participant Any Participant that shares in the payment of operations and maintenance costs under the Annual O&M Budget that is not owner of record of the Joint Use Facilities.
	Participant The City and any successors, assigns or other parties approved by the City. As of the Transfer Effective Date of the First Amendment, K-C shall not be a Participant, an Owner-Participant or a Non-Owner Participant.
7.6 and 7.7	Sections 7.6 and 7.7 of the Joint Use Agreement are hereby terminated and shall be of no further force or effect.
9	Section 9 of the Joint Use Agreement is hereby terminated and shall be of no further force or effect.
10.2.1	Subject to the City's security interest as set forth in Section 16.1 and the option to purchase set forth in Section 16.2, K-C shall be the owner of record of the Joint Use Facilities <u>until the Transfer Effective Date of the First Amendment. On and after the Transfer Effective Date of the First Amendment, the City shall be the owner of record of the Joint Use Facilities.</u>
10.3.1	The Owner-Participant K-C shall apply for governmental approvals for the construction and operation of the Joint Use Facilities. The City shall provide technical support and information required to complete applications and submittals; provided, however, the City's support shall not be construed to limit the City's exercise of its legislative, police and regulatory powers. The PRT shall review draft permit applications and technical submittals for the Joint Use Facilities prior to filing with governmental agencies. <u>The Owner-Participant K-C shall prepare and submit required SEPA documents, and the City shall to the extent possible serve as the lead agency for the SEPA process required for the Joint Use Facilities and for any subsequent replacement or repairs undertaken pursuant to this Agreement.</u>
12.1.1	Each year K-C <u>the Owner-Participant</u> shall propose an Annual O&M Budget to the PRT. The Annual O&M Budget shall be on a calendar year basis, and shall be approved and established by <u>the Owner-Participant</u> not later than December 1 preceding the year of the proposed budget. If an Annual O&M Budget is not approved by that time, the amounts of previous year's Annual O&M Budget shall be deemed to be the amounts of the next year's Annual O&M Budget until a new Annual O&M

	Budget is adopted. The <u>Owner-Participant</u> Participants shall coordinate the Annual O&M Budget with <u>its</u> their respective budget processes.
12.1.2	The Non-Owner Participant(s) The City shall reimburse the Owner-Participant K-C for operations and maintenance costs by paying to the Owner-Participant K-C its proportionate share of the Annual O&M Budget which share shall correspond to the City's Non-Owner Participant's percent interest in the Capacity of the Joint Use Facilities (initially 49.5%) or such other percentage of costs as all parties shall agree upon. Such payments will be made quarterly under 12.1.2 in accordance with invoices tendered by the Owner-Participant K-C .
12.1.4	Section 12.1.4 of the Joint Use Agreement is hereby terminated and shall be of no further force or effect.
12.2	Upon completion and final acceptance of the construction, K-C the Owner-Participant shall operate and maintain the Joint Use Facilities in compliance with applicable laws, regulations, and this Agreement. To enable coordination among operating personnel, foster communication between the Participants and provide oversight, the PRT may draft and approve an Operations Manual. Changes or modifications to the Operations Manual must be approved by the PRT prior to becoming effective. K-C The Owner-Participant shall operate and maintain the Joint Use Facilities for the benefit of the Participants, and in compliance with any Operations Manual.
12.4.1	The Participants K-C and the City will each hold separate NPDES permits with specific requirements pertaining to their respective effluent. The Participants K-C and the City will each monitor their respective effluent streams separately prior to their respective effluent streams being combined and discharged through the Joint Use Facilities. Each Participant will be responsible for compliance of their respective effluents with applicable laws, regulations, and permits. If the combined discharge approaches or exceeds permit conditions or if the Outfall fails or is in danger of failing to perform as permitted, the Participants will cooperate through the PRT to identify the cause of the problem.
12.4.3	If responsibility for an environmental problem is ambiguous, cannot be reasonably allocated or is apparently and substantially caused by both Participants' effluent, each Participant will pay its proportionate share of the cost of corrective or remedial actions, including any modification to the Joint Use Facilities, which share shall correspond to each Participant's K-C's and the City's percentage interest in the Capacity of the Joint Use Facilities(initially 50.5% and 49.5% respectively). Any corrective actions needed upstream in either of the Participant's Other Facilities will be borne by that Participant (unless one Participant is correcting the other Participants' problem). In the event a Participant must pay any fine or judgment or take corrective action that is caused in whole or in part by the other Participant, then that Participant may make a claim against the other Participant under Article 19 (Indemnity).
14	Section 14 of the Joint Use Agreement is hereby terminated and shall be of no further force or effect.
15.1.2.1.1	Section 15.1.2.1.1 of the Joint Use Agreement is hereby terminated and shall be of no further force or effect.

16.1	To secure performance of its obligations hereunder, K-C <u>the Owner-Participant</u> hereby grants and conveys to the <u>Non-Owner Participant</u> the City a security interest in the real and personal property of the Joint Use Facilities. The parties agree to execute such other documents as may be reasonably necessary to perfect the security interests granted herein, (<i>e-g.</i> , deeds of trust or financing statement). The security interests granted by this Agreement may be exercised in the event of default by the non-defaulting Participant and shall be subordinated to security interests subsequently granted by a Participant in the ordinary course of financing a Participant's ordinary business.
17	Section 17 of the Joint Use Agreement is hereby terminated and shall be of no further force or effect
18	The <u>Owner-Participant</u> shall determine the types, coverages, forms and amount of insurance to be carried on the Facilities. K-C <u>The Owner-Participant</u> shall maintain such insurance. The <u>Non-Owner Participant</u> shall be endorsed as an additional named insured in any policy insuring the Joint Use Facilities. If the Joint Use Facilities are added to <u>the Owner-Participant's</u> K-C's insurance for <u>its other infrastructure</u> the K-C Mill , and there is a resulting increase in K-C's <u>the Owner-Participant's</u> premium, K-C <u>the Owner-Participant</u> may include the amount of any premium increase in the Annual O&M Budget.
20	The condition subsequent in Section 20 of the Joint Use Agreement has been satisfied so such Section 20 is hereby terminated and shall be of no further force or effect.
21.1	All expenses submitted to <u>the Participants</u> the City shall be subject to inspection, audit and copying by the <u>other Participants</u> City or <u>its audit</u> their authorized representatives during normal K-C business hours. K-C <u>The Participants</u> shall <u>each</u> retain all of its records of Joint Use Facilities costs and expenses for not less than three years after final acceptance of any contracts let or awarded for the Joint Use Facilities.

<p>21.6</p>	<p>Any notice or other communications required or permitted by this Agreement shall be in writing and shall be deemed properly given when personally delivered to the PRT Lead Representative or sent by: (a) first class mail, certified or registered postage prepaid; (b) a recognized courier service; or (c) facsimile transmission with a confirmation of receipt followed by first-class mail addressed as follows:</p> <p>If to K-C:</p> <p style="padding-left: 40px;">Kimberly Clark Corporation 2600 Federal Avenue Everett, Washington 98201 Attention: Mill Manager</p> <p>If to the City:</p> <p style="padding-left: 40px;">The City of Everett 3200 Cedar Street Everett, Washington 98201 Attention: Director of Public Works</p>
<p>21.7.2, 21.7.3, 21.7.4, and 21.7.5</p>	<p>Sections 21.7.2, 21.7.3, 21.7.4 and 21.7.5 of the Joint Use Agreement are each hereby terminated and shall be of no further force or effect.</p>