

Property Transfer Agreement in Support of Grade Crossings Elimination and Highway Connections Project

1. AGREEMENT. This Property Transfer Agreement in Support of Grade Crossings Elimination and Highway Connection Project (“Agreement”) is entered by and between (a) the City of Everett, a Washington municipal corporation (“City”) and (b) Smith Island Terminal LLC; Miles Sand & Gravel Company; Cedar Grove Composting, Inc.; Sumner Capital LLC; WSG LLC; and, M.A.P. #2, LLC (collectively, the “Grantors”). The City and Grantors are each a “Party” and, collectively, the “Parties” to this Agreement. The City and Grantors agree as follows.

2. RECITALS.

2.1 The *Smith Island Safety Grade Crossings Elimination and Highway Connections Project* (“Project”) includes constructing an overpass over a busy BNSF Railway mainline in the City, closing two at-grade railroad crossings, and making safety improvements to an adjoining highway intersection. The new overpass will safely host more than 1,500 trucks daily that travel between industrial facilities and regional roads in northwest Washington. The Project will eliminate the threat of vehicle collisions with passenger and freight trains at the crossings, reduce air and noise pollution, and create transportation efficiencies. Further, the Project will mitigate congestion and safety concerns at an adjoining highway/road intersection.

2.2 The City is the sole applicant for grant funding in support of the Project. Grantors are adjacent property owners working with the City in cooperation with and support of Project funding and management of environmental permitting, preliminary design and engineering.

2.3 Through this Agreement, Grantors commit to the transfer of property interests necessary for the Project in support of the City’s grant application(s) and other efforts. The City and Grantors will enter further agreements as may be necessary to fund the Project should grant funding be insufficient. Nothing in this Agreement commits the City to appropriate any funds for this Project.

3. GRANTOR OBLIGATIONS – PROPERTIES TRANSFERED.

3.1 General.

3.1.1 Each Grantor shall transfer to the City (or City-designated governmental entity) the property interests identified by legal descriptions attached at Agreement Exhibit 1 (collectively, the “Property”). The transfer shall be by dedication, quit claim deed, or other form acceptable to the City. The property transfer shall be completed by each Grantor (a) upon the City entering into grant agreement for Project with the federal funding source(s) and (b) no later than the time necessary for the City to satisfy its obligations under any applicable grant agreement or other

necessary approvals. The City's obligation to accept the grant, including its obligation to accept donation of the right-of-way, is contingent on City Council approval.

3.1.2 Each Grantor shall cooperate reasonably with the City in support of grant applications and the Project.

3.2 Smith Island Terminal LLC. Smith Island Terminal shall transfer to the City the property interests set forth in Agreement Exhibit 1.

3.3 Miles Sand & Gravel Company. Miles Sand and Gravel Company shall transfer to the City the property interests set forth in Agreement Exhibit 1.

3.4 Cedar Grove Composting, Inc. Cedar Grove Composting, Inc shall transfer to the City the property interests set forth in Agreement Exhibit 1.

3.5 Sumner Capital LLC. Sumner Capital LLC shall transfer to the City the property interests set forth in Agreement Exhibit 1.

3.6 WSG LLC. WSG LLC shall transfer to the City the property interests set forth in Agreement Exhibit 1

3.7 M.A.P. #2, LLC. Map #2 LLC shall transfer to the City the property interests set forth in Agreement Exhibit 1.

4. CITY OBLIGATIONS.

4.1 City shall apply for grant funding for the Project and, if the grant award is accepted by City Council, shall apply such funding to the Project.

4.2 City, if approved by the City Council, shall accept the transfer of the Property in support of the Project and other public purposes and record the transfer documents in the records of Snohomish County, Washington.

4.3 If the grant and donation is accepted by City Council, the City shall comply with all applicable federal, state and municipal laws in conducting the Project and use of the grant(s).

5. GENERAL

5.1 Choice of Law. This Agreement shall be governed and interpreted according to the laws of the State of Washington. The Parties agree that the Superior Court for Snohomish County, in the State of Washington, shall be the exclusive and proper forum for any action or proceeding, including arbitration, if any, brought under this Agreement. The Parties accept the personal jurisdiction of such court.

5.2 Dispute Resolution. The Parties shall use reasonable, good faith efforts to cooperatively resolve any disputes that arise in connection with this Agreement. When a bona fide dispute arises

between the Grantor and City and subject to this Section 5.2, each Party shall each notify the other of the dispute, with the notice specifying the disputed issues and the position of the Party submitting the notice. If the Parties are unable to resolve a dispute within ten (10) business days, pursuant to this Section 5.2, a Party may proceed with any remedy available to it at law or in equity.

5.3 Remedies.

5.3.1 Except as otherwise provided for herein, no remedy conferred by any of the specific provisions of the Agreement or available to remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

5.3.2 Except as otherwise provided for herein, upon Grantor's satisfaction of its property transfer obligations under the Agreement, the City's sole and exclusive remedy from the Grantors shall relate to the form of the property transfer.

5.4 Amendments. This Agreement may be amended, supplemented or modified only by a writing dated and signed by all Parties.

5.5 Assignment; Successors. This Agreement shall inure to the benefit of and be binding on the Parties hereto and their permitted successors and assigns.

5.6 Severability. If any provision of this Agreement is invalid or unenforceable, the other provisions herein shall remain in full force and effect in such jurisdiction and shall be liberally construed to effectuate the purpose and intent of this Agreement, and the invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of any such provision in any other jurisdiction.

5.7 Waiver. Any failure or delay by a Party to exercise or partially exercise any right, power or privilege hereunder shall not be deemed a waiver of any of the rights, powers or privileges under the Agreement. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written instrument signed by the Parties hereto. No such waiver, modification or deletion in any one instance shall be deemed to be a waiver, modification or deletion of a term or condition in any other instance, whether like or unlike. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach.

5.8 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and is not subject to amendment or modification except as provided herein.

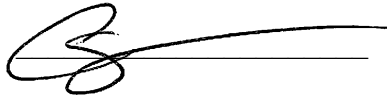
5.9 Force Majeure. No Party shall be deemed to be in violation of this Agreement if such Party is prevented from performing any of its obligations hereunder for any reason beyond its control, including without limitation, acts of God or of any public enemy; pandemic; elements, flood or other natural disaster not caused by a Party.

5.10 Section Headings. The headings of sections in this Agreement are for reference only and shall not affect the meaning of this Agreement.

5.11 Term and Survival. This Agreement shall remain in force and effect until the earlier of December 31, 2029, or the date sixty (60) days after the date of recording of the last of each of the property transfers.

6. EXECUTION AND APPROVAL The undersigned represents and warrants that each is authorized to and executes this Agreement for and on behalf of the identified Party. This Agreement may be executed in multiple counterparts, each of which may be considered an original Agreement.

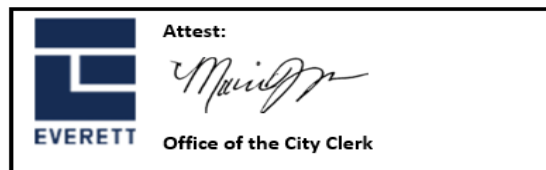
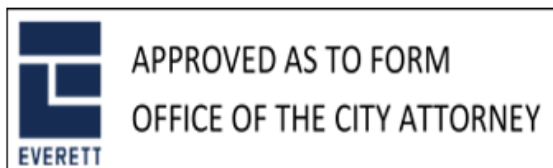
THE CITY OF EVERETT:

By: 

Name: Cassie Franklin

Its: Mayor

Date: 09/20/2024



GRANTORS:

SMITH ISLAND TERMINAL LLC

By: 

Name: J. Steve Banchero Jr.

Its: Authorized Signer

Date: 09/18/2024

MILES SAND & GRAVEL COMPANY

By: 

Name: Lisa Kittilsby

Its: Authorized Signer

Date: 09/18/2024

CEDAR GROVE COMPOSTING, INC.

By: 

Name: J. Steve Banchero Jr.

Its: Authorized Signer

Date: 09/19/2024

SUMNER CAPITAL LLC

By: 

Name: Brett Ferullo

Its: Authorized Signer

Date: 09/20/2024

WSG LLC

By: *Lisa Kittilsby*

Name: Lisa Kittilsby

Its: Authorized Signer

Date: 09/20/2024

M.A.P. #2, LLC

By: 

Name: Tim Sellew

Its: Authorized Signer

Date: 09/20/2024

EXHIBIT 1

RIGHT OF WAY DEDICATION **LEGAL DESCRIPTION**

RIGHT OF WAY AREA A

A STRIP OF LAND BEING 60 FEET WIDE OVER LOTS 1, 3 5, 6, AND 7 OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201910185004, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, WHOSE CENTERLINE IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 1;
THENCE SOUTH 89°09'33" WEST ALONG THE SOUTH LINE OF SAID LOT 1 FOR A DISTANCE OF 134.69 FEET TO THE **TRUE POINT OF BEGINNING** OF HEREIN DESCRIBED CENTERLINE;
THIS POINT ALSO BEING A POINT OF A NON-TANGENTIAL CURVE WHOSE CENTER BEARS SOUTH 62°44'50" WEST AND HAVING A RADIUS OF 60.00 FEET;
THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 63°34'26" FOR A DISTANCE OF 66.57 FEET;
THENCE SOUTH 89°10'24" WEST FOR A DISTANCE OF 411.03 FEET TO A POINT ON AN ARC OF A TANGENTIAL CURVE TO THE RIGHT HAVING A RADIUS OF 100.00 FEET;
THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 48°59'06" FOR A DISTANCE OF 85.49 FEET;
THENCE NORTH 41°50'30" WEST FOR A DISTANCE OF 816.47 FEET TO A POINT ON AN ARC OF A TANGENTIAL CURVE TO THE RIGHT HAVING A RADIUS OF 500.00 FEET;
THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 35°00'12" FOR A DISTANCE OF 305.46 FEET;
THENCE NORTH 6°50'18" WEST FOR A DISTANCE OF 333.97 FEET TO THE **TERMINUS** OF HEREIN DESCRIBED CENTERLINE.

CONTAINS 121,109 S.F. (2.8 ACRE MORE OR LESS)

AREA A CONTAINS PORTIONS OF SNOHOMISH COUNTY PARCEL ID:

29050500401600
29050500401800
29050500101500
29050500101700
29050500101600

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

RIGHT OF WAY AREA B

A STRIP OF LAND BEING 60 FEET WIDE OVER A PORTION OF THE SOUTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M. LYING WESTERLY OF THE GREAT NORTHERN RAILWAY COMPANY RIGHT-OF-WAY WHOSE CENTERLINE IS DESCRIBED AS FOLLOWS.

COMMENCING AT THE SOUTHEAST CORNER OF LOT 1 OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 201910185004, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;
THENCE SOUTH 10°02'20" WEST ALONG THE EAST LINE OF THE SOUTH HALF OF THE SOUTH HALF OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 5, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M. LYING WESTERLY OF THE GREAT NORTHERN RAILWAY COMPANY RIGHT-OF-WAY FOR A DISTANCE OF 302.42 FEET TO THE **TRUE POINT OF BEGINNING** OF HEREIN DESCRIBED CENTERLINE;
THENCE NORTH 79°57'40" WEST FOR A DISTANCE OF 60.00 FEET TO A POINT ON AN ARC OF A TANGENTIAL CURVE TO THE RIGHT HAVING A RADIUS OF 60.00 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00" FOR A DISTANCE OF 94.25 FEET;
THENCE NORTH 10°02'20" EAST FOR A DISTANCE OF 180.65 FEET TO A POINT ON AN ARC OF A TANGENTIAL CURVE TO THE LEFT HAVING A RADIUS OF 60.00 FEET;
THENCE NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 37°17'30" FOR A DISTANCE OF 39.05 FEET TO THE NORTH LINE OF THE SOUTH HALF OF THE SOUTH HALF OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 5, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M. AND THE **TERMINUS** OF HEREIN DESCRIBED CENTERLINE.

CONTAINS 22,467 S.F. (0.5 ACRE MORE OR LESS)

AREA B CONTAINS A PORTION OF SNOHOMISH COUNTY PARCEL ID:
29050500400100

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

RIGHT OF WAY AREA C

A PORTION OF THAT PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER, SECTION 5, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M. LYING WESTERLY OF THE RIGHT OF WAY FOR STATE HIGHWAY NO. 1 AND EASTERLY OF THE GREAT NORTHERN RAILWAY RIGHT OF WAY.

TOGETHER WITH THAT PORTION THEREOF CONVEYED FROM THE STATE OF WASHINGTON BY DEED RECORDED UNDER RECORDING NO. 202007290266, RECORDS OF SNOHOMISH COUNTY WASHINGTON MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF RIGHT OF WAY AREA C;
THENCE SOUTH 89°16'45" WEST ALONG THE SOUTH LINE OF SAID AREA C FOR A DISTANCE OF 229.09 FEET;
THENCE NORTH 58°12'59" WEST FOR A DISTANCE OF 128.10 FEET TO THE WEST LINE OF SAID AREA C;
THENCE SOUTH 10°02'20" WEST ALONG SAID WEST LINE FOR A DISTANCE OF 70.07 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINS 4,167 S.F. (0.1 ACRE MORE OR LESS)

AREA C CONTAINS A PORTION OF SNOHOMISH COUNTY PARCEL ID:
29050500400300

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

RIGHT OF WAY AREA D

ALL OF THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M. LYING WESTERLY OF THE RIGHT OF WAY FOR STATE HIGHWAY NO. 1 AND EASTERLY OF THE GREAT NORTHERN RAILWAY RIGHT OF WAY AND NORTHERLY OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT A POINT WHICH BEARS NORTH 9°41' EAST 1050.11 FEET FROM A POINT ON THE SOUTH LINE OF SAID SECTION, WHICH IS 600.54 FEET WESTERLY OF THE SOUTHEAST CORNER THEREOF; THENCE NORTH 80°19' WEST 300 FEET, MORE OR LESS, TO THE EASTERLY BOUNDARY OF SAID RAILROAD RIGHT OF WAY; TOGETHER WITH THAT PORTION THEREOF CONVEYED FROM THE STATE OF WASHINGTON BY DEED RECORDED UNDER RECORDING NO. 202007290266, RECORDS OF SNOHOMISH COUNTY WASHINGTON.

CONTAINS 65,596 S.F. (1.5 ACRE MORE OR LESS)

AREA D CONTAINS THE ENTIRE PORTION OF SNOHOMISH COUNTY PARCEL ID:
29050500401400

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.












Smith Island Crossing Agreement Final_SD

Final Audit Report

2024-09-20

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Status:	Signed
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-  Document e-signed by John Stephan Banchemo Jr (steveb@cgcompost.com)
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Signer lisak@gravelpits.com entered name at signing as Lisa Kittilsby

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Signer steveb@cgcompost.com entered name at signing as J Stephan Banchemo Jr

2024-09-19 - 6:52:51 PM GMT



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Signer bferullo@northwestconstruction.com entered name at signing as Brett ferullo

2024-09-20 - 5:06:54 PM GMT



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Signer lisak@gravelpits.com entered name at signing as Lisa Kittilsby

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-  Document approved by Marista Jorve (mjorve@everettwa.gov)
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-  Agreement completed.
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