

When Recorded, Return to:

CITY OF EVERETT
REAL PROPERTY MANAGER
801 E. Mukilteo Blvd., Bldg. 100
Everett, WA 98203

TEMPORARY RIGHT OF WAY USE PERMIT AND AGREEMENT

Grantor:	<u>CITY OF EVERETT</u>
Grantee:	<u>Pacific Rucker, LLC</u>
Legal Description Additional on Exhibit A and Exhibit B	<u>Sec 30 Twn 29 Rge 05; Plat of Everett Div "H" BLK 734 – Lots 1-6 Lots 7-16; N ½ of Lot 22 and Lots 23-32</u>
Assessor's Tax Parcel ID #:	<u>0043757340-2700, -2400, -2200, -2000, -1900, -1700, -1500, -1300, -1200, - 0900, -0700, -0600, -0102, -0101</u>
Reference Nos. of Documents Released or Assigned:	<u></u>

This Temporary Tie-Back Right of Way Use Permit and Agreement (the "**Agreement**"), dated for reference purposes as of JUNE 17, 2025, is executed by and between CITY OF EVERETT ("**Grantor**") and Pacific Rucker, LLC (together with its successors and assigns, "**Grantee**").

RECITALS

A. The Grantee owns the real property generally located at 3102 Rucker Avenue and legally described in the attached Exhibit A (the "**Property**"). The Property abuts Grantor rights-of-way, all of which are legally described in the attached Exhibit B (these rights-of-way collectively, the "**City Properties**")

B. Grantee requests an permit to establish certain temporary rights in favor of Grantee within a certain area of the City Properties, which area is shown in the schematic diagram in the attached Exhibit C (the "**Tie-Back Area**"). The purpose of these rights is for shoring walls and to provide support for the below-grade development of project being constructed on the property (the "**Project**"). After Project completion, the Tie-Back Improvements (as defined below) will be left in place, but will no longer be load-bearing, will be removed as set forth in this Agreement.

AGREEMENTS

In consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Grant of Temporary Tie-Back Permit.** Grantor grants Grantee a temporary right of way permit (the "***Tie-Back Permit***") giving Grantee the right to the use of the Tie-Back Area for shoring and other excavation-related uses related to the construction of the Project. For the purposes of this Agreement, any improvements constructed or installed in the Tie-Back Area by Grantee are referred to as the "***Tie-Back Improvements***."

2. **Reservation of Grantor's Rights.** This Agreement entitles Grantee to use Tie-Back Area only for the purposes expressly described herein. Grantor reserves the right to enter upon and use the Tie-Back Area established hereby for any purpose not inconsistent with Grantee's rights under this Agreement.

3. **Permit Term/As-Built.** The term of the Tieback Permit shall begin on the Project construction start date and shall terminate on December 31, 2026. No later than such date, Grantee shall provide Grantor with drawings showing, with reasonable detail, the final locations of the Tie-Back Improvements in the Tie-Back Area.

4. **Protection of City Properties.** Grantee acknowledges the importance of the City Properties, which include the Grand and Rucker Avenue right-of-way. Protection of the public's right-of-way use of Grand and Rucker Avenue is of paramount importance to Grantor in this Agreement.

4.1 All use of the Tie-Back Area and all permissions granted under this Agreement shall be in a manner that does not interfere with the use by the Grantor and the public of the Grand and Rucker Avenue rights-of-way. Grantee shall at its sole expense conform to all applicable laws, regulations, permits or requirements of any public authority affecting the use of the Tie-Back Area. Upon request, Grantee shall deliver to Grantor copies of any such permits.

4.2 Grantee shall pay all costs of any protection, support or relocation of existing utilities deemed necessary by the owners of utilities affected by the Tie-Back Improvements. Grantee is solely responsible for any damage to any utilities due to the construction, repair, reconstruction, maintenance, removal or operation of the Tie-Back Improvements.

4.3 Grantee shall not construct, reconstruct, relocate, adjust, remove, or repair the Tie-Back Improvements or otherwise use the Tie-Back Area except in accordance with plans and specifications approved in advance by the City Engineer. The

City Engineer has approved Tie-Back Improvements as described in the plans and specifications approved by the City of Everett in connection with the Grantee's building permit application under file number PW2305-013.

4.4 At its sole expense, Grantee shall operate, maintain, and repair the Tie-Back Improvements. Such operation, maintenance, and repair shall include such Grantee actions as may be necessary to avoid damage to Grantor or public use of the City Properties.

5. Termination of Agreement.

5.1. If Grantee's use of the Tie-Back Area or if the Tie-Back Improvements, in the reasonable judgment of the City Engineer, constitute a substantial threat to the structural integrity of the City Properties or a danger to the public use of the City Properties, then Grantor may deliver written notice thereof to Grantee. If Grantee does not cure such threat or danger at no expense to Grantor within thirty (30) days after delivery of the notice (or such sooner time as may be reasonably required by the City Engineer), or does not within such time period begin and thereafter diligently, continually, and in good faith work to effect such a cure as soon as possible, then the Grantor may, effective upon written notice to Grantee, terminate this Agreement.

5.2. If Grantor believes that Grantee has violated any material term or condition of Agreement, Grantor shall deliver written notice thereof to Grantee. This right is in addition to any right Grantor may have under Section 5.1. If Grantee does not cure such violation at no expense to Grantor within thirty (30) days after delivery of violation notice (or such sooner time as may be reasonably required by Grantor), or does not within such time period begin and thereafter diligently, continually, and in good faith work to effect such a cure as soon as possible, then the Grantor may, effective upon written notice to Grantee, terminate this Agreement.

5.3. Effective on the Project completion or on delivery of an uncured termination notice under Section 5.1 or Section 5.2 above, Grantee will, as directed by the City Engineer, either remove or cut-off the Tie-Back Improvements. If the City Engineer does not require removal or cut-off, the Tie-Back Improvements shall be deemed abandoned by Grantee. Without limiting the foregoing, effective on the Project completion or on delivery of an uncured termination notice under Section 5.1 or Section 5.2 above, the Grantor may at any time at Grantor's sole discretion remove the Tie-Back Improvements.

6. Release, Hold Harmless, Indemnification, and Duty to Defend. Grantee releases the Grantor from any and all claims resulting from damage or loss to its own property and does covenant and agree at all times to indemnify, defend and hold harmless the Grantor, its officers, agents and employees, from all claims, actions, suits, liability, loss, costs, expense or damages of every kind and description (excepting only such

damages that may result from the sole negligence of the Grantor), that may accrue to, or be suffered by, any person or persons or property or properties, including without limitation, damage or injury to the public, Grantee, its officers, agents, employees, contractors, invitees, tenants and tenants' invitees, licensees, arising from or relating to this Agreement or to the construction, maintenance, operation or use of the Tie-Back Area or the Tie-Back Improvements. If any such suit, action or claim is filed, instituted or begun against the Grantor, Grantee shall, upon notice thereof from the Grantor, defend the same at Grantee's sole cost and expense, and in case judgment shall be rendered against the Grantor in any suit or action, Grantee shall fully satisfy the judgment within one hundred and twenty (120) days after such suit, action or claim shall have been finally determined, if determined adversely to the Grantor. If it is determined by a court of competent jurisdiction that RCW 4.24.115 applies to any such suit, action or claim, then Grantee's obligations under this Section 6 shall apply only to the extent allowed by RCW 4.24.115. Solely and expressly for the purpose of its duties to indemnify and defend the Grantor, Grantee specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. Grantee recognizes that this waiver of immunity under Title 51 was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. This Section 6 survives any termination of this Agreement.

7. Insurance. For as long as this Agreement is in effect, Grantee shall obtain and maintain in full force and effect, at its sole expense, insurance that protects the Grantor from claims and risks of loss from perils that can be insured against under commercial general liability ("CGL") insurance policies in conjunction with:

- A. construction, reconstruction, operation, repair, maintenance, removal, use, or existence of the Tie-Back Improvements;
- B. activity of Grantee or its officers, agents, employees, contractors, invitees, tenants and tenants' invitees or licensees within, or the use or occupation of, the Tie-Back Area; and
- C. claims and risks in connection with and activity performed by or its officers, agents, employees, contractors, invitees, tenants and tenants' invitees or licensees by virtue of the rights granted under this Agreement.

Minimum insurance requirements include CGL insurance based on the Insurance Services Office (ISO) form CG 00 01 or equivalent. Grantee shall obtain insurance coverage with an insurer admitted and licensed to conduct business in Washington State or with a surplus lines carrier pursuant to Chapter 48.15 RCW, except that if it is infeasible to obtain coverage with such insurer, the Grantor may approve an alternative insurer. Minimum limits of liability shall be One Million Dollars (\$1,000,000) for each occurrence and combined single limit bodily injury, property damage with Two Million Dollars (\$2,000,000) annual aggregate and a Ten Million (\$10,000,000) umbrella. The above

policy must be primary and non-contributory as to the Grantor and must name the Grantor, its officers, employees and agents as additional insureds. Grantee shall provide to the Grantor, or cause to be provided, certification of insurance coverage on the ACORD form, together with an additional insured endorsement naming the City of Everett, its officers, employees and agents as additional insureds, or a blanket additional insured policy that is acceptable to the City Attorney. Grantee shall deliver such insurance coverage certification to the Grantor at such address as Grantor may specify, from time to time, in writing.

8. Attorneys' Fees. If, by reason of any default hereunder on the part of either Grantor or Grantees, either party employs an attorney, the defaulting party shall pay the non-defaulting party's costs, expenses and attorneys' fees reasonably expended or incurred in connection with such default.

9. Recording. Unless otherwise agreed by the parties, this Agreement will not be recorded. If either party desires to record this Agreement, that party shall give ten (10) days notice to the other party requesting approval-to-record, which will not be unreasonably denied. If this Agreement is recorded, upon termination of this Agreement, Grantee shall, unless directed otherwise in writing by the Grantor, record a Notice of Termination of Tie-Back in a form reasonably acceptable to Grantor.

10. Notice. For a notice under this Agreement to be valid, it must be in writing and the sending party must use one of the following methods of delivery: (a) personal delivery to the address stated below; (b) first class postage prepaid U.S. Mail to the address stated below; or (c) nationally recognized courier to the address stated below, with all fees prepaid.

City/Grantor:

City of Everett
Attention: Real Property Manager
801 E. Mukilteo Blvd., Bldg. 100
Everett, WA 98203
Tel: (425) 257-8938
Fax: (425) 257-8857

Grantee:

Pacific Rucker, LLC
Attn: Jack Hunden
10900 NE 8th Street, Suite 1200
Bellevue, WA 98004
Tel: (425) 453-9551

A party may change its address stated above by delivering written notice to the other party of the new address.

[REMAINDER OF PAGE BLANK; SIGNATURES APPEAR ON FOLLOWING
PAGES]

Dated as of the date first set forth above.

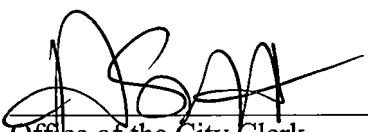
GRANTOR:

CITY OF EVERETT
a Washington municipal corporation

By


Cassie Franklin, Mayor

ATTEST:


Office of the City Clerk

STATE OF
WASHINGTON


} ss.

COUNTY OF
SNOHOMISH

On this day personally appeared before me Cassie Franklin, to me known to be the Mayor of the City of Everett, the Washington municipal corporation that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such municipal corporation, for the uses and purposes therein mentioned, and on oath stated that she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 17th day of June,
2025.




Printed Name Christine Wiersma
NOTARY PUBLIC in and for the State of Washington,
residing at Maple Valley, WA
My Commission Expires 11-10-2026

GRANTEE:

PACIFIC RUCKER, LLC

By Evan J. Hunden

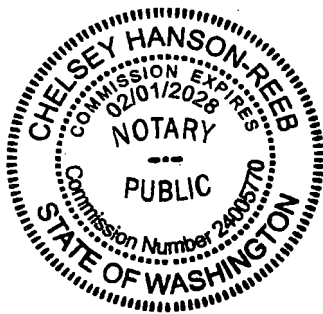
STATE OF WASHINGTON

COUNTY OF SNOHOMISH

} SS.

On this day personally appeared before me Evan J. Hunden, to
me known to be the Managing Member of the Managing Member of Pacific, the
entity that executed the foregoing instrument, and acknowledged such
instrument to be the free and voluntary act and deed of such corporation, for the uses and
purposes therein mentioned, and on oath stated that he was duly authorized to execute such
instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 13th day of May,
2025.



Chelsey Hanson-Reeb
Printed Name
NOTARY PUBLIC in and for the State of Washington,
residing at 10900 NE 8th St #1200 Bellevue, WA 98004
My Commission Expires 02/01/2028

EXHIBIT A

**PROPERTY
LEGAL DESCRIPTION**

PARCEL A: LOTS 1 THROUGH 6 INCLUSIVE, BLOCK 734, PLAT OF EVERETT DIVISION "H", ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 50, IN SNOHOMISH COUNTY, WASHINGTON.

PARCEL B: LOTS 7 THROUGH 16 INCLUSIVE, BLOCK 734, PLAT OF EVERETT DIVISION "H" ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATES, PAGE 50, IN SNOHOMISH COUNTY, WASHINGTON.

PARCEL C: THE NORTH HALF OF LOT 22 AND ALL OF LOTS 23 THROUGH 32 INCLUSIVE, BLOCK 734, PLAT OF EVERETT DIVISION "H", AS PER PLAT RECORDED IN VOLUME 4 OF PLATS ON PAGE 50, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

EXHIBIT B

CITY PROPERTIES

GRAND AVENUE RIGHT-OF-WAY BETWEEN PACIFIC AVENUE AND 32ND STREET.

RUCKER AVENUE RIGHT-OF-WAY BETWEEN PACIFIC AVENUE AND 32ND STREET.

