



**Everett City Council Preliminary Agenda  
6:30 p.m., Wednesday, January 21, 2026  
City Council Chambers**

Roll Call

Pledge Of Allegiance

Land Acknowledgment

Mayor's Comments: Introduction Of Firefighters: Stephen Council Vaughan And Cameron Kaulia

Approval Of Minutes: January 14, 2026

Public Comment

Council Comments

Administration Update

City Attorney

**CONSENT ITEMS:**

(1) Adopt Resolution Authorizing Claims Against The City Of Everett In The Amount Of \$3,460,865.23 For The Period Ending December 20, 2025, Through December 26, 2025.

Documents:

[\*\*RES CLAIMS PAYABLE 1.9.26.PDF\*\*](#)

(2) Authorize The Mayor To Sign BNSF Pipeline Licenses 25W-24305, 25W-24307, 25W-24309, And 25W-24310 For Port Gardner Storage Facility Construction.

Documents:

[\*\*BNSF RAILWAY CO\\_BNSF LICENSES.PDF\*\*](#)

(3) Authorize The Mayor To Sign The License Agreement With BNSF For A Water Main License At SR5 Near E Grand Avenue.

Documents:

[\*\*BNSF\\_BNSF PIPELINE LICENSE SR5 AND E GRAND.PDF\*\*](#)

(4) Authorize The Mayor To Sign Amendment No. 1 With David Evans And Associates, Inc For The Merrill And Ring Creek Bridge Replacement Project.

Documents:

[DAVID EVANS AND ASSOCIATES\\_MERRILL AND RING CREEK BRIDGE REPLACEMENT PROJECT\\_AMENDMENT NO. 1.PDF](#)

(5) Authorize The Mayor To Sign The PlanSource Service Agreement To Implement PlanSource Products.

Documents:

[PLANSOURCE SERVICES AGREEMENT.PDF](#)

ACTION ITEMS:

(6) CB 2512-91 – 3rd And Final Reading - Adopt An Ordinance For Everett 2044 Housekeeping Amendments To Development Regulations Recently Adopted Through The Everett 2044 Periodic Update, Amending EMC Chapters 14.16, 19.03, 19.04, 19.05, 19.06, 19.08, 19.09, 19.13, 19.22, 19.25, 19.34, 19.35, 19.38, 19.39, And 19.40.

Documents:

[CB 2512-91.PDF](#)

(7) Approve Appointments To The Charter Review Committee.

Documents:

[CHARTERREVIEW COMMITTEE.PDF](#)

BRIEFING:

(8) Legislative Session Preview And Update

Documents:

[LEGISLATIVE SESSION PREVIEW BRIEFING.PDF](#)

Executive Session

Adjourn

## **PARTICIPATION IN REMOTE COUNCIL MEETINGS**

- Participate remotely via Zoom by registering to speak at [everettwa.gov/speakerform](http://everettwa.gov/speakerform). You must register no later than 30 minutes prior to the meeting. You may contact the Council office at 425.257.8703 or [aely@everettwa.gov](mailto:aely@everettwa.gov) and identify the topic you wish to address.
- Provide written public comments by email to Council@everettwa.gov or mail to 2930 Wetmore Avenue, Suite 9A, Everett, WA 98201. Emailing comments 24 hours prior to the meeting will ensure your comment is distributed to councilmembers and appropriate staff.
- Persons seeking to comment on non-agenda items may be asked to submit the comments in writing if the comment does not address an issue of broad public interest.

## **AGENDAS, BROADCAST AND RECORDINGS**

- The Council agendas and meeting recordings can be found, in their entirety, at [everettwa.gov/citycouncil](http://everettwa.gov/citycouncil).
- Watch live meetings and recordings at [YouTube.com/EverettCity](https://YouTube.com/EverettCity).

## CONTACT THE COUNCIL

If you do not wish to participate in the meeting, we provide these other methods of contacting your elected officials: Email the Council at [Council@everettwa.gov](mailto:Council@everettwa.gov) or call the Council offices at 425.257.8703.

*The City of Everett does not discriminate on the basis of disability in the admission or access to, or treatment in, its programs or activities. Requests for assistance or accommodations can be arranged by contacting the Everett City Council Office at 425.257.8703. For additional information, please visit our website at <https://www.everettwa.gov/3129/American-Disabilities-Act-ADA-and-Title->.*



# EVERETT

WASHINGTON

RESOLUTION NO. \_\_\_\_\_

**Be it Resolved by the City Council of the City of Everett:**

Whereas the claims payable by checks against the City of Everett for the period December 20, 2025 through December 26, 2025, having been audited and approved by the proper officers, have been paid and the disbursements made by the same, against the proper funds in payment thereof, as follows:

<b><u>Fund</u></b>	<b><u>Department</u></b>	<b><u>Amount</u></b>	<b><u>Fund</u></b>	<b><u>Department</u></b>	<b><u>Amount</u></b>
001	City Council	1,239.55	101	Parks & Recreation	11,140.54
002	General Funds	(1,629.81)	110	Library	4,323.80
003	Legal	14,174.90	120	Public Works - Streets	10,930.41
004	Administration	6,250.00	130	Develop & Const Permit Fees	697.93
005	Municipal Court	7,428.50	138	Hotel/Motel Tax Fund	3,842.77
007	Human Resources	600.00	145	Cum Res/ Real Prop Acq.	6,676.78
009	Misc Financial Funds	322,574.78	146	Property Management	52,454.63
010	Finance	11,250.29	148	Cum Res/Parks	60.20
021	Planning & Community Dev	49,778.00	149	Senior Center Reserve	20,833.37
024	Public Works-Engineering	36,744.03	151	Fund for Animals	5,618.50
026	Animal Shelter	143.00	152	Cum Res/Library	106.76
031	Police	5,114.73	153	Emergency Med Svc	297,545.56
032	Fire	15,478.19	155	Capital Reserve Fund	8,057.39
038	Facilities Maintenance	1,376.17	156	Criminal Justice	247,812.41
<b>TOTAL GENERAL FUND</b>		<b>\$ 470,522.33</b>	303	Public Works Impr. Projects	251,079.34
			336	Water & Sewer Sys Improv Project	1,172,826.60
			342	City Facilities Const.	10,269.16
			354	Parks Capital Const.	16,351.68
			401	Public Works-Utilities	402,510.63
			402	Solid Waste Utility	2,258.63
			425	Public Works-Transit	27,045.76
			430	Public Works-Transit	18,515.44
			440	Golf	2,701.71
			450	Snoh River Regional Water Authority	2,040.00
			501	MVD - Trans Services	51,634.12
			503	Self-Insurance	2,404.50
			505	Computer Reserve	241,809.07
			507	Telecommunications	437.50
			508	Health Benefits Reserve	11,114.58
			637	Police Pension	20,837.00
			638	Fire Pension	35,658.63
			665	Other Special Agency Funds	50,747.50

Councilperson introducing Resolution

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2026

**TOTAL CLAIMS**

**3,460,865.23**

Council President \_\_\_\_\_

**Project title:** BNSF Pipeline Licenses for Port Gardner Storage Facility Project Construction

**Council Bill #** *interoffice use*

**Agenda dates requested:**

Briefing  
Proposed action  
Consent 1/21/26  
Action  
Ordinance  
Public hearing  
Yes  No

**Budget amendment:**

Yes  No

**PowerPoint presentation:**

Yes  No

**Attachments:**

Pipeline licenses

**Department(s) involved:**

Public Works, Legal

**Contact person:**

Tom Hood

**Phone number:**

425-257-8809

**Email:**

THood@everettwa.gov

**Initialed by:**

*RLS*

Department head

Administration

Council President

**Project:** PGSF WMVD, Package 2 – BNSF Pipeline Licenses

**Partner/Supplier:** BNSF Railway Company

**Location:** Underground Crossings of BNSF Tracks near WMVD at 20<sup>th</sup> St and 24<sup>th</sup> St

**Preceding action:** Plans and Systems Ordinance 3967-23 ([9/6/2023](#))

**Fund:** Fund 336 – Water & Sewer System Improvements Fund

**Fiscal summary statement:**

Pipeline license fees are \$3,700 per crossing (\$14,800 for four licenses), not including additional permit application fees and insurance costs. Including the permit application fees and insurance costs, the total for the four licenses is \$26,598.00.

Project funding is provided by Fund 336 – Water & Sewer System Improvements Fund. These costs are within the amounts budgeted for the project.

**Project summary statement:**

The PGSF WMVD Storm and Combined Sewer, Package 2 Project requires construction of four new pipelines beneath BNSF railroad tracks and through BNSF right-of-way. One crossing occurs near 2000 W. Marine View Drive (25W-24310), and three crossings occur near 2400 Lower Norton Avenue (25W-24305, 25W-24307, and 25W-24309).

**Recommendation (exact action requested of Council):**

Authorize the Mayor to sign BNSF Pipeline Licenses 25W-24305, 25W-24307, 25W-24309, and 25W-24310 for Port Gardner Storage Facility construction.

## PIPELINE LICENSE

THIS PIPELINE LICENSE ("License") is made to be effective \_\_\_\_\_, 2026 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **CITY OF EVERETT** ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

### GENERAL

1. **Grant of License.** Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), One (1) pipeline, 48 inches in diameter inside a 60 inch Steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Everett, County of Snohomish, State of Washington, Line Segment 0050, Mile Post 33.561 as shown on the attached Drawing No. 93844, dated April 18, 2025, attached hereto as Exhibit "A" and incorporated herein by reference (the "**Premises**").
2. **Term.** This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. **Existing Improvements.** Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. **Use of the Premises.** Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry storm water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose. Licensee is expressly prohibited from using or allowing any telecommunication facilities or equipment within the Premises, or using or allowing the use of the Premises for any other purpose.
5. **Alterations.** Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

### COMPENSATION

6. **License Fee.** Licensee shall pay Licensor, prior to the Effective Date, a one-time payment (in lieu of recurring periodic fixed license fees) in the amount the sum of Three Thousand Seven Hundred and No/100 Dollars (\$3,700.00) as compensation for the use of the Premises.
7. **Costs and Expenses.**
  - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
  - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and

unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

7.3 Licensor, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

### **LICENSOR'S RESERVED RIGHTS**

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
- 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
- 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.

10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

### **LICENSEE'S OPERATIONS**

11. **Construction and Maintenance of the Pipeline.**

- 11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's representative or the Scheduling Agent at [ROWCoordinator@BNSF.com](mailto:ROWCoordinator@BNSF.com) at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. Only in the event of emergency, Licensee shall notify Licensor's Roadmaster of entry onto the Premises, at the telephone 360-922-1401, as soon as practicable and shall promptly thereafter follow up with written notice of such entry to the email provided above.
- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Lessor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Pipeline, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Lessor, (ii) the safe operation and activities of Lessor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Lessor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Lessor, the parties agree that Lessor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Lessor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Lessor, (ii) the safe operation and activities of Lessor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Lessor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Lessor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Lessor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Lessor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Pipeline by Lessor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Lessor, the parties agree that Lessor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Lessor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Lessor, fail to properly perform its obligations under this **Section 11**, Lessor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Lessor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Lessor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

## 12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3<sup>rd</sup> parties mark the location of utilities. Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the

ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the United States Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Lessor concerning the existence and approximate location of Lessor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Lessor's Telecommunications Helpdesk, currently at 1-800-533-2891 (option 1, then option 7), at least ten (10) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Lessor will provide Licensee with the information Lessor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Lessor's standard procedures. Lessor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Lessor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Lessor's reasonable opinion that granular material is present, Lessor may select a new location for Licensee's use, or may require Licensee to furnish for Lessor's review and approval, in Lessor's sole discretion, a remedial plan to deal with the granular material. Once Lessor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 No wells shall be installed without prior written approval from Lessor.
- 12.4 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
  - 12.4.1 filled in to surrounding ground level with compacted bentonite grout; or
  - 12.4.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Lessor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

## **LIABILITY AND INSURANCE**

- 13. Liability and Indemnification.
  - 13.1 For purposes of this License: (a) "**Indemnitees**" means Lessor and Lessor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
  - 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE,**

KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

- 13.2.1 THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,
- 13.2.2 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,
- 13.2.3 LICENSEE'S OCCUPATION AND USE OF THE PREMISES,
- 13.2.4 THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR
- 13.2.5 ANY ACT OR OMISSION OF ANY LICENSEE PARTY.

13.3 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

13.4 IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

13.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.

13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK

**OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. **Insurance.** Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:

15.1 Commercial General Liability "CGL" Insurance.

- a. The policy will provide a minimum of \$5,000,000 per occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
  - Bodily Injury and Property Damage
  - Personal Injury and Advertising Injury
  - Fire legal liability
  - Products and completed operations
  - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
- b. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
  - The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Lessor's property;
  - Waiver of subrogation in favor of and acceptable to Lessor;
  - Additional insured endorsement in favor of and acceptable to Lessor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing and completed operations;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Lessor.
- c. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Lessor's employees.
- d. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 Business Automobile Insurance.

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
  - Bodily injury and property damage.
  - Any and all vehicles owned, used or hired.
- b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
  - Waiver of subrogation in favor of and acceptable to Lessor;
  - Additional insured endorsement in favor of and acceptable to Lessor;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Lessor.

15.3 Workers' Compensation and Employers' Liability Insurance.

- a. The policy will provide coverage of all employees performing any part of the installation or maintenance of the Pipeline including coverage for, but not limited to:
  - Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be performed. The policy will cover all

of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Lessor.

15.4 **Railroad Protective Liability Insurance.** The policy will name only Lessor as the Insured and will provide coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Lessor and Licensee shall not perform any work or services of any kind under this agreement until Lessor has reviewed and approved the policy.
- The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Lessor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,266.00.

- Licensee may **elect** to participate in Lessor's Blanket Policy;
- Licensee **declines** to participate in Lessor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

15.6.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.

15.6.2 Licensee agrees to waive its right of recovery against Lessor for all claims and suits against Lessor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Lessor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Lessor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.

15.6.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.

- 15.6.4 Licensee is not allowed to self-insure without the prior written consent of Licensor. If Licensor allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licensor liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.5 Prior to entering the Premises or commencing any work related to the installation or subsequent maintenance of the Pipeline, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.6.6 Licensee shall notify BNSF in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration of any insurance requirement.
- 15.6.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.6.9 Licensee agrees to provide evidence to Licensor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage
- 15.6.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.6.11 Not more frequently than once every five years, Licensor may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensor as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor under this agreement.
- 15.6.13 Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.6.15 In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to BNSF.
- 15.6.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF requires and shall be entitled to the broader

coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.

15.6.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services are performed under this License.

15.6.18 For purposes of this **Section 15**, Lessor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

## **COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS**

16. **Compliance with Laws, Rules, and Regulations.**

- 16.1 Licensee shall observe and comply with any and all applicable federal, state, local, and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Lessor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "Safety Orientation") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable, renew) the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "Rights") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Right be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. **Environmental.**

- 17.1 Licensee shall strictly comply with Environmental Laws (as defined below). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as

defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or Hazardous Materials (as defined below) on or about the Premises.

- 17.2 Except as specifically set forth in Section 4 of this License, Licensee covenants that it will not handle or transport Hazardous Materials through the Pipeline or on Lessor's property. Upon request by Lessor, Licensee agrees to furnish Lessor with proof, satisfactory to Lessor, that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Lessor immediate notice to Lessor's Resource Operations Center at (800) 832-5452 of any known (i) release of Hazardous Materials on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use its best efforts to immediately respond to any release on, from, or affecting the Premises. Licensee also shall give Lessor prompt notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Lessor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Lessor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Lessor's right-of-way.
- 17.5 Licensee shall immediately report to Lessor's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Lessor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Lessor's request for information regarding said conditions or activities.
- 17.6 During the term of this License, Lessor may, at Lessor's option, require Licensee to conduct an environmental audit, including but not limited to sampling, of the Premises through an environmental consulting engineer acceptable to Lessor, at Licensee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during occupancy thereof by Licensee. The audit shall be conducted to Lessor's satisfaction and a copy of the audit report shall promptly be provided to Lessor for its review. Licensee shall pay all expenses for any remedial or corrective action that may be required as a result of said audit to correct any noncompliance or environmental damage, and Licensee shall diligently pursue and complete all necessary work prior to termination of this License. Licensee's obligations under this Section 17.6 shall survive termination of this License.
- 17.7 Notwithstanding anything in this Section 17, the parties agree that Lessor has no duty or obligation to monitor Licensee's use of the Premises to determine Licensee's compliance with Environmental Laws, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is compliant. Neither the exercise nor the failure by Lessor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 17.8 "**Environmental Law(s)**" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et

seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

17.9 **"Hazardous Material(s)"** shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

### **DISCLAIMER OF WARRANTIES**

18. **No Warranties.**

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. **Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. **Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.**

### **LIENS AND TAXES**

21. **Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.**

22. **Taxes.** Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Lessor or the Premises that are attributable to the Improvements.

## **DEFAULT, TERMINATION, AND SURRENDER**

23. **Default and Termination.** In addition to and not in limitation of Lessor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Lessor has the right to terminate as set forth below:

- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Lessor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Lessor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Lessor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of Hazardous Materials, notwithstanding anything contained in any other provision of this License, Lessor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee.
- 23.3 Any waiver by Lessor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Lessor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Lessor may have at law or in equity.
- 23.4 In addition to and not in limitation of Lessor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. **Surrender of the Premises.**

- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
  - 24.1.1 if so directed by Lessor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Lessor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Lessor;
  - 24.1.2 report and restore any damage to the Premises or Lessor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
  - 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
  - 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date, or as otherwise agreed to by Lessor.

24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor for no additional consideration.

## **MISCELLANEOUS**

25. **Successors and Assigns.** All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. **Assignment.**

26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.

26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation

to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Lessor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive the expiration or earlier termination of this License.

26.4 Lessor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this License, and upon any such transfer or assignment, Lessor shall be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Lessor for the performance of such obligations.

27. **Notices.** Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Lessor: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive, MOB2  
Fort Worth, TX 76131  
Attn: Permits/Licenses

with a copy to: BNSF Railway Company  
2650 Lou Menk Dr.  
Fort Worth, TX 76131  
Attn: Senior Manager Real Estate

If to Licensee: City of Everett  
3200 Cedar Street  
Everett, WA 98201

28. **Survival.** Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.

29. **Recordation.** It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. **Applicable Law.** All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Washington without regard to conflicts of law provisions.

31. **Severability.** To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. **Integration.** This License is the full and complete agreement between Lessor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Lessor harmless in any prior written agreement between the parties.

33. **Joint and Several Liability.** If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. **Waiver.** The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. **Interpretation.**
  - 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
  - 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. **Counterparts.** This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.
37. **Licensor's Representative.** Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

**END OF PAGE – SIGNATURE PAGE FOLLOWS**

This License has been duly executed by the parties hereto as of the Effective Date.

**LICENSOR:**

**BNSF Railway Company**, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive, MOB2  
Fort Worth, TX 76131

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

Patricia Villegas  
Vice President, Permits

**LICENSEE:**

**City of Everett**

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

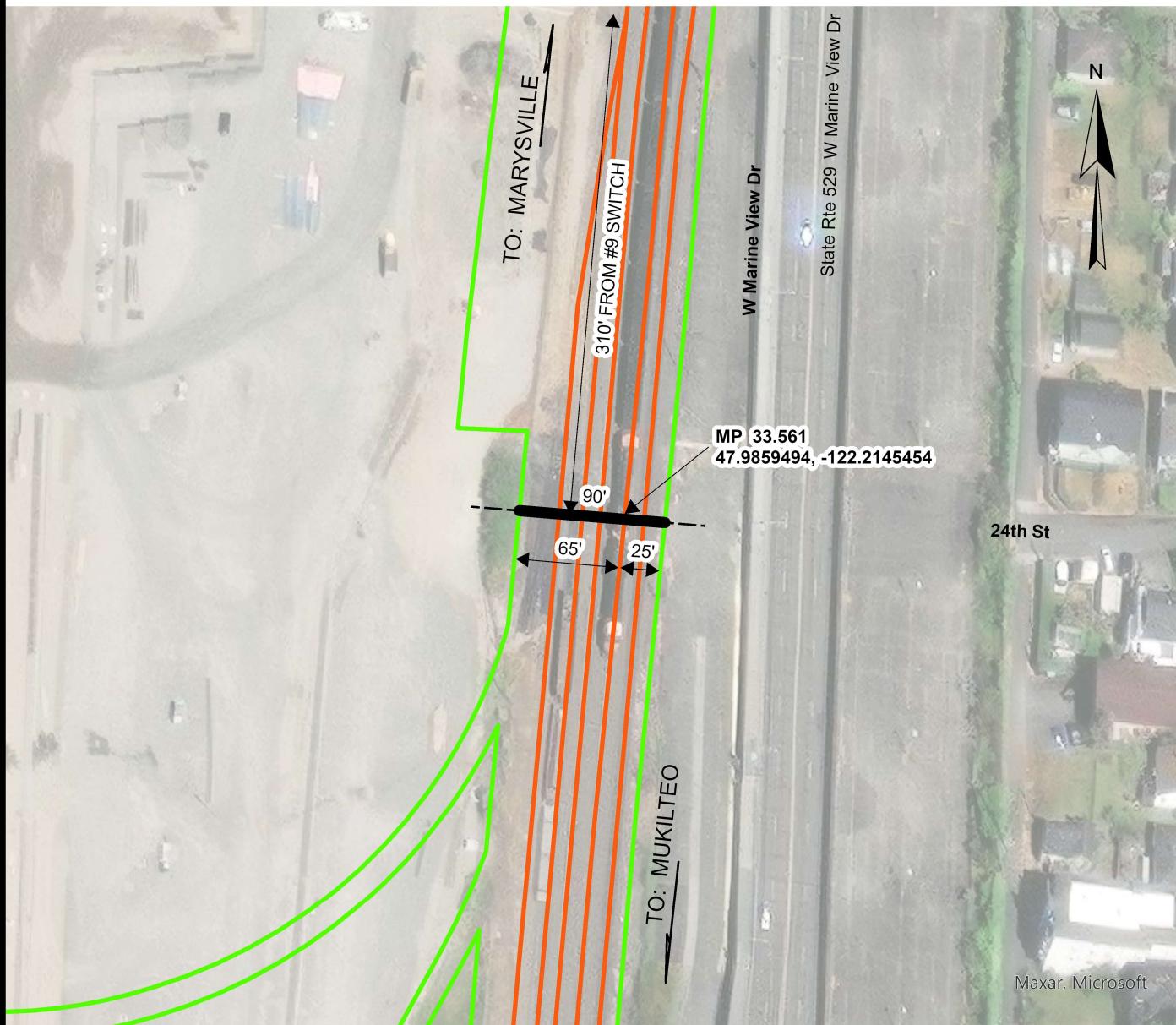
Cassie Franklin  
Mayor

SCALE: 1 IN = 100 FT  
 NORTHWEST DIV.  
 SCENIC SUBDIV.  
 L.S. 0050 MP: 33.561  
 DATE: 4/18/2025

# EXHIBIT "A"

SECTION: 19  
 TOWNSHIP & RANGE:  
 29N 5E  
 MERIDIAN: WILLM

MAP REF. S52010



## DESCRIPTION OF PIPELINE PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE	CARRIER PIPE	CASING PIPE
SIZE:	48"	60"	90'	90'
CONTENTS:	STORM SEWER			
PIPE MATERIAL:	FIBERGLASS	STEEL		
SPECIFICATIONS / GRADE:	ASTM D3262	A1097		
WALL THICKNESS:	1.09"	0.781"		
COATING:	-	FBE & ARO		
LENGTH ON R/W:				
WORKING PRESSURE:			10 PSI	
BURY: BASE/RAIL TO TOP OF CASING				9'
BURY: NATURAL GROUND				8.9'
BURY: ROADWAY DITCHES				8.9'
CATHODIC PROTECTION				NO

VENTS: NUMBER 0 SIZE - HEIGHT OF VENT ABOVE GROUND -

NOTE: CASING TO BE JACKED OR DRY BORED ONLY

EVERETT  
 COUNTY OF SNOHOMISH

STATE OF WA

JPM

## PIPELINE LICENSE

THIS PIPELINE LICENSE ("License") is made to be effective \_\_\_\_\_, 2026 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **CITY OF EVERETT**, a Washington municipality ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

### GENERAL

1. **Grant of License.** Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), One (1) pipeline, 48 inches in diameter inside a 60 inch Steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Everett, County of Snohomish, State of Washington, Line Segment 0050, Mile Post 33.563 as shown on the attached Drawing No. 93845, dated April 18, 2025, attached hereto as Exhibit "A" and incorporated herein by reference (the "**Premises**").
2. **Term.** This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. **Existing Improvements.** Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. **Use of the Premises.** Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry storm water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose. Licensee is expressly prohibited from using or allowing any telecommunication facilities or equipment within the Premises, or using or allowing the use of the Premises for any other purpose.
5. **Alterations.** Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

### COMPENSATION

6. **License Fee.** Licensee shall pay Licensor, prior to the Effective Date, a one-time payment (in lieu of recurring periodic fixed license fees) in the amount the sum of Three Thousand Seven Hundred and No/100 Dollars (\$3,700.00) as compensation for the use of the Premises.
7. **Costs and Expenses.**
  - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
  - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and

unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

7.3 Licensor, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

### **LICENSOR'S RESERVED RIGHTS**

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
- 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
- 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.

10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

### **LICENSEE'S OPERATIONS**

11. **Construction and Maintenance of the Pipeline.**

- 11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's representative or the Scheduling Agent at [ROWCoordinator@BNSF.com](mailto:ROWCoordinator@BNSF.com) at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. Only in the event of emergency, Licensee shall notify Licensor's Roadmaster of entry onto the Premises, at the telephone 360-922-1401, as soon as practicable and shall promptly thereafter follow up with written notice of such entry to the email provided above.
- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Lessor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Pipeline, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Lessor, (ii) the safe operation and activities of Lessor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Lessor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Lessor, the parties agree that Lessor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Lessor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Lessor, (ii) the safe operation and activities of Lessor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Lessor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Lessor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Lessor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Lessor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Pipeline by Lessor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Lessor, the parties agree that Lessor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Lessor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Lessor, fail to properly perform its obligations under this **Section 11**, Lessor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Lessor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Lessor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

## 12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3<sup>rd</sup> parties mark the location of utilities. Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the

ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the United States Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Lessor concerning the existence and approximate location of Lessor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Lessor's Telecommunications Helpdesk, currently at 1-800-533-2891 (option 1, then option 7), at least ten (10) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Lessor will provide Licensee with the information Lessor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Lessor's standard procedures. Lessor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Lessor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Lessor's reasonable opinion that granular material is present, Lessor may select a new location for Licensee's use, or may require Licensee to furnish for Lessor's review and approval, in Lessor's sole discretion, a remedial plan to deal with the granular material. Once Lessor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 No wells shall be installed without prior written approval from Lessor.
- 12.4 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
  - 12.4.1 filled in to surrounding ground level with compacted bentonite grout; or
  - 12.4.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Lessor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

## **LIABILITY AND INSURANCE**

- 13. Liability and Indemnification.
  - 13.1 For purposes of this License: (a) "**Indemnitees**" means Lessor and Lessor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
  - 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE,**

KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

- 13.2.1 THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,
- 13.2.2 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,
- 13.2.3 LICENSEE'S OCCUPATION AND USE OF THE PREMISES,
- 13.2.4 THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR
- 13.2.5 ANY ACT OR OMISSION OF ANY LICENSEE PARTY.

13.3 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

13.4 IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

13.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.

13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK

**OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:

15.1 Commercial General Liability "CGL" Insurance.

- a. The policy will provide a minimum of \$5,000,000 per occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
  - Bodily Injury and Property Damage
  - Personal Injury and Advertising Injury
  - Fire legal liability
  - Products and completed operations
  - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
- b. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
  - The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Lessor's property;
  - Waiver of subrogation in favor of and acceptable to Lessor;
  - Additional insured endorsement in favor of and acceptable to Lessor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing and completed operations;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Lessor.
- c. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Lessor's employees.
- d. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 Business Automobile Insurance.

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
  - Bodily injury and property damage.
  - Any and all vehicles owned, used or hired.
- b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
  - Waiver of subrogation in favor of and acceptable to Lessor;
  - Additional insured endorsement in favor of and acceptable to Lessor;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Lessor.

15.3 Workers' Compensation and Employers' Liability Insurance.

- a. The policy will provide coverage of all employees performing any part of the installation or maintenance of the Pipeline including coverage for, but not limited to:
  - Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be performed. The policy will cover all

of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Lessor.

15.4 **Railroad Protective Liability Insurance.** The policy will name only Lessor as the Insured and will provide coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Lessor and Licensee shall not perform any work or services of any kind under this agreement until Lessor has reviewed and approved the policy.
- The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Lessor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,266.00.

- Licensee may **elect** to participate in Lessor's Blanket Policy;
- Licensee **declines** to participate in Lessor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

15.6.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.

15.6.2 Licensee agrees to waive its right of recovery against Lessor for all claims and suits against Lessor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Lessor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Lessor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.

15.6.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.

- 15.6.4 Licensee is not allowed to self-insure without the prior written consent of Licensor. If Licensor allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licensor liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.5 Prior to entering the Premises or commencing any work related to the installation or subsequent maintenance of the Pipeline, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.6.6 Licensee shall notify BNSF in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration of any insurance requirement.
- 15.6.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.6.9 Licensee agrees to provide evidence to Licensor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage
- 15.6.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.6.11 Not more frequently than once every five years, Licensor may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensor as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor under this agreement.
- 15.6.13 Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.6.15 In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to BNSF.
- 15.6.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF requires and shall be entitled to the broader

coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.

15.6.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services are performed under this License.

15.6.18 For purposes of this **Section 15**, Lessor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

## **COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS**

16. **Compliance with Laws, Rules, and Regulations.**

- 16.1 Licensee shall observe and comply with any and all applicable federal, state, local, and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Lessor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "Safety Orientation") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable, renew) the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "Rights") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Right be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. **Environmental.**

- 17.1 Licensee shall strictly comply with Environmental Laws (as defined below). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as

defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or Hazardous Materials (as defined below) on or about the Premises.

- 17.2 Except as specifically set forth in Section 4 of this License, Licensee covenants that it will not handle or transport Hazardous Materials through the Pipeline or on Lessor's property. Upon request by Lessor, Licensee agrees to furnish Lessor with proof, satisfactory to Lessor, that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Lessor immediate notice to Lessor's Resource Operations Center at (800) 832-5452 of any known (i) release of Hazardous Materials on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use its best efforts to immediately respond to any release on, from, or affecting the Premises. Licensee also shall give Lessor prompt notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Lessor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Lessor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Lessor's right-of-way.
- 17.5 Licensee shall immediately report to Lessor's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Lessor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Lessor's request for information regarding said conditions or activities.
- 17.6 During the term of this License, Lessor may, at Lessor's option, require Licensee to conduct an environmental audit, including but not limited to sampling, of the Premises through an environmental consulting engineer acceptable to Lessor, at Licensee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during occupancy thereof by Licensee. The audit shall be conducted to Lessor's satisfaction and a copy of the audit report shall promptly be provided to Lessor for its review. Licensee shall pay all expenses for any remedial or corrective action that may be required as a result of said audit to correct any noncompliance or environmental damage, and Licensee shall diligently pursue and complete all necessary work prior to termination of this License. Licensee's obligations under this Section 17.6 shall survive termination of this License.
- 17.7 Notwithstanding anything in this Section 17, the parties agree that Lessor has no duty or obligation to monitor Licensee's use of the Premises to determine Licensee's compliance with Environmental Laws, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is compliant. Neither the exercise nor the failure by Lessor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 17.8 "**Environmental Law(s)**" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et

seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

17.9 **"Hazardous Material(s)"** shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

### **DISCLAIMER OF WARRANTIES**

18. **No Warranties.**

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. **Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. **Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.**

### **LIENS AND TAXES**

21. **Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.**

22. **Taxes.** Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Lessor or the Premises that are attributable to the Improvements.

## **DEFAULT, TERMINATION, AND SURRENDER**

23. **Default and Termination.** In addition to and not in limitation of Lessor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Lessor has the right to terminate as set forth below:

- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Lessor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Lessor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Lessor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of Hazardous Materials, notwithstanding anything contained in any other provision of this License, Lessor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee.
- 23.3 Any waiver by Lessor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Lessor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Lessor may have at law or in equity.
- 23.4 In addition to and not in limitation of Lessor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. **Surrender of the Premises.**

- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
  - 24.1.1 if so directed by Lessor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Lessor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Lessor;
  - 24.1.2 report and restore any damage to the Premises or Lessor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
  - 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
  - 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date, or as otherwise agreed to by Lessor.

24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor for no additional consideration.

## **MISCELLANEOUS**

25. **Successors and Assigns.** All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. **Assignment.**

26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.

26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation

to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Lessor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive the expiration or earlier termination of this License.

26.4 Lessor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this License, and upon any such transfer or assignment, Lessor shall be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Lessor for the performance of such obligations.

27. **Notices.** Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Lessor: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive, MOB2  
Fort Worth, TX 76131  
Attn: Permits/Licenses

with a copy to: BNSF Railway Company  
2650 Lou Menk Dr.  
Fort Worth, TX 76131  
Attn: Senior Manager Real Estate

If to Licensee: City of Everett  
3200 Cedar Street  
Everett, WA 98201

28. **Survival.** Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.

29. **Recordation.** It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. **Applicable Law.** All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Washington without regard to conflicts of law provisions.

31. **Severability.** To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. **Integration.** This License is the full and complete agreement between Lessor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Lessor harmless in any prior written agreement between the parties.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
  - 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
  - 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

**END OF PAGE – SIGNATURE PAGE FOLLOWS**

This License has been duly executed by the parties hereto as of the Effective Date.

**LICENSOR:**

**BNSF Railway Company**, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive, MOB2  
Fort Worth, TX 76131

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

Patricia Villegas  
Vice President, Permits

**LICENSEE:**

**City of Everett**

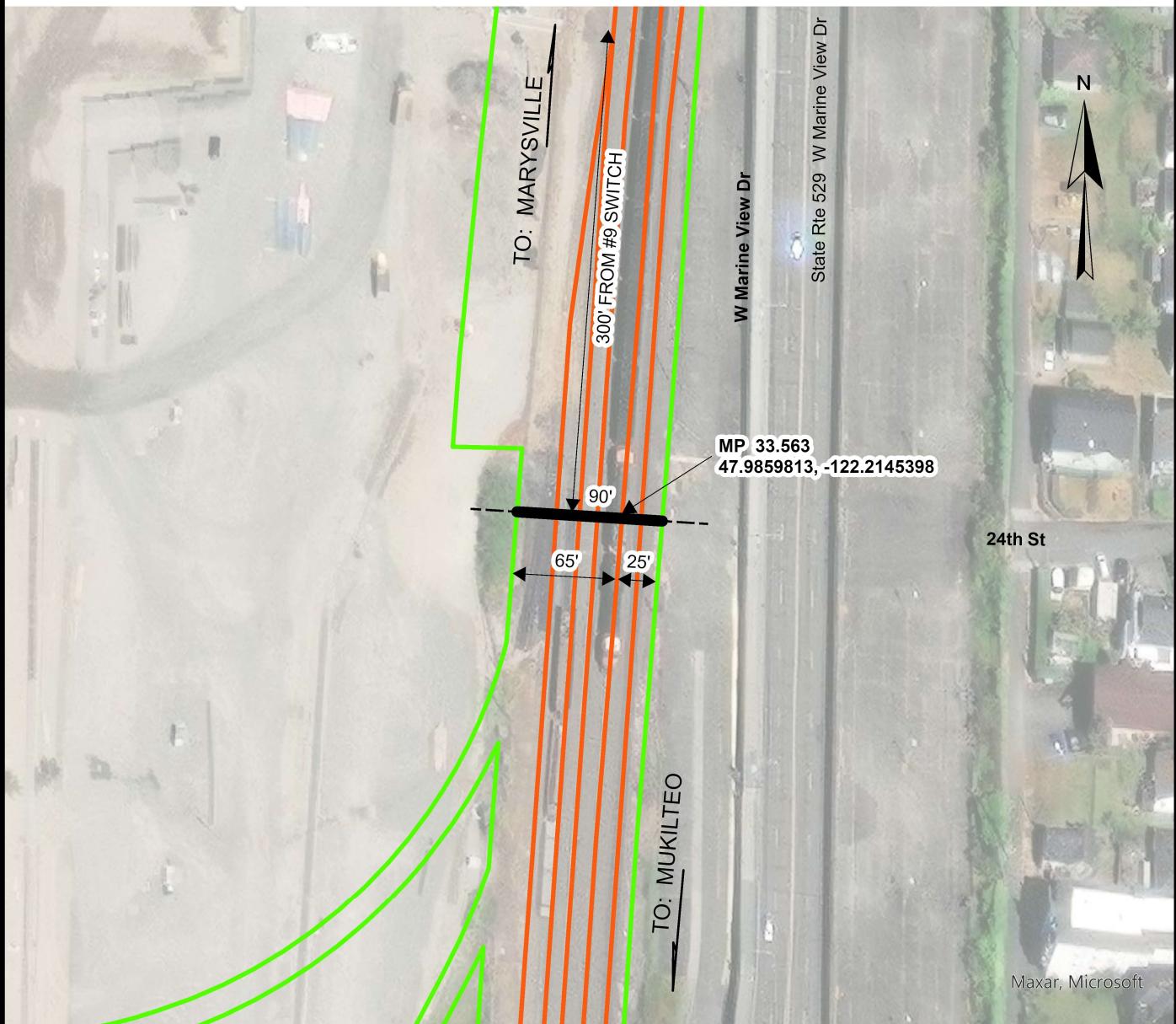
By: \_\_\_\_\_

Cassie Franklin  
Mayor

SCALE: 1 IN = 100 FT  
 NORTHWEST DIV.  
 SCENIC SUBDIV.  
 L.S. 0050 MP: 33.563  
 DATE: 4/18/2025

# EXHIBIT "A"

SECTION: 19  
 TOWNSHIP & RANGE:  
29N 5E  
 MERIDIAN: WILLM

MAP REF. s52010

## DESCRIPTION OF PIPELINE PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	<u>48"</u>	<u>60"</u>	LENGTH ON R/W:	<u>90</u>	<u>90'</u>
CONTENTS:	STORM WATER		WORKING PRESSURE:	<u>0 PSI</u>	
PIPE MATERIAL:	FIBERGLASS	STEEL	BURY: BASE/RAIL TO TOP OF CASING		<u>9'</u>
SPECIFICATIONS / GRADE:	ASTM D3262	A1097 X35	BURY: NATURAL GROUND		<u>8.9'</u>
WALL THICKNESS:	<u>1.09"</u>	<u>0.781"</u>	BURY: ROADWAY DITCHES		<u>8.9'</u>
COATING:	<u>-</u>	FBE & ARO	CATHODIC PROTECTION		<u>NO</u>

VENTS: NUMBER 0 SIZE - HEIGHT OF VENT ABOVE GROUND -

NOTE: CASING TO BE JACKED OR DRY BORED ONLY

EVERETT  
 COUNTY OF SNOHOMISH

STATE OF WA

JPM

## PIPELINE LICENSE

THIS PIPELINE LICENSE ("License") is made to be effective \_\_\_\_\_, 2026 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **CITY OF EVERETT** ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

### GENERAL

1. **Grant of License.** Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), One (1) pipeline, 24 inches in diameter inside a 36 inch Steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Everett, County of Snohomish, State of Washington, Line Segment 0050, Mile Post 33.565 as shown on the attached Drawing No. 93846, dated April 18, 2025, attached hereto as Exhibit "A" and incorporated herein by reference (the "**Premises**").
2. **Term.** This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. **Existing Improvements.** Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. **Use of the Premises.** Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry sanitary sewer, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose. Licensee is expressly prohibited from using or allowing any telecommunication facilities or equipment within the Premises, or using or allowing the use of the Premises for any other purpose.
5. **Alterations.** Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

### COMPENSATION

6. **License Fee.** Licensee shall pay Licensor, prior to the Effective Date, a one-time payment (in lieu of recurring periodic fixed license fees) in the amount the sum of Three Thousand Seven Hundred and No/100 Dollars (\$3,700.00) as compensation for the use of the Premises.
7. **Costs and Expenses.**
  - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
  - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and

unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

7.3 Licensor, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

### **LICENSOR'S RESERVED RIGHTS**

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
- 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
- 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.

10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

### **LICENSEE'S OPERATIONS**

11. **Construction and Maintenance of the Pipeline.**

- 11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's representative or the Scheduling Agent at [ROWCoordinator@BNSF.com](mailto:ROWCoordinator@BNSF.com) at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. Only in the event of emergency, Licensee shall notify Licensor's Roadmaster of entry onto the Premises, at the telephone 360-922-1401, as soon as practicable and shall promptly thereafter follow up with written notice of such entry to the email provided above.
- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Lessor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Pipeline, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Lessor, (ii) the safe operation and activities of Lessor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Lessor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Lessor, the parties agree that Lessor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Lessor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Lessor, (ii) the safe operation and activities of Lessor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Lessor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Lessor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Lessor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Lessor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Pipeline by Lessor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Lessor, the parties agree that Lessor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Lessor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Lessor, fail to properly perform its obligations under this **Section 11**, Lessor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Lessor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Lessor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

## 12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3<sup>rd</sup> parties mark the location of utilities. Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the

ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the United States Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Lessor concerning the existence and approximate location of Lessor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Lessor's Telecommunications Helpdesk, currently at 1-800-533-2891 (option 1, then option 7), at least ten (10) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Lessor will provide Licensee with the information Lessor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Lessor's standard procedures. Lessor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Lessor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Lessor's reasonable opinion that granular material is present, Lessor may select a new location for Licensee's use, or may require Licensee to furnish for Lessor's review and approval, in Lessor's sole discretion, a remedial plan to deal with the granular material. Once Lessor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 No wells shall be installed without prior written approval from Lessor.
- 12.4 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
  - 12.4.1 filled in to surrounding ground level with compacted bentonite grout; or
  - 12.4.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Lessor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

## **LIABILITY AND INSURANCE**

- 13. Liability and Indemnification.
  - 13.1 For purposes of this License: (a) "**Indemnitees**" means Lessor and Lessor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
  - 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE,**

KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

- 13.2.1 THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,
- 13.2.2 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,
- 13.2.3 LICENSEE'S OCCUPATION AND USE OF THE PREMISES,
- 13.2.4 THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR
- 13.2.5 ANY ACT OR OMISSION OF ANY LICENSEE PARTY.

13.3 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

13.4 IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

13.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.

13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK

**OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:

15.1 Commercial General Liability "CGL" Insurance.

- a. The policy will provide a minimum of \$5,000,000 per occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
  - Bodily Injury and Property Damage
  - Personal Injury and Advertising Injury
  - Fire legal liability
  - Products and completed operations
  - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
- b. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
  - The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Lessor's property;
  - Waiver of subrogation in favor of and acceptable to Lessor;
  - Additional insured endorsement in favor of and acceptable to Lessor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing and completed operations;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Lessor.
- c. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Lessor's employees.
- d. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 Business Automobile Insurance.

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
  - Bodily injury and property damage.
  - Any and all vehicles owned, used or hired.
- b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
  - Waiver of subrogation in favor of and acceptable to Lessor;
  - Additional insured endorsement in favor of and acceptable to Lessor;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Lessor.

15.3 Workers' Compensation and Employers' Liability Insurance.

- a. The policy will provide coverage of all employees performing any part of the installation or maintenance of the Pipeline including coverage for, but not limited to:
  - Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be performed. The policy will cover all

of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Lessor.

15.4 **Railroad Protective Liability Insurance.** The policy will name only Lessor as the Insured and will provide coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Lessor and Licensee shall not perform any work or services of any kind under this agreement until Lessor has reviewed and approved the policy.
- The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Lessor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,266.00.

- Licensee may **elect** to participate in Lessor's Blanket Policy;
- Licensee **declines** to participate in Lessor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

15.6.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.

15.6.2 Licensee agrees to waive its right of recovery against Lessor for all claims and suits against Lessor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Lessor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Lessor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.

15.6.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.

- 15.6.4 Licensee is not allowed to self-insure without the prior written consent of Licensor. If Licensor allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licensor liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.5 Prior to entering the Premises or commencing any work related to the installation or subsequent maintenance of the Pipeline, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.6.6 Licensee shall notify BNSF in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration of any insurance requirement.
- 15.6.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.6.9 Licensee agrees to provide evidence to Licensor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage
- 15.6.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.6.11 Not more frequently than once every five years, Licensor may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensor as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor under this agreement.
- 15.6.13 Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.6.15 In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to BNSF.
- 15.6.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF requires and shall be entitled to the broader

coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.

15.6.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services are performed under this License.

15.6.18 For purposes of this **Section 15**, Lessor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

## **COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS**

16. **Compliance with Laws, Rules, and Regulations.**

- 16.1 Licensee shall observe and comply with any and all applicable federal, state, local, and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Lessor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "Safety Orientation") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable, renew) the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of-way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "Rights") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Right be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. **Environmental.**

- 17.1 Licensee shall strictly comply with Environmental Laws (as defined below). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as

defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or Hazardous Materials (as defined below) on or about the Premises.

- 17.2 Except as specifically set forth in Section 4 of this License, Licensee covenants that it will not handle or transport Hazardous Materials through the Pipeline or on Lessor's property. Upon request by Lessor, Licensee agrees to furnish Lessor with proof, satisfactory to Lessor, that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Lessor immediate notice to Lessor's Resource Operations Center at (800) 832-5452 of any known (i) release of Hazardous Materials on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use its best efforts to immediately respond to any release on, from, or affecting the Premises. Licensee also shall give Lessor prompt notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Lessor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Lessor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Lessor's right-of-way.
- 17.5 Licensee shall immediately report to Lessor's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Lessor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Lessor's request for information regarding said conditions or activities.
- 17.6 During the term of this License, Lessor may, at Lessor's option, require Licensee to conduct an environmental audit, including but not limited to sampling, of the Premises through an environmental consulting engineer acceptable to Lessor, at Licensee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during occupancy thereof by Licensee. The audit shall be conducted to Lessor's satisfaction and a copy of the audit report shall promptly be provided to Lessor for its review. Licensee shall pay all expenses for any remedial or corrective action that may be required as a result of said audit to correct any noncompliance or environmental damage, and Licensee shall diligently pursue and complete all necessary work prior to termination of this License. Licensee's obligations under this Section 17.6 shall survive termination of this License.
- 17.7 Notwithstanding anything in this Section 17, the parties agree that Lessor has no duty or obligation to monitor Licensee's use of the Premises to determine Licensee's compliance with Environmental Laws, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is compliant. Neither the exercise nor the failure by Lessor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 17.8 "**Environmental Law(s)**" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et

seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

17.9 **"Hazardous Material(s)"** shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

### **DISCLAIMER OF WARRANTIES**

18. **No Warranties.**

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. **Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. **Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.**

### **LIENS AND TAXES**

21. **Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.**

22. **Taxes.** Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Lessor or the Premises that are attributable to the Improvements.

## **DEFAULT, TERMINATION, AND SURRENDER**

23. **Default and Termination.** In addition to and not in limitation of Lessor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Lessor has the right to terminate as set forth below:

- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Lessor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Lessor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Lessor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of Hazardous Materials, notwithstanding anything contained in any other provision of this License, Lessor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee.
- 23.3 Any waiver by Lessor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Lessor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Lessor may have at law or in equity.
- 23.4 In addition to and not in limitation of Lessor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. **Surrender of the Premises.**

- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
  - 24.1.1 if so directed by Lessor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Lessor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Lessor;
  - 24.1.2 report and restore any damage to the Premises or Lessor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
  - 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
  - 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date, or as otherwise agreed to by Lessor.

24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor for no additional consideration.

## **MISCELLANEOUS**

25. **Successors and Assigns.** All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. **Assignment.**

26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.

26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation

to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Lessor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive the expiration or earlier termination of this License.

26.4 Lessor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this License, and upon any such transfer or assignment, Lessor shall be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Lessor for the performance of such obligations.

27. **Notices.** Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Lessor: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive, MOB2  
Fort Worth, TX 76131  
Attn: Permits/Licenses

with a copy to: BNSF Railway Company  
2650 Lou Menk Dr.  
Fort Worth, TX 76131  
Attn: Senior Manager Real Estate

If to Licensee: City of Everett  
3200 Cedar Street  
Everett, WA 98201

28. **Survival.** Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.

29. **Recordation.** It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. **Applicable Law.** All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Washington without regard to conflicts of law provisions.

31. **Severability.** To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. **Integration.** This License is the full and complete agreement between Lessor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Lessor harmless in any prior written agreement between the parties.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
  - 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
  - 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

**END OF PAGE – SIGNATURE PAGE FOLLOWS**

This License has been duly executed by the parties hereto as of the Effective Date.

**LICENSOR:**

**BNSF Railway Company**, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive, MOB2  
Fort Worth, TX 76131

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

Patricia Villegas  
Vice President, Permits

**LICENSEE:**

**City of Everett**

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

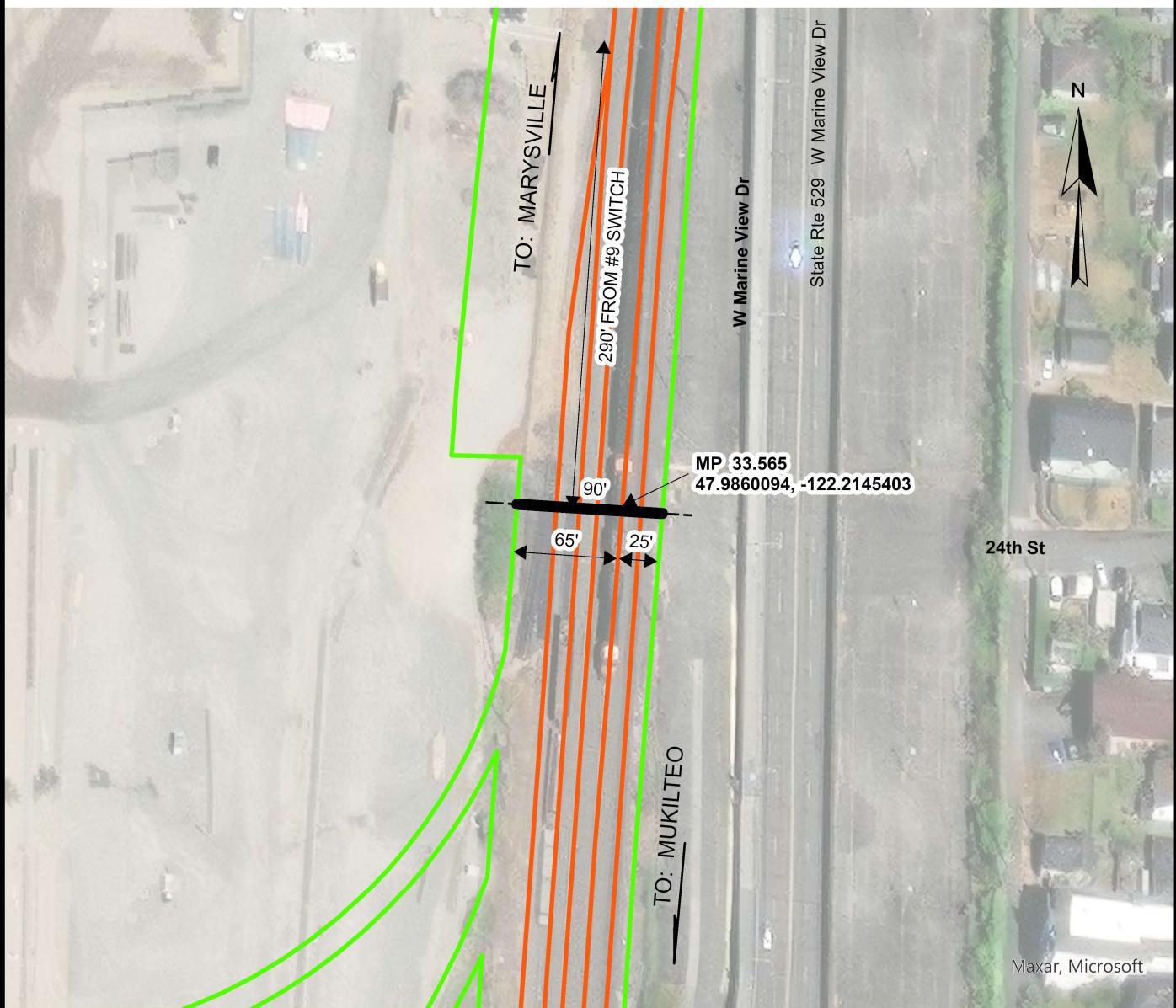
Cassie Franklin  
Mayor

SCALE: 1 IN = 100 FT  
 NORTHWEST DIV.  
 SCENIC SUBDIV.  
 L.S. 0050 MP: 33.565  
 DATE: 4/18/2025

# EXHIBIT "A"

SECTION: 19  
 TOWNSHIP & RANGE:  
 29N 5E  
 MERIDIAN: WILLM

MAP REF. S52010



## DESCRIPTION OF PIPELINE PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE	CARRIER PIPE	CASING PIPE
SIZE:	24"	36"	90'	90'
CONTENTS:	SANITARY SEWER		0 PSI	
PIPE MATERIAL:	PVC	STEEL		
SPECIFICATIONS / GRADE:	C900 DR21	A1097 X35		
WALL THICKNESS:	1.229"	0.5"		
COATING:	-	FBE & ARO		
VENTS: NUMBER	0	SIZE	-	HEIGHT OF VENT ABOVE GROUND
NOTE: Casing to be jacked or dry bored only				

VENTS: NUMBER 0 SIZE - HEIGHT OF VENT ABOVE GROUND -  
 NOTE: Casing to be jacked or dry bored only

EVERETT  
 COUNTY OF SNOHOMISH

STATE OF WA

JPM

## PIPELINE LICENSE

THIS PIPELINE LICENSE ("License") is made to be effective \_\_\_\_\_, 2026 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **CITY OF EVERETT**, a Washington municipality ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

### GENERAL

1. **Grant of License.** Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), One (1) pipeline, 18 inches in diameter inside a 30 inch ductile iron pipe inside a 60 inch steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Everett, County of Snohomish, State of Washington, Line Segment 0050, Mile Post 33.93 as shown on the attached Drawing No. 95054, dated July 10, 2025, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").
2. **Term.** This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. **Existing Improvements.** Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. **Use of the Premises.** Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry storm water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose. Licensee is expressly prohibited from using or allowing any telecommunication facilities or equipment within the Premises, or using or allowing the use of the Premises for any other purpose.
5. **Alterations.** Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

### COMPENSATION

6. **License Fee.** Licensee shall pay Licensor, prior to the Effective Date, a one-time payment (in lieu of recurring periodic fixed license fees) in the amount the sum of Three Thousand Seven Hundred and No/100 Dollars (\$3,700.00) as compensation for the use of the Premises.
7. **Costs and Expenses.**
  - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
  - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and

unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

7.3 Licensor, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

### **LICENSOR'S RESERVED RIGHTS**

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
- 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
- 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.

10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

### **LICENSEE'S OPERATIONS**

11. **Construction and Maintenance of the Pipeline.**

- 11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's representative or the Scheduling Agent at [ROWCoordinator@BNSF.com](mailto:ROWCoordinator@BNSF.com) at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. Only in the event of emergency, Licensee shall notify Licensor's Roadmaster of entry onto the Premises, at the telephone 360-922-1401, as soon as practicable and shall promptly thereafter follow up with written notice of such entry to the email provided above.
- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Lessor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Pipeline, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Lessor, (ii) the safe operation and activities of Lessor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Lessor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Lessor, the parties agree that Lessor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Lessor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Lessor, (ii) the safe operation and activities of Lessor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Lessor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Lessor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Lessor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Lessor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Pipeline by Lessor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Lessor, the parties agree that Lessor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Lessor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Lessor, fail to properly perform its obligations under this **Section 11**, Lessor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Lessor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Lessor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

## 12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3<sup>rd</sup> parties mark the location of utilities. Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the

ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the United States Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Lessor concerning the existence and approximate location of Lessor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Lessor's Telecommunications Helpdesk, currently at 1-800-533-2891 (option 1, then option 7), at least ten (10) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Lessor will provide Licensee with the information Lessor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Lessor's standard procedures. Lessor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Lessor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Lessor's reasonable opinion that granular material is present, Lessor may select a new location for Licensee's use, or may require Licensee to furnish for Lessor's review and approval, in Lessor's sole discretion, a remedial plan to deal with the granular material. Once Lessor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 No wells shall be installed without prior written approval from Lessor.
- 12.4 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
  - 12.4.1 filled in to surrounding ground level with compacted bentonite grout; or
  - 12.4.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Lessor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

## **LIABILITY AND INSURANCE**

### **13. Liability and Indemnification.**

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Lessor and Lessor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

13.2 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

13.2.1 THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,

13.2.2 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,

13.2.3 LICENSEE'S OCCUPATION AND USE OF THE PREMISES,

13.2.4 THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR

13.2.5 ANY ACT OR OMISSION OF ANY LICENSEE PARTY.

13.3 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

13.4 IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

13.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.

13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. **Personal Property Risk of Loss.** **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. **Insurance.** Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:

15.1 **Commercial General Liability "CGL" Insurance.**

- a. The policy will provide a minimum of \$5,000,000 per occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
  - Bodily Injury and Property Damage
  - Personal Injury and Advertising Injury
  - Fire legal liability
  - Products and completed operations
  - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
- b. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
  - The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Lessor's property;
  - Waiver of subrogation in favor of and acceptable to Lessor;
  - Additional insured endorsement in favor of and acceptable to Lessor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing and completed operations;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Lessor.
- c. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Lessor's employees.
- d. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 **Business Automobile Insurance.**

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
  - Bodily injury and property damage.
  - Any and all vehicles owned, used or hired.
- b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
  - Waiver of subrogation in favor of and acceptable to Lessor;
  - Additional insured endorsement in favor of and acceptable to Lessor;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Lessor.

15.3 Workers' Compensation and Employers' Liability Insurance.

- a. The policy will provide coverage of all employees performing any part of the installation or maintenance of the Pipeline including coverage for, but not limited to:
  - Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be performed. The policy will cover all of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).
  - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
  - Waiver of subrogation in favor of and acceptable to Licenser.

15.4 Railroad Protective Liability Insurance. The policy will name only Licenser as the Insured and will provide coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licenser and Licensee shall not perform any work or services of any kind under this agreement until Licenser has reviewed and approved the policy.
- The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

15.5 Intentionally deleted.15.6 Other Requirements:

- 15.6.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.
- 15.6.2 Licensee agrees to waive its right of recovery against Licenser for all claims and suits against Licenser. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Licenser for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licenser for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.
- 15.6.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.
- 15.6.4 Licensee is not allowed to self-insure without the prior written consent of Licenser. If Licenser allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licenser liabilities that would otherwise be covered by Licensee's insurance in

accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.

- 15.6.5 Prior to entering the Premises or commencing any work related to the installation or subsequent maintenance of the Pipeline, Licensee shall furnish to Lessor an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.6.6 Licensee shall notify BNSF in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration of any insurance requirement.
- 15.6.7 Any insurance policy shall be written by a reputable insurance company acceptable to Lessor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.6.9 Licensee agrees to provide evidence to Lessor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage
- 15.6.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.6.11 Not more frequently than once every five years, Lessor may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Lessor as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Lessor under this agreement.
- 15.6.13 Failure to provide evidence as required by this section shall entitle, but not require, Lessor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Lessor shall not be limited by the amount of the required insurance coverage.
- 15.6.15 In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to BNSF.
- 15.6.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF requires and shall be entitled to the broader coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.

15.6.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services are performed under this License.

15.6.18 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

## **COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS**

16. Compliance with Laws, Rules, and Regulations.

- 16.1 Licensee shall observe and comply with any and all applicable federal, state, local, and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "Safety Orientation") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable, renew) the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "Rights") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

- 17.1 Licensee shall strictly comply with Environmental Laws (as defined below). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or Hazardous Materials (as defined below) on or about the Premises.
- 17.2 Except as specifically set forth in Section 4 of this License, Licensee covenants that it will not handle or transport Hazardous Materials through the Pipeline or on Licensor's property. Upon

request by Lessor, Licensee agrees to furnish Lessor with proof, satisfactory to Lessor, that Licensee is in compliance with the provisions of this **Section 17.2**.

- 17.3 Licensee shall give Lessor immediate notice to Lessor's Resource Operations Center at (800) 832-5452 of any known (i) release of Hazardous Materials on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use its best efforts to immediately respond to any release on, from, or affecting the Premises. Licensee also shall give Lessor prompt notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Lessor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Lessor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Lessor's right-of-way.
- 17.5 Licensee shall immediately report to Lessor's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Lessor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Lessor's request for information regarding said conditions or activities.
- 17.6 During the term of this License, Lessor may, at Lessor's option, require Licensee to conduct an environmental audit, including but not limited to sampling, of the Premises through an environmental consulting engineer acceptable to Lessor, at Licensee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during occupancy thereof by Licensee. The audit shall be conducted to Lessor's satisfaction and a copy of the audit report shall promptly be provided to Lessor for its review. Licensee shall pay all expenses for any remedial or corrective action that may be required as a result of said audit to correct any noncompliance or environmental damage, and Licensee shall diligently pursue and complete all necessary work prior to termination of this License. Licensee's obligations under this Section 17.6 shall survive termination of this License.
- 17.7 Notwithstanding anything in this Section 17, the parties agree that Lessor has no duty or obligation to monitor Licensee's use of the Premises to determine Licensee's compliance with Environmental Laws, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is compliant. Neither the exercise nor the failure by Lessor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 17.8 "**Environmental Law(s)**" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

17.9 "**Hazardous Material(s)**" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

### **DISCLAIMER OF WARRANTIES**

18. No Warranties.

18.1 LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

18.2 LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.

19. Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.

### **LIENS AND TAXES**

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

## **DEFAULT, TERMINATION, AND SURRENDER**

23. **Default and Termination.** In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:

23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.

23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of Hazardous Materials, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee.

23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. **Surrender of the Premises.**

24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:

24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;

24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;

24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date, or as otherwise agreed to by Licensor.

24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are

surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Lessor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Lessor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Lessor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Lessor, provide a bill of sale in a form acceptable to Lessor conveying the Pipeline and the other Improvements to Lessor for no additional consideration.

## **MISCELLANEOUS**

25. **Successors and Assigns.** All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Lessor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. **Assignment.**

26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Lessor, which consent may not be unreasonably withheld or delayed by Lessor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Lessor in its sole and absolute discretion.

26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LESSOR, SUCH CONSENT TO BE IN LESSOR'S SOLE DISCRETION.

26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Lessor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive

the expiration or earlier termination of this License.

26.4 Licensor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this License, and upon any such transfer or assignment, Licensor shall be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Licensor for the performance of such obligations.

27. **Notices.** Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive, MOB2  
Fort Worth, TX 76131  
Attn: Permits/Licenses

with a copy to: BNSF Railway Company  
2650 Lou Menk Dr.  
Fort Worth, TX 76131  
Attn: Senior Manager Real Estate

If to Licensee: City of Everett  
3200 Cedar Street  
Everett, WA 98201

28. **Survival.** Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.

29. **Recordation.** It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. **Applicable Law.** All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Washington without regard to conflicts of law provisions.

31. **Severability.** To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. **Integration.** This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

33. **Joint and Several Liability.** If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

34. **Waiver.** The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

35. Interpretation.

35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.

35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.

36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.

37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

**END OF PAGE – SIGNATURE PAGE FOLLOWS**

This License has been duly executed by the parties hereto as of the Effective Date.

**LICENSOR:**

**BNSF Railway Company**, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive, MOB2  
Fort Worth, TX 76131

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

Patricia Villegas  
Vice President, Permits

**LICENSEE:**

**City of Everett**

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

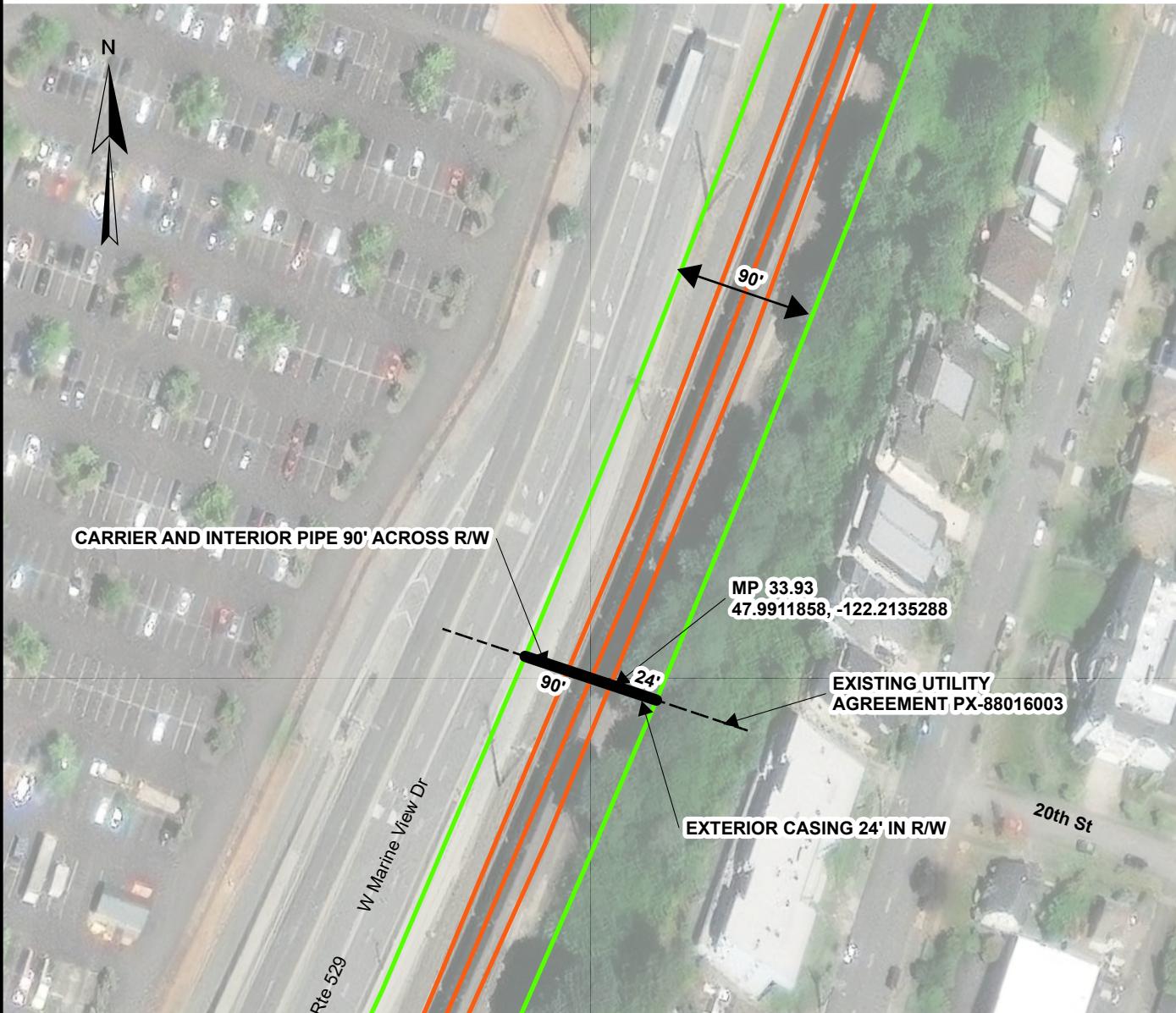
Cassie Franklin  
Mayor

SCALE: 1 IN = 100 FT  
 NORTHWEST DIV.  
 BELLINGHAM SUBDIV.  
 L.S. 0050 MP: 33.93  
 DATE: 7/10/2025

# EXHIBIT "A"

SECTION: 19  
 TOWNSHIP & RANGE:  
29N, 5E  
 MERIDIAN: WILLM

MAP REF. S52010



DESCRIPTION OF PIPELINE  
 PIPELINE SHOWN BOLD

	CARRIER PIPE	INTERIOR CASING PIPE	EXTERIOR CASING PIPE		CARRIER PIPE	INTERIOR CASING PIPE	EXTERIOR CASING PIPE
SIZE:	18"	30"	60"	LENGTH ON R/W:	90'		
CONTENTS:	STORM & SANITARY SEWER			WORKING PRESSURE:	53 PSI		
PIPE MATERIAL:	HDPE	DUCTILE IRON	STEEL	BURY:	BASE/RAIL TO TOP		
SPECIFICATIONS / GRADE:	PE4710	CL 250	UNKNOWN	OF CASING			
WALL THICKNESS:	1.059"	0.42"	0.625"	BURY:	NATURAL GROUND		
COATING:	-	-	-	BURY:	ROADWAY DITCHES		
				CATHODIC PROTECTION			

VENTS: NUMBER    SIZE    HEIGHT OF VENT ABOVE GROUND   

NOTE: CASINGS ARE EXISTING IN PLACE BY AGREEMENT PX-88016003.

CARRIER PIPE BEING INSTALLED BY SLIPLINING METHOD.

EVERETT

COUNTY OF SNOHOMISH

STATE OF WA

JPG

**Project title:** BNSF Pipeline License for Water Main installation at SR5 and E Grand

**Council Bill #** *interoffice use*

**Agenda dates requested:**

Briefing  
Proposed action  
Consent 1/21/26  
Action  
Ordinance  
Public hearing  
Yes  No

**Budget amendment:**

Yes  No

**PowerPoint presentation:**

Yes  No

**Attachments:**

PSA Amendment

**Department(s) involved:**

Public Works

**Contact person:**

Tom Hood

**Phone number:**

425-257-8809

**Email:**

THood@everettwa.gov

**Initialed by:**

*RLS*

Department head

Administration

Council President

**Project:** Water Main Replacement Y, Phase 2, BNSF Pipeline License for Water Main at SR5 near E Grand Ave

**Partner/Supplier:** BNSF

**Location:** Aerial crossing of BNSF tracks at I-5 bridge near E Grand Ave

**Preceding action:** N/A

**Fund:** 336 – Utilities Fund, Program 042

**Fiscal summary statement:**

Funding source will be Utilities Fund.

Expenditure required: \$ \$17,266.00 for a 25-year license and BNSF required liability insurance.

Programmed available funding for the Water Main Replacement Y, Phase 2 project is \$2,300,000.00.

**Project summary statement:**

This pipeline license with BNSF is for an aerial crossing of the BNSF railroad tracks and BNSF right-of-way at I-5 bridge near East Grand Avenue. The new pipeline is being installed with the upcoming Water Main Y, Phase 2 project, and will replace the existing pipeline on the bridge.

**Recommendation (exact action requested of Council):**

Authorize the Mayor to sign the License Agreement with BNSF for a water main license at SR5 near E Grand Avenue.

## PIPELINE LICENSE

THIS PIPELINE LICENSE ("License") is made to be effective \_\_\_\_\_, 2026 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **City of Everett** ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

### GENERAL

1. **Grant of License.** Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), One (1) pipeline, 12 inches in diameter inside an 18 inch Galv. Steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Everett, County of Snohomish, State of Washington, Line Segment 0408, Mile Post 9.17 as shown on the attached Drawing No. 91278, dated March 21, 2025, attached hereto as Exhibit "A" and incorporated herein by reference (the "**Premises**").
2. **Term.** This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. **Existing Improvements.** Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. **Use of the Premises.** Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry domestic water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose. Licensee is expressly prohibited from using or allowing any telecommunication facilities or equipment within the Premises, or using or allowing the use of the Premises for any other purpose.
5. **Alterations.** Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

### COMPENSATION

6. **License Fee.** Licensee shall pay Licensor, prior to the Effective Date, a one-time payment (in lieu of recurring periodic fixed license fees) in the amount the sum of Sixteen Thousand and No/100 Dollars (\$16,000.00) as compensation for the use of the Premises.
7. **Costs and Expenses.**
  - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
  - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and

unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

7.3 Licensor, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

### **LICENSOR'S RESERVED RIGHTS**

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;

9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or

9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.

10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

### **LICENSEE'S OPERATIONS**

11. **Construction and Maintenance of the Pipeline.**

11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's representative or the Scheduling Agent at [ROWCoordinator@BNSF.com](mailto:ROWCoordinator@BNSF.com) at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. Only in the event of emergency, Licensee shall notify Licensor's Roadmaster of entry onto the Premises, at the telephone 360-922-1401, as soon as practicable and shall promptly thereafter follow up with written notice of such entry to the email provided above.

11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.

11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Lessor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Pipeline, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Lessor, (ii) the safe operation and activities of Lessor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Lessor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Lessor, the parties agree that Lessor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Lessor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Lessor, (ii) the safe operation and activities of Lessor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Lessor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Lessor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Lessor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Lessor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Pipeline by Lessor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Lessor, the parties agree that Lessor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Lessor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Lessor, fail to properly perform its obligations under this **Section 11**, Lessor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Lessor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Lessor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

## 12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3<sup>rd</sup> parties mark the location of utilities. Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the

ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the United States Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Lessor concerning the existence and approximate location of Lessor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Lessor's Telecommunications Helpdesk, currently at 1-800-533-2891 (option 1, then option 7), at least ten (10) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Lessor will provide Licensee with the information Lessor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Lessor's standard procedures. Lessor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 To the extent applicable based upon the Drawings & Specifications, for all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Lessor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Lessor's reasonable opinion that granular material is present, Lessor may select a new location for Licensee's use, or may require Licensee to furnish for Lessor's review and approval, in Lessor's sole discretion, a remedial plan to deal with the granular material. Once Lessor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 No wells shall be installed without prior written approval from Lessor.
- 12.4 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
  - 12.4.1 filled in to surrounding ground level with compacted bentonite grout; or
  - 12.4.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Lessor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

## **LIABILITY AND INSURANCE**

- 13. Liability and Indemnification.
  - 13.1 For purposes of this License: (a) "**Indemnitees**" means Lessor and Lessor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
  - 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE,**

KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

- 13.2.1 THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,
- 13.2.2 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,
- 13.2.3 LICENSEE'S OCCUPATION AND USE OF THE PREMISES,
- 13.2.4 THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR
- 13.2.5 ANY ACT OR OMISSION OF ANY LICENSEE PARTY.

13.3 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

13.4 IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

13.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.

13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK

**OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. **Insurance.** Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:

15.1 Commercial General Liability "CGL" Insurance.

- a. The policy will provide a minimum of \$5,000,000 per occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
  - Bodily Injury and Property Damage
  - Personal Injury and Advertising Injury
  - Fire legal liability
  - Products and completed operations
  - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
- b. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
  - The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Lessor's property;
  - Waiver of subrogation in favor of and acceptable to Lessor;
  - Additional insured endorsement in favor of and acceptable to Lessor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing and completed operations;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Lessor.
- c. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Lessor's employees.
- d. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 Business Automobile Insurance.

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
  - Bodily injury and property damage.
  - Any and all vehicles owned, used or hired.
- b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
  - Waiver of subrogation in favor of and acceptable to Lessor;
  - Additional insured endorsement in favor of and acceptable to Lessor;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Lessor.

15.3 Workers' Compensation and Employers' Liability Insurance.

- a. The policy will provide coverage of all employees performing any part of the installation or maintenance of the Pipeline including coverage for, but not limited to:
  - Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be performed. The policy will cover all

of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Lessor.

15.4 **Railroad Protective Liability Insurance.** The policy will name only Lessor as the Insured and will provide coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Lessor and Licensee shall not perform any work or services of any kind under this agreement until Lessor has reviewed and approved the policy.
- The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Lessor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,266.00.

- Licensee may **elect** to participate in Lessor's Blanket Policy;
- Licensee **declines** to participate in Lessor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

15.6.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.

15.6.2 Licensee agrees to waive its right of recovery against Lessor for all claims and suits against Lessor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Lessor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Lessor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.

15.6.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.

- 15.6.4 Licensee is not allowed to self-insure without the prior written consent of Licensor. If Licensor allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licensor liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.5 Prior to entering the Premises or commencing any work related to the installation or subsequent maintenance of the Pipeline, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.6.6 Licensee shall notify BNSF in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration of any insurance requirement.
- 15.6.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.6.9 Licensee agrees to provide evidence to Licensor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage
- 15.6.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.6.11 Not more frequently than once every five years, Licensor may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensor as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor under this agreement.
- 15.6.13 Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.6.15 In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to BNSF.
- 15.6.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF requires and shall be entitled to the broader

coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.

15.6.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services are performed under this License.

15.6.18 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

## **COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS**

16. **Compliance with Laws, Rules, and Regulations.**

- 16.1 Licensee shall observe and comply with any and all applicable federal, state, local, and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable, renew) the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of-way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. **Environmental.**

- 17.1 Licensee shall strictly comply with Environmental Laws (as defined below). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as

defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or Hazardous Materials (as defined below) on or about the Premises.

- 17.2 Except as specifically set forth in Section 4 of this License, Licensee covenants that it will not handle or transport Hazardous Materials through the Pipeline or on Lessor's property. Upon request by Lessor, Licensee agrees to furnish Lessor with proof, satisfactory to Lessor, that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Lessor immediate notice to Lessor's Resource Operations Center at (800) 832-5452 of any known (i) release of Hazardous Materials on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use its best efforts to immediately respond to any release on, from, or affecting the Premises. Licensee also shall give Lessor prompt notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Lessor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Lessor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Lessor's right-of-way.
- 17.5 Licensee shall immediately report to Lessor's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Lessor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Lessor's request for information regarding said conditions or activities.
- 17.6 During the term of this License, Lessor may, at Lessor's option, require Licensee to conduct an environmental audit, including but not limited to sampling, of the Premises through an environmental consulting engineer acceptable to Lessor, at Licensee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during occupancy thereof by Licensee. The audit shall be conducted to Lessor's satisfaction and a copy of the audit report shall promptly be provided to Lessor for its review. Licensee shall pay all expenses for any remedial or corrective action that may be required as a result of said audit to correct any noncompliance or environmental damage, and Licensee shall diligently pursue and complete all necessary work prior to termination of this License. Licensee's obligations under this Section 17.6 shall survive termination of this License.
- 17.7 Notwithstanding anything in this Section 17, the parties agree that Lessor has no duty or obligation to monitor Licensee's use of the Premises to determine Licensee's compliance with Environmental Laws, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is compliant. Neither the exercise nor the failure by Lessor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 17.8 "**Environmental Law(s)**" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et

seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

17.9 **"Hazardous Material(s)"** shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

### **DISCLAIMER OF WARRANTIES**

18. **No Warranties.**

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. **Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. **Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.**

### **LIENS AND TAXES**

21. **Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.**

22. **Taxes.** Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Lessor or the Premises that are attributable to the Improvements.

## **DEFAULT, TERMINATION, AND SURRENDER**

23. **Default and Termination.** In addition to and not in limitation of Lessor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Lessor has the right to terminate as set forth below:

- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Lessor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Lessor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Lessor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of Hazardous Materials, notwithstanding anything contained in any other provision of this License, Lessor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee.
- 23.3 Any waiver by Lessor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Lessor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Lessor may have at law or in equity.
- 23.4 In addition to and not in limitation of Lessor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. **Surrender of the Premises.**

- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
  - 24.1.1 if so directed by Lessor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Lessor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Lessor;
  - 24.1.2 report and restore any damage to the Premises or Lessor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
  - 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
  - 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date, or as otherwise agreed to by Lessor.

24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor for no additional consideration.

## **MISCELLANEOUS**

25. **Successors and Assigns.** All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. **Assignment.**

26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.

26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation

to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Lessor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive the expiration or earlier termination of this License.

26.4 Lessor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this License, and upon any such transfer or assignment, Lessor shall be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Lessor for the performance of such obligations.

27. **Notices.** Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Lessor: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive, MOB2  
Fort Worth, TX 76131  
Attn: Permits/Licenses

with a copy to: BNSF Railway Company  
2650 Lou Menk Dr.  
Fort Worth, TX 76131  
Attn: Senior Manager Real Estate

If to Licensee: City of Everett  
3200 Cedar Street  
Everett, WA 98201  
Attn: Amie Campbell

28. **Survival.** Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.

29. **Recordation.** It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. **Applicable Law.** All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Washington without regard to conflicts of law provisions.

31. **Severability.** To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. **Integration.** This License is the full and complete agreement between Lessor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Lessor harmless in any prior written agreement between the parties.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
  - 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
  - 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

**END OF PAGE – SIGNATURE PAGE FOLLOWS**

This License has been duly executed by the parties hereto as of the Effective Date.

**LICENSOR:**

**BNSF Railway Company**, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive, MOB2  
Fort Worth, TX 76131

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

Patricia Villegas  
Vice President, Permits

**LICENSEE:**

**City of Everett**

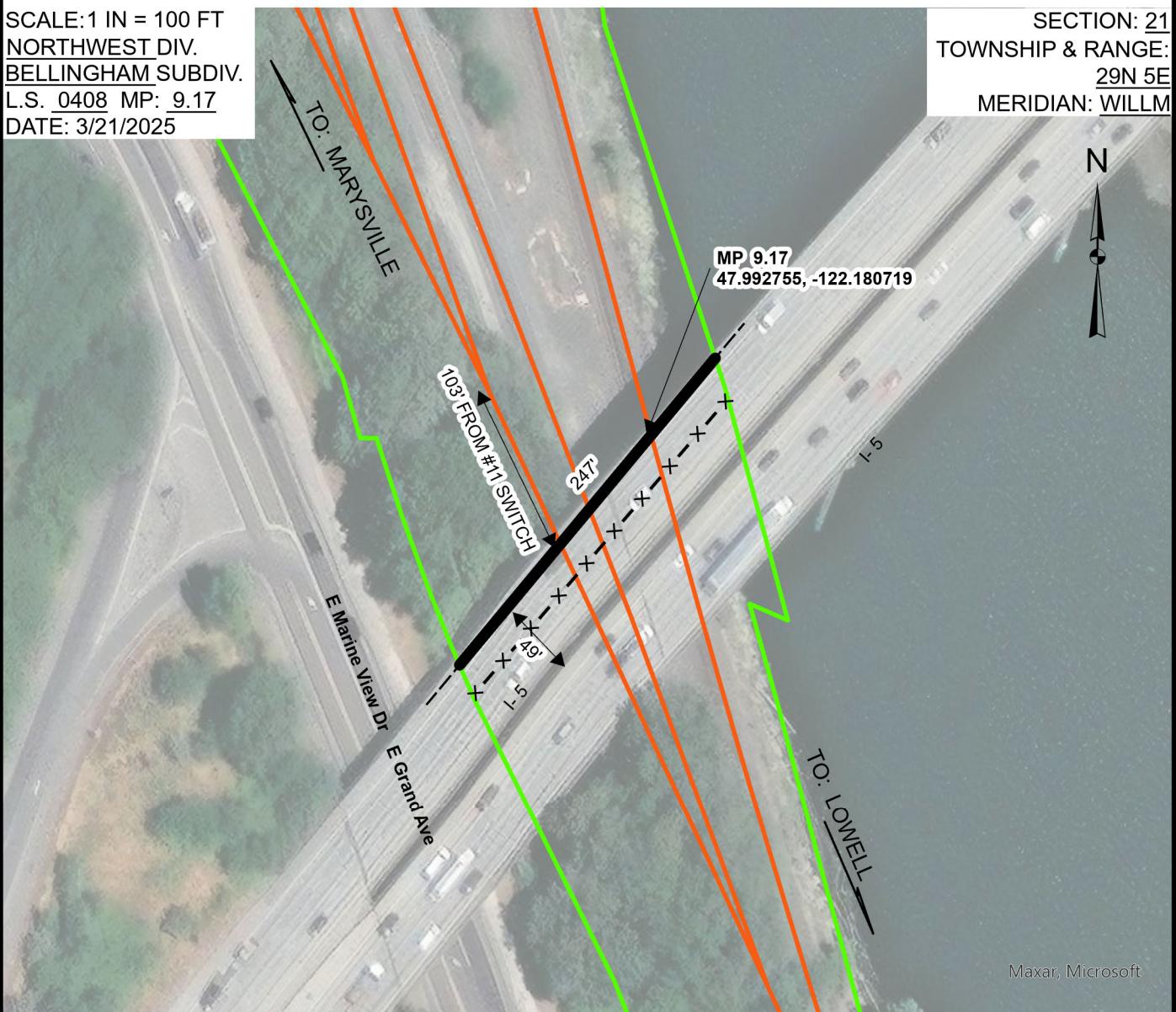
By: \_\_\_\_\_

By: Cassie Franklin  
Title: Mayor

## EXHIBIT "A"

SCALE: 1 IN = 100 FT  
NORTHWEST DIV.  
BELLINGHAM SUBDIV.  
L.S. 0408 MP: 9.17  
DATE: 3/21/2025

SECTION: 21  
TOWNSHIP & RANGE:  
29N 5E  
MERIDIAN: WILLM



## EXISTING WATER PIPELINE

- X UNDER UNKNOWN AGREEMENT  
TO BE REMOVED

DESCRIPTION OF PIPELINE  
PIPELINE SHOWN BOLD

## NOTE:

ABANDONMENT PIPE WILL NEED  
TO BE REMOVED FROM PROPERTY

	CARRIER PIPE	CASING PIPE
SIZE:	12"	18"
CONTENTS:	DOMESTIC WATER	
PIPE MATERIAL:	DUCT. IRON	GALV. STEEL
SPECIFICATIONS / GRADE:	CLASS 52	16 GA
WALL THICKNESS:	0.37"	0.063"
COATING:	ASPHALTIC	ZINC-GALVANIZED

LENGTH ON R/W:	CARRIER PIPE
WORKING PRESSURE:	89 PSI
DISTANCE ABOVE TOP OF RAIL	247'
BURY: NATURAL GROUND	247'
BURY: ROADWAY DITCHES	65' 6"
CATHODIC PROTECTION	-

VENTS: NUMBER 0 SIZE - HEIGHT OF VENT ABOVE GROUND -

NOTE: CASING TO BE ATTACHED TO HIGHWAY BRIDGE

EVERETT  
COUNTY OF SNOHOMISH

STATE OF WA

JNC

**Project title:** Amendment with David Evans and Associates for the design of Merrill and Ring Creek Bridge Replacement Project.

**Council Bill #**

**Project:** Merrill and Ring Creek Bridge Replacement Project

**Agenda dates requested:**

**Partner/Supplier:** David Evans and Associates, Inc.

Briefing

**Location:** W. Mukilteo Blvd

Proposed action

**Preceding action:** [Original PSA approved 11/13/24](#)

Consent 1/21/26

**Fund:** Fund 303 – Public Works Improvement Projects

Action

**Fiscal summary statement:**

Ordinance

This is a no cost amendment.

Public hearing

Amendment No. 1 updates outdated labor class and indirect cost rates to ensure compliance with the Washington State Department of Transportation's current approved rates. These updates do not change the original total compensation amount of \$4,024,383.

Yes  No**Budget amendment:**Yes  No**PowerPoint presentation:**Yes  No**Attachments:**

Supplemental Agreement

**Project summary statement:**

WSDOT ANTE Rates

The professional services agreement is for full design, permitting, and right-of-way services to replace the existing Merrill and Ring Creek bridge, which is seismically vulnerable and functionally obsolete. The bridge is located along W. Mukilteo Blvd and is an arterial route that is used daily by nearby residents, transit, ferry and freight traffic, school buses and emergency responders.

WSDOT ICR Rate

**Department(s) involved:**

Public Works, Admin

David Evans and Associates, Inc was selected through a qualification-based selection process that included advertisement of a Request for Qualifications (RFQ) and a detailed review of submitted qualifications. The qualification statements were evaluated and scored by the project team.

**Contact person:**

Tom Hood

**Recommendation (exact action requested of Council):****Phone number:**

425-257-8809

Authorize the Mayor to sign Amendment No. 1 with David Evans and Associates, Inc for the Merrill and Ring Creek Bridge Replacement Project.

**Initialed by:**

RLS

Department head

Administration

Council President



**Washington State  
Department of Transportation**

<b>Supplemental Agreement Number</b> _____	Organization and Address	
Original Agreement Number	Phone: _____	
Project Number	Execution Date	Completion Date
Project Title	New Maximum Amount Payable	
Description of Work		

The Local Agency of \_\_\_\_\_

desires to supplement the agreement entered into with \_\_\_\_\_

and executed on \_\_\_\_\_ and identified as Agreement No. \_\_\_\_\_

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days for completion of the work to read: \_\_\_\_\_

III

Section V, PAYMENT, shall be amended as follows:

as set forth in the attached Exhibit A, and by this reference made a part of this supplement.  
If you concur with this supplement and agree to the changes as stated above, please sign in the Appropriate spaces below and return to this office for final action.

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

\_\_\_\_\_  
Consultant Signature

\_\_\_\_\_  
Approving Authority Signature

\_\_\_\_\_  
Date

**Exhibit "A"**  
**Summary of Payments**

	Basic Agreement	Supplement #1	Total
Direct Salary Cost			
Overhead (Including Payroll Additives)			
Direct Non-Salary Costs			
Fixed Fee			
Total			

## Actuals Not To Exceed Table (ANTE)

### David Evans and Associates, Inc.

JOB CLASSIFICATIONS	2025	Overhead NTE 177.26%	Fixed Fee NTE 30.00%	2025
	Labor Rate NTE			All Inclusive Hourly Billing Rate NTE
Administrative Assist IV (ADM4)	\$47.25	\$83.76	\$14.18	\$145.18
Business Development Leader I (BUD1)	\$73.74	\$130.71	\$22.12	\$226.58
Business Development Leader II (BUD2)	\$119.32	\$211.50	\$35.80	\$366.61
Business Development Leader III (BUD3)	\$113.59	\$201.35	\$34.08	\$349.01
Business Development Leader IV (BUD4)	\$155.40	\$275.46	\$46.62	\$477.48
BU/COE Sr. Manager I (BUS1)	\$88.81	\$157.43	\$26.64	\$272.88
BU/COE Sr. Manager II (BUS2)	\$122.17	\$216.55	\$36.65	\$375.37
BU/COE Sr. Manager III (BUS3)	\$164.85	\$292.21	\$49.46	\$506.52
CAD Technician I (CAD1)	\$31.19	\$55.29	\$9.36	\$95.84
CAD Technician II (CAD2)	\$39.52	\$70.05	\$11.86	\$121.43
CAD Technician III (CAD3)	\$41.04	\$72.75	\$12.31	\$126.10
CAD Technician IV (CAD4)	\$58.16	\$103.10	\$17.45	\$178.71
CAD Technician V (CAD5)	\$59.24	\$105.01	\$17.77	\$182.02
COE Delivery Leader I (CDL1)	\$54.32	\$96.28	\$16.29	\$166.89
COE Delivery Leader II (CDL2)	\$61.63	\$109.25	\$18.49	\$189.38
COE Delivery Leader III (CDL3)	\$92.49	\$163.94	\$27.75	\$284.17
Construction Inspector I (CIN1)	\$38.50	\$68.25	\$11.55	\$118.30
Construction Inspector II (CIN2)	\$44.85	\$79.50	\$13.46	\$137.81
Construction Inspector III (CIN3)	\$53.29	\$94.46	\$15.99	\$163.73
Construction Inspector IV (CIN4)	\$64.98	\$115.19	\$19.49	\$199.66
Construction Inspector V (CIN5)	\$70.00	\$124.08	\$21.00	\$215.08
Construction Services Manager I (CSM1)	\$44.31	\$78.54	\$13.29	\$136.14
Construction Services Manager II (CSM2)	\$54.27	\$96.20	\$16.28	\$166.75
Construction Services Manager III (CSM3)	\$81.10	\$143.76	\$24.33	\$249.19
Construction Services Manager IV (CSM4)	\$86.43	\$153.21	\$25.93	\$265.57
Deputy Construction Manager (DCON)	\$46.45	\$82.33	\$13.93	\$142.71
Designer I (DES1)	\$37.05	\$65.67	\$11.11	\$113.84
Designer II (DES2)	\$48.30	\$85.62	\$14.49	\$148.41
Designer III (DES3)	\$61.95	\$109.81	\$18.59	\$190.35
Designer IV (DES4)	\$72.47	\$128.46	\$21.74	\$222.67
Designer V (DES5)	\$74.09	\$131.34	\$22.23	\$227.66
Electrical Engineer II (ELE2)	\$53.13	\$94.18	\$15.94	\$163.25
Electrical Engineer III (ELE3)	\$52.08	\$92.32	\$15.62	\$160.02
Engineering Designer I (END1)	\$45.13	\$80.00	\$13.54	\$138.66
Engineering Designer II (END2)	\$56.13	\$99.50	\$16.84	\$172.47
Engineering Designer III (END3)	\$62.15	\$110.17	\$18.65	\$190.96
Engineer III (ENG3)	\$64.94	\$115.11	\$19.48	\$199.52

## Actuals Not To Exceed Table (ANTE)

### David Evans and Associates, Inc.

JOB CLASSIFICATIONS	2025	Overhead NTE 177.26%	Fixed Fee NTE 30.00%	2025
	Labor Rate NTE			All Inclusive Hourly Billing Rate NTE
Engineer IV (ENG4)	\$72.98	\$129.36	\$21.89	\$224.23
Engineer V (ENG5)	\$82.95	\$147.04	\$24.89	\$254.87
Engineer VI (ENG6)	\$96.60	\$171.23	\$28.98	\$296.81
Engineer VII (ENG7)	\$119.70	\$212.18	\$35.91	\$367.79
Flight Operations Manager (FLOM)	\$81.23	\$143.99	\$24.37	\$249.59
Field Survey Technician I (FST1)	\$28.35	\$50.25	\$8.51	\$87.11
Field Survey Technician II (FST2)	\$30.62	\$54.28	\$9.19	\$94.10
Field Survey Technician III (FST3)	\$34.67	\$61.45	\$10.40	\$106.52
Field Survey Technician IV (FST4)	\$37.14	\$65.83	\$11.14	\$114.12
GIS Analyst II (GIA2)	\$47.25	\$83.76	\$14.18	\$145.18
GIS Analyst III (GIA3)	\$51.99	\$92.15	\$15.60	\$159.74
GIS Analyst IV (GIA4)	\$55.65	\$98.65	\$16.70	\$170.99
GIS Manager (GISM)	\$61.95	\$109.81	\$18.59	\$190.35
Graphic Designer II (GRD2)	\$48.30	\$85.62	\$14.49	\$148.41
Graphic Designer III (GRD3)	\$51.65	\$91.55	\$15.49	\$158.69
Geospatial Technician I (GST1)	\$41.18	\$73.00	\$12.35	\$126.53
Geospatial Technician II (GST2)	\$45.00	\$79.77	\$13.50	\$138.27
Geospatial Technician III (GST3)	\$51.50	\$91.29	\$15.45	\$158.24
Geospatial Technician IV (GST4)	\$64.18	\$113.77	\$19.25	\$197.20
Hydrographer I (HYD1)	\$32.49	\$57.58	\$9.75	\$99.81
Hydrographer II (HYD2)	\$35.09	\$62.19	\$10.53	\$107.80
Hydrographer III (HYD3)	\$42.00	\$74.45	\$12.60	\$129.05
Hydrographer IV (HYD4)	\$61.86	\$109.66	\$18.56	\$190.08
Hydrographer V (HYD5)	\$73.50	\$130.29	\$22.05	\$225.84
Hydrographer VI (HYD6)	\$85.00	\$150.67	\$25.50	\$261.17
Intern I (INT1)	\$27.52	\$48.77	\$8.25	\$84.54
Intern II (INT2)	\$24.05	\$42.63	\$7.21	\$73.89
Landscape Designer I (LAD1)	\$30.87	\$54.72	\$9.26	\$94.85
Landscape Designer IV (LAD4)	\$50.04	\$88.70	\$15.01	\$153.75
Landscape Architect II (LAR2)	\$43.50	\$77.11	\$13.05	\$133.66
Landscape Architect III (LAR3)	\$51.54	\$91.36	\$15.46	\$158.37
Landscape Architect IV (LAR4)	\$63.53	\$112.61	\$19.06	\$195.19
Landscape Architect V (LAR5)	\$65.61	\$116.30	\$19.68	\$201.59
Office Survey Technician I (OST1)	\$35.18	\$62.35	\$10.55	\$108.08
Office Survey Technician II (OST2)	\$35.28	\$62.54	\$10.58	\$108.40
Office Survey Technician III (OST3)	\$42.71	\$75.71	\$12.81	\$131.24
Office Survey Technician IV (OST4)	\$48.15	\$85.35	\$14.45	\$147.95

## Actuals Not To Exceed Table (ANTE)

### David Evans and Associates, Inc.

JOB CLASSIFICATIONS	2025	Overhead NTE 177.26%	Fixed Fee NTE 30.00%	2025
	Labor Rate NTE			All Inclusive Hourly Billing Rate NTE
Office Survey Technician V (OST5)	\$50.83	\$90.10	\$15.25	\$156.18
Office Survey Technician VI (OST6)	\$56.00	\$99.27	\$16.80	\$172.07
Project Accountant II (PAC2)	\$37.91	\$67.19	\$11.37	\$116.47
Project Accountant III (PAC3)	\$43.58	\$77.25	\$13.07	\$133.90
Project Accountant IV (PAC4)	\$49.35	\$87.48	\$14.81	\$151.63
Project Accountant V (PAC5)	\$53.32	\$94.51	\$16.00	\$163.83
Party Chief I (PCH1)	\$38.33	\$67.93	\$11.50	\$117.76
Party Chief II (PCH2)	\$44.18	\$78.31	\$13.25	\$135.75
Party Chief III (PCH3)	\$50.69	\$89.85	\$15.21	\$155.74
Party Chief IV (PCH4)	\$58.28	\$103.30	\$17.48	\$179.06
Party Chief V (PCH5)	\$65.00	\$115.22	\$19.50	\$199.72
Project Controls Specialist I (PCS1)	\$41.00	\$72.68	\$12.30	\$125.98
Project Controls Specialist II (PCS2)	\$48.00	\$85.08	\$14.40	\$147.48
Project Controls Specialist III (PCS3)	\$53.97	\$95.67	\$16.19	\$165.83
Project Controls Specialist IV (PCS4)	\$63.29	\$112.18	\$18.99	\$194.45
Project Controls Specialist V (PCS5)	\$72.44	\$128.41	\$21.73	\$222.58
Project Coordinator I (PJC1)	\$33.50	\$59.38	\$10.05	\$102.93
Project Coordinator II (PJC2)	\$36.87	\$65.36	\$11.06	\$113.29
Project Coordinator III (PJC3)	\$41.30	\$73.21	\$12.39	\$126.90
Project Coordinator IV (PJC4)	\$46.14	\$81.80	\$13.84	\$141.78
Project Coordinator V (PJC5)	\$51.54	\$91.36	\$15.46	\$158.37
Project Coordinator VI (PJC6)	\$61.50	\$109.01	\$18.45	\$188.96
Project Manager I (PJM1)	\$59.24	\$105.01	\$17.77	\$182.02
Project Manager II (PJM2)	\$71.48	\$126.70	\$21.44	\$219.62
Project Manager III (PJM3)	\$86.58	\$153.47	\$25.97	\$266.03
Project Manager IV (PJM4)	\$106.04	\$187.97	\$31.81	\$325.82
Project Manager V (PJM5)	\$124.95	\$221.49	\$37.49	\$383.92
Project Manager VI (PJM6)	\$138.60	\$245.68	\$41.58	\$425.86
Planner I (PLN1)	\$38.99	\$69.12	\$11.70	\$119.80
Planner II (PLN2)	\$48.74	\$86.41	\$14.62	\$149.77
Planner III (PLN3)	\$61.12	\$108.34	\$18.34	\$187.80
Planner IV (PLN4)	\$72.53	\$128.56	\$21.76	\$222.85
Project Surveyor I (PSV1)	\$56.84	\$100.75	\$17.05	\$174.65
Project Surveyor II (PSV2)	\$56.18	\$99.58	\$16.85	\$172.60
Project Surveyor III (PSV3)	\$65.10	\$115.40	\$19.53	\$200.03
Project Surveyor IV (PSV4)	\$75.60	\$134.01	\$22.68	\$232.29
QA/QC Specialist II (QAC2)	\$43.23	\$76.63	\$12.97	\$132.84

## Actuals Not To Exceed Table (ANTE)

### David Evans and Associates, Inc.

JOB CLASSIFICATIONS	2025	Overhead NTE 177.26%	Fixed Fee NTE 30.00%	2025
	Labor Rate NTE			All Inclusive Hourly Billing Rate NTE
QA/QC Specialist III (QAC3)	\$54.60	\$96.78	\$16.38	\$167.76
QA/QC Specialist IV (QAC4)	\$96.60	\$171.23	\$28.98	\$296.81
Remote Pilot I (RPL1)	\$30.56	\$54.16	\$9.17	\$93.88
Remote Pilot II (RPL2)	\$44.18	\$78.31	\$13.25	\$135.75
Remote Pilot III (RPL3)	\$68.25	\$120.98	\$20.48	\$209.70
Survey Analyst I (SAN1)	\$40.72	\$72.18	\$12.22	\$125.12
Survey Analyst II (SAN2)	\$60.38	\$107.02	\$18.11	\$185.51
Scientist I (SCI1)	\$38.71	\$68.62	\$11.61	\$118.95
Scientist II (SCI2)	\$43.05	\$76.31	\$12.92	\$132.28
Scientist III (SCI3)	\$45.48	\$80.62	\$13.65	\$139.75
Scientist IV (SCI4)	\$76.65	\$135.87	\$23.00	\$235.51
Support Svcs Specialist II (SSS2)	\$23.27	\$41.26	\$6.98	\$71.51
Support Svcs Specialist III (SSS3)	\$32.51	\$57.63	\$9.75	\$99.90
Support Svcs Specialist IV (SSS4)	\$35.00	\$62.04	\$10.50	\$107.54
Support Svcs Specialist V (SSS5)	\$43.00	\$76.22	\$12.90	\$132.12
Support Svcs Specialist VI (SSS6)	\$50.00	\$88.63	\$15.00	\$153.63
Support Svcs Specialist VII (SSS7)	\$58.80	\$104.23	\$17.64	\$180.67
Survey Manager I (SVM1)	\$66.93	\$118.65	\$20.08	\$205.66
Survey Manager II (SVM2)	\$80.85	\$143.31	\$24.26	\$248.42
Survey Manager III (SVM3)	\$85.05	\$150.76	\$25.52	\$261.32



**Washington State  
Department of Transportation**

**Development Division**  
Contract Services Office  
PO Box 47408  
Olympia, WA 98504-7408  
7345 Linderson Way SW  
Tumwater, WA 98501-6504

TTY: 1-800-833-6388  
[www.wsdot.wa.gov](http://www.wsdot.wa.gov)

April 17, 2025

David Evans and Associates, Inc  
703 Douglas Fir Dr.  
Magnolia, TX, 77354

Subject: Acceptance FYE 2024 ICR – Cognizant Review

Dear Marie Fuzzell:

We have accepted your firm's FYE 2024 Indirect Cost Rate (ICR) of 177.26% of direct labor (rate includes 0.90% Facilities Capital Cost of Money) based on the "Cognizant Review" from The Oregon Department of Transportation (ODOT). This rate will be applicable for WSDOT Agreements and Local Agency Contracts in Washington only. This rate may be subject to additional review if considered necessary by WSDOT. Your ICR must be updated on an annual basis.

Costs billed to agreements/contracts will still be subject to audit of actual costs, based on the terms and conditions of the respective agreement/contract.

Any other entity contracting with your firm is responsible for determining the acceptability of the ICR.

If you have any questions, feel free to contact our office at **(360) 704-6397** or via email [consultantrates@wsdot.wa.gov](mailto:consultantrates@wsdot.wa.gov).

Regards,

Schatzie Harvey

Schatzie Harvey (Apr 18, 2025 06:39 PDT)

SCHATZIE HARVEY, CPA  
Contract Services Manager

SH:kb



## City Council Agenda Item Cover Sheet

**Project title:** PlanSource Benefits and Affordable Care Act Platform

**Council Bill #** *interoffice use*

**Agenda dates requested:**

Briefing  
Proposed action  
Consent 1/21/26

Action  
Ordinance  
Public hearing

Yes  No

**Budget amendment:**

Yes  No

**PowerPoint presentation:**

Yes  No

**Attachments:**

PlanSource Service  
Agreement

**Department(s) involved:**

HR

**Contact person:**

Kandy Bartlett

**Phone number:**

425-257-8706

**Email:**

kbartlett@everettwa.gov

**Initialed by:**

*KB*

Department head

Administration

Council President

**Project:** PlanSource Benefits and ACA Platform

**Partner/Supplier:** PlanSource

**Location:** N/A

**Preceding action:** N/A

**Fund:** 503 (Self-Insurance Fund)

### Fiscal summary statement:

PlanSource Order Form #Q-90836 to the service agreement outlines the schedule of fees for month administration.

- Fund: 503 (Self-Insurance Fund)
- Expenditure amount: Approximately \$69,600 in year 1, and \$54,600 in years 2 and 3
- Amount budgeted: \$80,000/year currently

### Project summary statement:

PlanSource will provide 2 services for the City, its employee benefits platform and 1095-C reporting as required under the Affordable Care Act (ACA). Our current benefits platform, which is used by employees to elect their benefits and to initiate changes with vendors, is sunsetting effective 07/01/2026. The bundling of services not only eases administrative burden but reduces overall cost to the City compared to vendors currently utilized.

**Recommendation (exact action requested of Council):** Authorize the Mayor to sign the PlanSource Service Agreement to implement PlanSource products.

**PLANSOURCE SERVICES AGREEMENT**

*Last updated on August 1, 2025*

THIS PLANSOURCE SERVICES AGREEMENT IS ENTERED INTO BETWEEN YOU (THE ENTITY THAT IS A PARTY TO THIS AGREEMENT) AND PLANSOURCE BENEFITS ADMINISTRATION, INC. ("PLANSOURCE") AND GOVERNS YOUR ACCESS TO, USE OF, AND RECEIPT OF PLANSOURCE'S SERVICES (DEFINED BELOW) AND IS EFFECTIVE AS OF THE DATE OF YOUR ACCEPTANCE ("EFFECTIVE DATE").

BY (1) INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT, (2) EXECUTING AN ORDER FORM, OR (3) USING, ACCESSING, OR RECEIVING THE SERVICES ("ACCEPTANCE"), YOU ACCEPT THIS AGREEMENT AND ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND WILL COMPLY WITH THE SAME. IF YOU DO NOT ACCEPT THIS AGREEMENT, THEN YOU MUST NOT ACCESS, USE, OR RECEIVE THE SERVICES. AN INDIVIDUAL ACCEPTING THIS AGREEMENT ON BEHALF OF AN ENTITY REPRESENTS THAT S/HE HAS THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT AND IS AT LEAST 18 YEARS OF AGE.

**1. DEFINITIONS.**

**Affiliate** means an entity controlled by, under common control with, or controlling such entity, where control is denoted by having fifty percent (50%) or more of the voting power (or equivalent) of the applicable entity. Subject to the terms and conditions of this Agreement, your Affiliates may use the Services provided hereunder, and you are responsible for their compliance with this Agreement.

**Agreement** means PlanSource Services Agreement, Product-Specific Terms (as relevant), the Order Form, the Scope of Services (as relevant), and any agreement incorporated herein by reference.

**API** means the application programming interface(s) provided by PlanSource that permits you to access the Subscription Services, if available.

**Authorized User** means an individual authorized by you to use the Subscription Services. You are responsible for the acts and omissions of Authorized Users and any other person who accesses and uses the Subscription Services using your or an Authorized Users' access credentials.

**Benefits Services** means benefits services, such as implementation, benefits administration services, and benefits management, as outlined in the relevant [Scope of Services](#), which is incorporated herein by reference.

**Confidential Information** means all non-public information disclosed by a party ("Disclosing Party") under this Agreement to the other party ("Receiving Party"), whether orally or in writing, that is designated as "confidential" at the time of disclosure or that reasonably should be understood to be confidential given the nature of the information and/or the circumstances of disclosure, including, without limitation: the existence of the Agreement between the parties, the terms and conditions of the Agreement (including pricing), business and marketing plans, technology and technical information, products and product plans, designs, and roadmaps (including features, functionality and PlanSource content), and business processes, trade secrets, financial data, and know-how.

**End User** means, if you are an employer group, your employees, former employees, or other participant(s).

**End User Data** means information and data provided from you, your Authorized User, or End User to PlanSource in the course of accessing or using the Subscription Services.

**Malicious Code** means malicious code, Trojan horses, malware, spam, viruses, or other destructive technology.

**Order Form** means an order form or document issued by PlanSource that specifies the Services to be provided hereunder along with pricing and other related information.

**Provider** means any third party that you have separately and independently engaged for other services, including your designated carrier; payroll, service, or insurance provider; broker of record; auditor, or other agent.

**Services** means Subscription Services, Benefits Services, and any other products provided by PlanSource or its authorized third parties to you.

**Subscription Services** means PlanSource software-as-a-service, API, and Software made available by PlanSource to you, which includes updates, new releases, versions, modifications, or enhancements, on a subscription basis.

**Software** means object code versions of any downloadable software provided by PlanSource to you, which may include an agent or progressive web application to access the Subscription Services, and which includes updates, new releases, versions, modifications, or enhancements, pursuant to this Agreement.

## **2. GRANT; NO FEE ACCESS.**

**2.1 Grant.** Upon payment of fees and subject to compliance with this Agreement, PlanSource grants you a limited, revocable, non-exclusive, non-transferable, non-sublicensable, right during the Term (defined below) to access and use the Subscription Services for Customer's internal business purposes as well as access to and use of the other Services available under this Agreement.

**2.2 No Fee Access.** If Subscription Services are provided to Customer for evaluation, demonstration, beta, release candidate, or free purposes, PlanSource hereby grants to you, subject to your compliance with this Agreement, a limited, revocable, non-exclusive, non-transferable, non-sublicensable right to access and use evaluation, demonstration, beta, or release candidate features and functionality or free versions of the Subscription Services pursuant to the terms of the Agreement. Unless as otherwise agreed between the parties, Subscription Services provided for evaluation, demonstration, beta, or release candidate purposes shall not be used for production use, and your access and use right shall terminate on the end date of the predetermined period or immediately upon notice from PlanSource in its sole discretion, whichever occurs first. YOU ACKNOWLEDGE AND AGREE THAT THE SUBSCRIPTION SERVICES PROVIDED UNDER THIS SECTION ARE PROVIDED ON AN "AS-IS" BASIS AND WITHOUT ANY INDEMNIFICATION, SUPPORT, OR WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER STATUTORY, EXPRESS OR IMPLIED, AND PLANSOURCE HEREBY DISCLAIMS AND EXCLUDES ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. Except to the extent such terms conflict with this Section, all other terms of this Agreement shall apply to the Services provided for evaluation, demonstration, beta, release candidate, or free purposes.

## **3. USE OF SERVICES; RESTRICTIONS.**

**3.1 Use of Services.** You acknowledge, agree, and warrant that you: (i) will be responsible for your, your Authorized Users', and End Users' activity and use of the Services and compliance with applicable laws and regulations, and, if you become aware of any violation, will immediately terminate the offending party's access to the Services; (ii) will utilize the latest version of the Services, including any API or Software, and only utilize the Services with properly licensed software and applications; (iii) are able to legally process and provide End User Data to PlanSource and will be solely responsible for the procurement, accuracy, security, quality, integrity, and legality of the same; and (iv) are responsible for the security, completeness, and accuracy of your registration, account, and billing information (and will promptly notify PlanSource of any unauthorized access or use of the same).

**3.2 Restrictions.** You shall not (and shall not permit your Authorized Users or End Users to), directly or indirectly: (a) exceed your rights to use the Services pursuant to this Agreement and the Order Form; (b) make any Services available to anyone other than you, your Authorized Users, or End Users, or use any Services for the benefit of anyone other than you or your Affiliates; (c) sell, resell, license, sublicense, distribute, rent, lease, loan, or otherwise transfer any Services; (d) reverse engineer, decompile, or disassemble, or otherwise obtain or attempt to create, derive, or obtain the source code or unauthorized access of the Services; (e) modify, translate, enhance, or

otherwise change the Services or prepare derivative works of the Services unless expressly agreed between the parties; (f) use the Services to violate third party rights or applicable laws or to process unauthorized, infringing, libelous, unlawful, or tortious data that you are not authorized to process; (g) use the Services to store or transmit Malicious Code or interfere with, impair, or disrupt the integrity or performance of the Services or any party's use of the Services; (h) use or otherwise exploit the Services for the purposes of benchmarking, competitive analysis, or the development of a competing software product; (i) circumvent or attempt to circumvent any methods employed by PlanSource to control access to the components, features, or functions of the Services; (j) conduct security testing on PlanSource's infrastructure, Services, or other products; or (j) remove, obscure, or alter any proprietary notices, including trademark or copyright notices, from the Services.

**4. OWNERSHIP; FEEDBACK; END USER DATA; PROTECTION.**

**4.1 Ownership.** PlanSource (or its licensors) is the sole and exclusive owner(s) of all right, title, and interest in and to the Services and PlanSource's proprietary property (including all improvements, enhancements, or modifications of the foregoing or any other intellectual property or proprietary rights) and reserves and retains all right, title and interest in and to the same.

**4.2 Feedback.** You may provide suggestions, comments, or other feedback to PlanSource with respect to the Services ("Feedback"). End User grants PlanSource a worldwide, royalty-free, fully-paid, worldwide, transferable, sublicensable, irrevocable and perpetual license to use and incorporate the Feedback for any purpose, but only to the extent that any such Feedback does not incorporate any of your identifying information.

**4.3 End User Data.** As between you and PlanSource, you are the sole and exclusive owner of all right, title and interest in and to the End User Data and reserve all right, title and interest in and to the End User Data not expressly granted under the Agreement. You shall retain copies of such End User Data. You grant PlanSource the right to host and process End User Data for providing and improving the Services and to support you under this Agreement. If you choose to use third party systems and applications with the Subscription Services, or you authorize or direct PlanSource to provide or exchange such End User Data to a Provider, you grant PlanSource permission to allow such third-party systems and applications or Provider(s) to access, receive, or exchange such End User Data with such third-party systems and applications or Provider(s), as appropriate. PlanSource will access data or information that constitutes classified information or protected health information ("PHI") as defined under the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and to the extent that you are providing PlanSource with access to PHI, the parties shall process PHI in accordance with PlanSource's Business Associate Agreement, which is incorporated by reference.

**4.4 Protection.** During the Term, each party shall comply with its respective obligations under applicable data protection and privacy laws, and each party shall maintain a security program that is reasonably designed to protect the security of, and prevent unauthorized access to, Confidential Information and End User Data. Such security program shall include implementation of appropriate administrative, technical, and physical safeguards.

**5. BENEFIT SERVICES.** Benefit Services shall be outlined in the PlanSource Scope of Services, which shall be incorporated hereto by reference. PlanSource will perform its Services in a professional and workmanlike manner. You will cooperate with PlanSource, as necessary, in the delivery of such Services and make available personnel and information and take other action(s) as PlanSource may reasonably request and require. Any delays or failures resulting from your failure to cooperate will not impose any liability upon PlanSource.

**6. TERM AND TERMINATION.**

**6.1 Term of Agreement.** This Agreement commences on the Effective Date and will continue for the period specified in the applicable Order Form ("Initial Term"). Unless otherwise agreed, the Agreement will automatically renew for successive renewal terms upon the expiration of the Initial Term and any renewal term thereafter (each a "Renewal Term," and collectively with the Initial Term, the "Term"). Each Renewal Term will be the same length as the Initial Term unless otherwise specified at the time of renewal.

**6.2     Termination.** Either party may terminate this Agreement by providing the other party with at least ninety (90) days prior written notice of their intention not to renew the Agreement prior to the end of the applicable Term and such termination will be effective at the end of the then-current Term. This Agreement may be earlier terminated by either party (a) if the other party materially breaches this Agreement and fails to cure such breach within ninety (90) days or after receiving written notice of such breach from the other party, except the cure period for non-payment is ten (10) days; or (b) immediately upon written notice, if you or your Authorized User(s) infringe upon or misappropriate PlanSource's intellectual property rights, or if you become insolvent or cease to operate in the ordinary course, make an assignment for the benefit of creditors, or becomes the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding.

**6.3     Effect of Termination.** Upon termination of this Agreement, you shall immediately cease use of the Services and will download End User Data prior to such termination. Following termination, PlanSource shall have no obligation with respect to storage of End User Data and may, in its sole discretion, permanently delete End User Data in accordance with its internal policies and procedures. Any termination or expiration shall not relieve you of your obligation to pay all fees outlined in the Order Form(s) ("Fees"), and any provisions, which by their express terms survive or by their nature should survive, shall survive any termination of this Agreement.

**7.     FEES AND TAXES.** You will pay all Fees specified in the applicable Order Form(s) and shall provide PlanSource with accurate and complete billing information and payment method. Services purchased under an Order Form are non-cancelable and non-refundable. You may, at any time, purchase additional Services and may be required to execute a new Order Form related to such Services. If you exceed your quantity commitment outlined in the Order Form, additional charges will be applied to such actual use. If you, in good faith, dispute Fees outlined in an invoice, you must notify PlanSource within ninety (90) days from receipt of such invoice; failure to do so will waive your right to dispute such Fees. If any undisputed amount is overdue and you fail to cure such nonpayment, PlanSource may, without limiting its other rights and remedies, suspend the Services. The Fees and all other payments hereunder do not include taxes, duties, tariffs, levies, withholdings and similar assessments of any nature (including without limitation, sales, use, and value- added and withholding taxes), assessable by any jurisdiction whatsoever (collectively, "Taxes"), other than taxes based on PlanSource's net income. You are responsible for the payment of all Taxes associated with its purchases hereunder.

**8.     CONFIDENTIALITY.** The Receiving Party will: (i) hold the Disclosing Party's Confidential Information in confidence and use reasonable care to protect the same; (ii) restrict disclosure of such Confidential Information to those employees or agents with a need to know such information and who are under a duty of confidentiality respecting the protection of Confidential Information substantially similar to those of this Agreement; and (iii) use Confidential Information only for the purposes for which it was disclosed. The restrictions will not apply to Confidential Information, to the extent it (a) is (or, through no fault of the Receiving Party, has become) generally available to the public; (b) was lawfully received by the Receiving Party from a third party without such restrictions; (c) was known to the Receiving Party without such restrictions prior to receipt from the Disclosing Party; (d) was independently developed by the Receiving Party without breach of this Agreement or access to or use of the Confidential Information; or (e) disclosure of Confidential Information was approved in writing by the Disclosing Party. The Receiving Party may disclose Confidential Information to the extent the disclosure is required by law, regulation, or judicial order, provided the Receiving Party will provide prompt notice to the Disclosing Party, where permitted, of such order and will take reasonable steps to contest or limit such disclosure.

**9.     DISCLAIMER.**

**9.1     ERISA.** PlanSource will perform certain Services under this Agreement for you. Such Services will not include or imply any discretionary control or discretionary authority over the management of any employee benefits plans ("Plan(s)"), or any authority or control over management or disposition of any assets of any Plan(s), or any discretionary authority or discretionary responsibility in the administration of any Plan(s). As to any Plan(s), PlanSource is not and will not be deemed to be a "fiduciary", an "administrator" or "plan administrator", or "plan sponsor," as those terms are defined in or referred to in the Employee Retirement Income Security Act of 1974 and regulations thereunder, as amended ("ERISA") or other applicable law or regulation. PlanSource has no power to

make any decisions about the policy, interpretations, practices or procedures of any Plan(s). You shall have sole responsibility for the Plan(s). PlanSource has no obligation to maintain or provide any Plan(s) documents or related forms, including to any Provider or regulating party, or make any determinations under any such Plan(s) or forms. To the extent the Services require PlanSource to assist you as administrator of a Plan(s), the performance of such Services will consist of only ministerial functions enumerated in U.S. Department of Labor Regulation §2509.75-8, D-2 (including, without limitation, those relating to report preparation required by governmental agencies, employee communications material, recommendations regarding Plan(s) administration and several other ministerial functions). PlanSource will perform the Services within the framework of policies, interpretations, rules, practices, and procedures you or the administrator of the Plan(s) establishes. You or the administrator of the Plan(s) shall review on a continuing basis all Services PlanSource provides and shall be responsible for requesting any modifications to any Services.

**9.2 GENERAL.** THE SERVICES PROVIDED HEREUNDER ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. PLANSOURCE DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ACCURACY, RELIABILITY, SECURITY, LOSS OR CORRUPTION OF YOUR DATA, QUIET ENJOYMENT, OR ABSENCE OF DEFECT RELATING TO THE SERVICES OR RESULTS OF THE SAME. YOU ASSUME ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES ARE ACCURATE AND SUFFICIENT FOR YOUR PURPOSES AND ASSUME RESPONSIBILITY AND ENSURE MANUAL REVIEW OF ANY OUTPUT RESULTING FROM ANY AI FUNCTIONALITY. PLANSOURCE SPECIFICALLY DISCLAIMS RESPONSIBILITY FOR SYSTEMS, APPLICATIONS, AND PROVIDERS WITH WHICH YOU MAY UTILIZE THE SERVICES.

**10. LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY UPON WHICH THE LIABILITY IS BASED. AS YOUR SOLE AND EXCLUSIVE REMEDY, THE MAXIMUM TOTAL LIABILITY OF PLANSOURCE TO YOU WILL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED IN AGGREGATE, THE TOTAL AMOUNTS PAID TO PLANSOURCE FOR THE SERVICES THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVEN RISE TO THE CLAIM.

**11. INDEMNIFICATION.** You will indemnify and hold harmless PlanSource and its affiliates, officers, directors, employees, and agents, from and against any claim or liability arising out of or due to: End User Data; your (or your Authorized User’s or End User’s) use of the Services in violation of PlanSource’s or any third party rights, including any intellectual property or privacy rights, or any applicable laws; or your misuse of the Services. PlanSource shall notify you of any claims for which it seeks indemnification. PlanSource shall reasonably cooperate with you, although you shall immediately take control of the defense and investigation of such claim and shall employ counsel approved by PlanSource, such approval not to be unreasonably withheld, to defend the same, at your sole cost and expense. PlanSource’s failure to timely notify you under this Section will not relieve you of your obligations under this Section except to the extent you are materially prejudiced due to such failure. PlanSource may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. You shall not settle any claim without PlanSource’s prior written consent, which shall not be unreasonably withheld.

**12. MISCELLANOUS.**

**12.1 Counterparts; Modification.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which, taken together, shall be deemed to constitute the entire Agreement and may be used as evidence of the execution of the Agreement to the same extent as that of an original signature. This Agreement and any Order Form may be modified or amended by a written amendment signed by both parties.

**12.2 Relationship.** The parties are independent contractors in the performance of the Agreement, and nothing herein will create or imply any partnership, agency, or joint venture. Neither party will have or hold itself out to third

parties as having authority to bind or enter into any agreement on the other party's behalf. There are no third-party beneficiaries under this Agreement.

**12.3 Choice of Law.** The laws of the state of Delaware, without giving effect to its principles of conflicts of law, will govern all disputes arising out of this Agreement. Venue for any claim regarding this Agreement will be exclusively in state or federal court located in New Castle County, Delaware. If for any reason, a court of competent jurisdiction finds any provision or portion of this Agreement to be invalid or unenforceable, the validity or enforceability of the remainder of this Agreement will not in any way be affected or impaired.

**12.4 Notices.** Any notices or other communications required in this Agreement (aside from billing requests or questions) will be in English and in writing and will be deemed to have been duly given to a party upon receipt, upon receipt, if sent by certified or registered mail, return receipt requested. Notice to PlanSource must be sent to: PlanSource Benefits Administration, Inc., Attn: General Counsel, 122 W. Pine St., Suite 203, Orlando, FL 32801 with a copy sent to: [legal@plansource.com](mailto:legal@plansource.com). Notice to Customer must be sent to the contact mailing address or email address on the most recent Order Form.

**12.5 Force Majeure.** Neither party is responsible for nonperformance or delay in performance of its obligations (other than payment of Fees) due to causes, reason, event or circumstances beyond its reasonable control, such as acts of God or nature, strike, blockade, war, act of terrorism, riot, Internet outages, failure of service providers (including cloud service providers), failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency, or any other cause, reason, event or circumstances whether or not similar to those listed in this Section.

**12.6 Assignment.** This Agreement and the rights and obligations hereunder may not be assigned, in whole or in part, by either party without the other party's written consent (which shall not be unreasonably withheld); provided, without consent, either party may assign this Agreement to another party in connection with a change of control, acquisition, or sale of all or substantially all of its assets. This Agreement shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the parties hereto. Any attempted assignment in violation of this Section is void.

**12.7 Severability; Waiver.** If any provision is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect. The parties may waive a breach of this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. Failure or delay in exercising any right or remedy or in requiring the satisfaction of any condition operates as a waiver or estoppel of any right, remedy or condition.

**12.8 Dispute Resolution.** Prior to initiating any claim or proceeding under, arising out of, or in connection with the Agreement, the parties will make a good faith effort to resolve the underlying dispute, including by: (a) elevating the issue to management of each party within twenty (20) business days; and (b) reasonably sharing relevant documents, records and other materials, as reasonably requested, in connection with the dispute. You agree that regardless of any statute or law to the contrary, any claim arising out of, related to or connected with the use of the Services must be filed within one year after such claim arose.

**12.9 Entire Agreement.** This PlanSource Services Agreement, the Order Form(s), Product-Specific Terms, and any agreement incorporated herein by reference constitute the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings or agreements between the parties with respect to such subject matter. Any terms contained in any other documentation provided by you to PlanSource are void and will not become part of the Agreement or bind the parties. There are no representations, agreements, arrangements, or understandings between the parties relating to the subject matter of this Agreement that are not fully expressed herein.

**PRODUCT-SPECIFIC TERMS**

If there is a conflict between these Product-Specific Terms and the PlanSource Services Agreement, these Terms will control solely with regard to the specific Services.

**Enhanced Services.** You, your Authorized Users, and your End Users may use various PlanSource features that leverage generative and agentic AI to enhance the performance and efficiency of the Services. PlanSource shall ensure that AI features used in connection with the Services comply with applicable federal and state laws and regulations, but not limited to HIPAA and ERISA. Due to the nature of machine learning and technology powering generative AI, outputs may not be unique to you. You are responsible for your use of any output generated by the generative AI functionality, including evaluating the accuracy of such output.

**NACHA.** The parties agree that they (i) will comply with applicable NACHA Operating Rules and Guidelines (“NACHA Rules”) as such rules may be revised from time to time, including without limitation all applicable NACHA Rules related to agreements with, and obligations regarding, Originators of ACH Entries (as those terms are defined in the NACHA Rules), and (ii) will provide the other party with reasonable assistance as may be required to comply with applicable NACHA Rules. If Customer makes any payments under the Agreement by electronic funds transfers through the Automated Clearing House network (ACH), Customer authorizes PlanSource to (i) initiate debit entries to the account at the depository financial institution identified by Customer; and (ii) debit Customer’s account in such amounts and times to pay PlanSource for fees associated with the Services. This authorization will remain in full force and effect until PlanSource receives written notice from you of your intent to terminate the Agreement. PlanSource will charge a fee of at least \$35.00 for each non-sufficient funds transaction. The ACH network is controlled and managed by the National Automated Clearinghouse Association (“**NACHA**”) and its member organizations. Where submitting charges over the ACH network, End User must comply with the Terms and Conditions for Recurring Electronic Funds (“**EFT**”), the NACHA Operating Rules, as amended from time to time (the “**NACHA Rules**”), the PlanSource Recurring Electronic Funds Transfer (EFT) Client Authorization Agreement (“**EFT Agreement**”), and any additional ACH authorization or electronic funds transfer agreements provided to End User.


**PLANSOURCE ORDER FORM #Q-90836**
*Offer valid until: January 5, 2026*
**BILLING INFORMATION**

Customer Name:	THE CITY OF EVERETT	Customer Address:	2930 Wetmore Avenue
Customer Contact Name and Email:	Chelsi Bardwell cbardwell@everettwa.gov	Customer Address:	Everett, Washington 98201
Billing Contact Name and Email, if different from above:	Ana Mechler amechler@everettwa.gov	Billing Address, if different from above:	
<b>Recurring Services</b>			
Target Go-Live** Date:	June 1, 2026	Services Term Length:	36 Months
Start Services Term Date:	June 1, 2026	End Services Term Date:	5/31/2029

*\*PlanSource utilizes ACH for payment processing.*
*\*\*Intended launch of the Services to Customer's participants.*
**RECURRING SERVICES**

Recurring Services	Basis	Billing Frequency	Quantity	Min. Quantity	Price per Basis
Benefits Platform Subscription Fees	Benefits Eligible Employees	Monthly	1,200	1,200	USD 3.25
Benefits Platform Monthly Subscription Fees for Benefits-Ineligible Employees	Ineligible employees	Monthly	1	0	USD 0.25
ACA Measurement & Reporting	Per Employee	Monthly	1,200	1,200	USD 0.50

**OTHER SERVICES**

Other Services	Basis	Billing Frequency	Quantity	Price per Basis
Implementation	Flat Fee	One-Time	1	USD 15,000.00
ACA Fulfillment	Per mailed form		1	USD 2.50

**Other Charges:** Customer agrees to pay PlanSource fees for its use of the Services above based upon the outlined price per Unit, subject to the Minimum Quantity above. For any Services performed that are not outlined in this Order Form, additional fees will apply.

As of the latest signature date below ("Order Form Effective Date"), this Order Form is made by and between PlanSource Benefits Administration, Inc. ("PlanSource") and Customer. The term of this Order Form shall commence on the Order Form Effective Date and will end on the End of Services Term Date ("Term"). Subject to the terms and conditions in this Order Form and the Agreement, PlanSource will provide the above-mentioned Services to the Customer pursuant to the [PlanSource Service Agreement](#) (the "Agreement"). Capitalized terms not defined herein shall have the same meaning as detailed under the Agreement.

Customer agrees that billing will commence upon the receipt of an invoice. This Order Form is not cancellable. The Fees set forth herein are in USD, not refundable, and are exclusive of all applicable taxes, levies, duties, VAT, or GST unless otherwise agreed. Taxes may be outlined in the invoice, and the Customer will increase the amount payable to PlanSource by the amount of such taxes so that PlanSource receives the full amount of all fees and expenses. Taxes will apply unless Customer provides PlanSource with a valid tax exemption certificate.

If an invoiced amount is not received by PlanSource by the due date, then without limiting PlanSource's other rights or remedies, overdue charges will accrue late interest at the rate of 1.5% of the outstanding balance per month or the maximum rate permitted by law, whichever is greater. For the Initial Term, Fees shall remain fixed. If at any point during the Term, Customer no longer qualifies for a PlanSource discount, the Fees will increase appropriately.

In the event of a conflict between the terms of the Agreement and this Order Form, the terms of this Order Form shall control. By signing below, each party acknowledges that it has carefully read and fully understood this Order Form and have caused this Order Form to be executed by their respective duly authorized representatives as of the Order Form Effective Date.

**PLANSOURCE BENEFITS ADMINISTRATION, INC.**

**THE CITY OF EVERETT**

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Name (Print):** \_\_\_\_\_

**Name (Print):** \_\_\_\_\_

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

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

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

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



## City Council Agenda Item Cover Sheet

**Project title:** Everett 2044 Housekeeping Amendments Ordinance

**Council Bill #** *interoffice use*

CB 2512-91

**Agenda dates requested:**

Briefing & 1<sup>st</sup> Reading 1/7/26  
2<sup>nd</sup> Reading 1/14/26  
Action 1/21/26  
Ordinance X  
Public Hearing 1/14/26

**Budget amendment:**

Yes  No

**PowerPoint presentation:**

X Yes  No

**Attachments:**

Staff Memo  
Proposed Ordinance -  
Development Regulations

**Department(s) involved:**

Planning

**Contact person:**

Yorik Stevens-Wajda

**Phone number:**

425-257-8725

**Email:**

[ystevens@everettwa.gov](mailto:ystevens@everettwa.gov)

**Initialed by:**

YSW

Department head

Administration

Council President

**Project:** Everett 2044 Comprehensive Plan and Development Regulations Periodic Update

**Partner/Supplier:** NA

**Location:** Citywide

**Preceding action:** Ordinance 4102-25

**Fund:** NA

**Fiscal summary statement:**

None

**Project summary statement:**

The Everett 2044 Comprehensive Plan and Development Regulation Periodic Update was adopted June 18, 2025, via ordinances [4101-25](#) and [4102-25](#), with an effective date of July 8, 2025. The [comprehensive plan](#) is available at [everettwa.gov/3365/2044-Comprehensive-Plan](http://everettwa.gov/3365/2044-Comprehensive-Plan). The updated [development regulations](#) are available through the online municipal code viewer at [everett.municipal.codes/EMC/](http://everett.municipal.codes/EMC/)

In the months since adoption of the development regulations, staff have identified errors and provisions that are difficult to interpret accurately and consistently. This is the first of what could be several housekeeping ordinances to correct errors and clarify provisions in the development regulations.

The planning commission adopted [PC Resolution 25-02](#) on November 18, 2025, recommending approval of a set of amendments to correct errors and clarify regulations.

**Recommendation (exact action requested of Council):**

Adopt an Ordinance for Everett 2044 Housekeeping Amendments to Development Regulations Recently Adopted through the Everett 2044 Periodic Update, AMENDING EMC Chapters 14.16, 19.03, 19.04, 19.05, 19.06, 19.08, 19.09, 19.13, 19.22, 19.25, 19.34, 19.35, 19.38, 19.39, and 19.40.



**ORDINANCE NO. \_\_\_\_\_**

**An ORDINANCE Adopting Housekeeping Amendments to Development Regulations Recently Adopted through the Everett 2044 Periodic Update, AMENDING EMC Chapters 14.16, 19.03, 19.04, 19.05, 19.06, 19.08, 19.09, 19.13, 19.22, 19.25, 19.34, 19.35, 19.38, 19.39, and 19.40.**

**WHEREAS,**

- A.** The Everett 2044 Comprehensive Plan and Development Regulation Periodic Update was adopted June 18, 2025, with an effective date of July 8, 2025, via ordinances 4101-25 and 4102-25; and
- B.** In the months following the adoption of the development regulations in the Everett 2044 periodic update, staff have identified errors and provisions that are difficult to interpret accurately and consistently; and
- C.** This is the first of what could be several housekeeping ordinances to correct errors and clarify provisions in the development regulations; and
- D.** The amendments contained in this ordinance maintain consistency with the Growth Management Act and are consistent with its planning goals; and
- E.** The amendments contained in this resolution are consistent with and supportive of goals, policies, and implementation strategies in the Everett Comprehensive Plan, including:
  - 1. Goal DD 2: Building and site designs are based on clear and predictable development regulations via a menu of options.
  - 2. DD-1 Maintain a continuous, consistent, walkable, and human-scaled pedestrian environment at the interface of buildings and the public realm. Promote interaction between indoor and outdoor activities to create an inclusive and vibrant public realm.
  - 3. DD-20 Be attentive to ways code or policies may inadvertently disadvantage small-scale developments and developers, and where possible take steps to rectify imbalances.
  - 4. Policy HO-2 Adopt flexible development regulations that streamline the local review process with clear objective standards, encouraging innovative and context-sensitive development.
  - 5. HO-12 Boost homeownership opportunities through administrative, regulatory, and financial benefits.

6. HO-21 Implement inclusionary zoning requirements in areas of the city subject to high displacement risk.
7. HO-24 Evaluate the cost and supply implications of proposed regulations, policies, and procedures affecting housing development and ensure that they promote affordability, development, and housing diversity.
8. ED-34 Encourage predictability and consistency in the City's land use regulations, while also allowing for flexibility and creativity in the site development process.
9. Goal EAI-5: Everett implements the Comprehensive Plan in a coordinated and efficient manner in accordance with state law and in the best interests of city residents.
10. Policy EAI-17 Implement the Comprehensive Plan through city development regulations, programs, budgets, and functional plans, ensuring that each are consistent and mutually supportive.

F. The Planning Commission reviewed the amendments contained in this ordinance, including holding a briefing on August 19, 2025 and a public hearing on September 16, 2025; and

G. The Planning Commission considered the factors in EMC 15.03.300(C) in reviewing the proposed development regulation text amendments in this ordinance; and

H. The Planning Commission recommends, via Planning Commission Resolution 25-02, approval of the amendments contained in this ordinance, finding that the proposed amendments are consistent with the Everett comprehensive plan, bear a substantial relation to public health, safety and welfare, and promote the best long-term interests of the Everett community.

I. The city's responsible official issued a Determination of Significance and Adoption of Everett 2044 Periodic Update Final Environmental Impact Statement on \_\_\_\_\_; and

J. Notice of the proposed updated comprehensive plan was sent to the Washington State Department of Commerce on October 14, 2025 and a letter of receipt was received the next day; and

K. The amended development regulations contained in this ordinance maintain consistency with the GMA and are consistent with the GMA planning goals; and

L. The amended development regulations contained in this ordinance are consistent with and supportive of the Everett Comprehensive Plan; and

M. The development regulations amendments contained in this ordinance were prepared following the procedural requirements in RCW 36.70A and WAC 365-196; and

N. The development regulations amendments contained in this ordinance were prepared following the procedural requirements in EMC 15.02.095; and

O. The City Council considered the factors in EMC 15.03.300 in reviewing the proposed development regulations amendment in this ordinance and based approval, in part, on the following findings:

1. The proposed development regulation amendments are consistent with the Everett comprehensive plan;
2. The proposed development regulation amendments bear a substantial relation to public health, safety or welfare;
3. The proposed development regulation amendments promote the best long-term interests of the Everett community

P. On \_\_\_\_\_, the Everett City Council held a public hearing, after proper notice, and considered public comment and the entire record related to the amendments contained in this ordinance.

**NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:**

**Section 1.** EMC 14.16.430 is hereby amended as follows, with strikeout text deleted and underlined text added.

**14.16.430 Single and multiple metered services—Regulations and charges.**

A. *Residential dwelling units – Separate meters required.* Each residential dwelling unit (as defined by the current edition of the International Residential Code for one- and two- unit dwellings) shall require a separate metered service. The required permit(s) shall be obtained, and a separate metered service shall be installed to each dwelling unit. Each meter shall be charged for water service independently and shall remain liable for a lien for water charges as provided in Section 14.16.850.

1. Where multiple existing dwelling units share a single metered service, separation of the service and installation of a separate metered service to each dwelling unit may be required at the discretion of Public Works.
2. At the discretion of Public Works, a single shared water service and meter may be permitted for a new dwelling unit being added within or attached to an existing one-unit dwelling, provided both units remain under single ownership.

B. *Commercial structures – Single metered service.* Commercial structures (as defined by the current edition of the International Building Code, including multi-family structures with three or more dwelling units) shall provide a single metered service per structure, sized per the current edition of the Uniform Plumbing code.

1. Multiple metered services may be permitted for separate non-residential tenant spaces within a commercial structure at the discretion of Public Works.

**Section 2.** EMC 19.03.030 is hereby amended as follows, with strikeout text deleted and underlined text added.

### **19.03.030, Purpose and application of zone districts**

A. *Agriculture Zone (AG)*. The purpose of the agricultural use zone is to provide and protect areas for certain agricultural uses on lands which are not appropriate for residential, commercial or industrial development at urban intensities.

B. *Residential Zones*.

1. Neighborhood Residential-Constrained. The purpose of the Neighborhood Residential-Constrained zone is to reduce risk from hazards in areas with limited access by providing for a continuation of established development patterns and limiting growth potential.

2. Neighborhood Residential. The purpose of the Neighborhood Residential is to provide for a variety of housing opportunities while limiting the scale of buildings to three floors or less to be complimentary to existing neighborhood scale and bulk.

3. Urban Residential (4 Floors). The purpose of the Urban Residential (4 Floors) zone is to permit moderate-scale residential development in buildings up to up to four floors along with limited opportunities for neighborhood commercial development.

4. Urban Residential (7 Floors). The primary purpose of the Urban Residential (7 Floors) zone is to permit moderate-scale residential development in buildings up to seven floors along with limited opportunities for neighborhood commercial development.

C. *Mixed Use Zones*.

1. *Mixed Use (4 Floors)*. The purpose of the Mixed Use (4 Floors) zone is to provide for low-scale residential and commercial development in buildings up to four floors.

2. *Mixed Use (7 Floors)*. The purpose of the Mixed Use (7 Floors) zone is to provide for medium-scale residential and commercial development in buildings up to seven floors.

3. *Mixed Use (15 Floors)*. The purpose of the Mixed Use (15 Floors) zone is to provide for intensive mixed-use development along transit corridors and around high-capacity transit stations in buildings up to fifteen floors.

4. *Mixed Use (25 Floors-Center City)*. The purpose of the Mixed Use (25 Floors-Center City) zone is to reinforce and enhance the downtown center city that provides local and regional service, retail, entertainment, civic and public uses as well as a variety of urban housing choices in buildings up to twenty-five floors.

D. *Industrial Zones*.

1. *Light Industrial-Mixed Use (LI-MU)*. The purpose of the Light Industrial-Mixed Use (LI-MU) zone is to support existing light industrial and manufacturing uses while providing opportunities for the addition of commercial and residential uses.

2. *Light Industrial (LI)*. The purpose of the light industrial (LI) zone is to support industrial development and uses and those that are highly complementary, prohibit incompatible uses, concentrate employment, and mitigate adverse impacts on adjacent residential zones.
3. *Heavy Industrial (HI)*. The purpose of the heavy industrial zone is to provide for and protect certain areas of the city for heavy manufacturing uses. This zone is also intended to:
  - a. Provide and protect areas of the city for marine-related commerce, while striking a balance with the need for limited commercial uses;
  - b. Preserve Everett's "working waterfront" character; and
  - c. Further the goals of the Everett comprehensive plan and shoreline master program relating to public access to and enjoyment of the shoreline.

E. *Park and Open Space Zone (P-OS)*. The purpose of the park and open space zone is to provide a zoning classification for recreational and open space uses and other compatible public uses on current and future city-owned land, or for public properties characterized by environmental sensitivity and value to be preserved, for the most part, in their undisturbed state, and to provide and protect open space and other natural assets of the community.

F. *Watershed Resource Management (WRM)*. The purpose of the watershed resource management zone is to provide a land use classification which allows for the continuation of existing uses and anticipated future uses for land in the city-owned Chaplain Tract within the corporate limits of Everett. These are lands that are not intended for urban development and are located outside the urban growth boundary. These properties are intended to be used only for municipal service purposes that do not conflict with the maintenance of a safe and adequate water supply for the Everett water system, and which are in accordance with applicable license requirements.

G. *Overlay Zones*.

1. *Historic Overlay Zone (H)*. The purpose of the historic overlay zone is to:
  - a. Establish a regulatory mechanism for the designation and protection of historic sites, buildings, districts and landmarks;
  - b. Provide for methods of modifying the development standards of the underlying zone in the interest of preserving or enhancing the historic features or significance of a particular site; and
  - c. Recognize the depth of historical resources in Everett and their significance to the heritage of the community.
2. *Institutional Overlay Zone (I)*. The purpose of the institutional overlay zone is to allow for various institutional land uses with special needs and impacts to be located in the Everett community in a manner which is compatible with surrounding land uses

through a master plan review process which requires public involvement and provides predictability to the institution and the public.

3. *Planned Development Overlay Zone (PD).* The purpose of the planned development (PD) overlay zone is to allow for commercial, industrial and mixed-use developments which are of a unique character and desirable quality, and which are beneficial to the area in which the property is located and to the community in general. It is the intent of this chapter to provide a public review process through which a planned development may be proposed with alternative standards to those contained in this title, and that the primary basis for city approval of alternative development standards is that the proposal will result in a development which, as a whole, provides public benefits and high quality development that otherwise cannot be realized through conformance to the requirements of this title.

4. *Airport/~~Port~~ and Navy Compatibility Overlay Zone (APN).* The purpose of the ~~APN~~ Airport and Navy compatibility zones is to protect Paine Field Airport, ~~Port of Everett~~, and Naval Station Everett from nearby incompatible land uses and development by implementing special development standards and project permit notice procedures.

5. Mixed-Use Centers. The purpose of Mixed-Use Centers is to support significant housing and employment growth in compact and pedestrian-oriented urban places that are connected to public transit and active transportation networks. Mixed-Use Centers include Metro Everett.

**Section 3.** Subsection EMC 19.04.030 “Street-facing dwelling unit façade” is hereby deleted.

**Section 4.** Subsection EMC 19.04.050 “Transit Stop, Frequent” is hereby deleted.

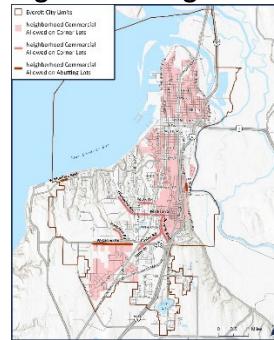
**Section 5.** EMC 19.05.045 is hereby amended as follows, with strikeout text deleted and underlined text added.

#### **19.05.045, Neighborhood Commercial**

A. The purpose of this section is to allow small-scale neighborhood commercial uses in residential areas subject to specific development standards to ensure compatibility. Uses identified in section C are permitted where meeting the criteria in subsection B, subject to the standards in section C.

B. Neighborhood Commercial uses are permitted in residential zones in the following areas:

**Map 5-1 Areas Eligible for Neighborhood Commercial**



1. Corner lots, meaning lots that abut two different and intersecting public streets, within the areas identified in Map 5-1; and
2. In buildings historically used for and built for commercial/~~residential or~~ mixed use, including buildings for which a legal nonconforming use has discontinued or ceased; and
3. Lots abutting the following streets:
  - a. W Casino Rd; and
  - b. S 2<sup>nd</sup> Ave between Zillah St and Eugene St.
  - c. W Mukilteo Blvd between Sound Ave and Upland Ave

C. Allowed Neighborhood Commercial uses:

1. Food or beverage establishment;
2. The following subcategories of Retail Sales and Service: grocery, specialty food stores (bakery, convenience store, ice cream, candy, deli, butcher/meat market, vegetable, beer/wine/liquor), cobbler/shoe repair, tailor, laundromat, barber, hair salon, bookstore, florist, pet store, pharmacy, or similar;
3. Clinic, except in the area bounded by Hoyt Avenue, Lombard Avenue, 10<sup>th</sup> Street, and 14<sup>th</sup> Street;
4. Lodging-Hotels, Motels (limited to five rooms);
5. Veterinary Clinic or Animal Day Care — Limited to Small Animal;
6. Day Care Center, Commercial (limited to 20 children or adults);
7. Entertainment and Recreation — Enclosed in Building (e.g., theater, fitness facility);
8. Offices; and
9. Other uses not listed above if determined through the review process described in Title 15 to be compatible with surrounding properties and the immediate vicinity.

D. Standards for Neighborhood Commercial uses, provided that standards may be modified by the planning director if determined through the review process described in Title 15 to be compatible with surrounding properties and the immediate vicinity:

1. Up to 3,000 square feet gross floor area or 50% of the gross floor area of the ground floor, whichever is larger;
2. Outdoor use areas are subject to administrative use permit and EMC 19.39.050;
3. See EMC 19.06.020 for reduced setbacks for Neighborhood Commercial uses;
4. No minimum off-street parking required;
5. Off-street parking prohibited between the building and the street;
6. No drive through facilities allowed;
7. Hours of operation: limited to 6 am to 11 pm;
8. See Chapter 20.08 for maximum permissible noise levels; and
9. The primary street-facing façade shall have a main entrance door and at least 60 percent of the area transparent windows or doors and the secondary street-facing facade must be 25 percent windows or entrance doors. Windows used to meet this standard must allow views from the building to the street and may not be glass block.

**Section 6.** EMC 19.05.090 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.05.090 Table 5-2 (commercial use table)**

USE	NR-C	NR	UR4	MU4 MU7 MU15 MU25	LI-MU	LI	HI	AG	SPECIAL REGULATIONS
COMMERCIAL USES	(See EMC 19.39.060, Performance regulations—General, regarding requirements to prevent nuisance impacts.)								
Automobile drive-through facility				P <sup>3</sup>					See EMC 19.13.095 for regulations concerning drive-through facilities. <sup>3</sup> Drive through facilities restricted in mixed-use centers. See EMC 19.13.095 for automobile drive through facility requirements.
Auto fuel sales				A <sup>4</sup>	P <sup>4</sup>	P	P		<sup>4</sup> Prohibited in mixed-use centers.

USE	NR-C	NR	UR4	MU4 MU7 MU15 MU25	LI-MU	LI	HI	AG	SPECIAL REGULATIONS
Automobile, light truck or RV sales or rental				P <sup>4</sup>					<sup>4</sup> Prohibited in mixed-use centers.
Equipment sales and rental				A	P	P	P		
Heavy truck and equipment sales					P	P	P		
Automobile and truck service, light; body repair and painting				P <sup>4</sup>	P <sup>4</sup>	P <sup>4</sup>	P <sup>8</sup>		See EMC 19.13.140 for light automobile and truck service, body repair and painting. <sup>4</sup> TOD or pedestrian streets: prohibited use. <sup>8</sup> In HI zone, light vehicle servicing is permitted only in multiple-tenant building or development.
Automobile and truck service, heavy						P			
Automobile dismantling/recycling					P <sup>9</sup>	P	P <sup>9</sup>		<sup>9</sup> Permitted only when completely contained within an enclosed building.
Impound, storage yard, tow yard					P <sup>10</sup>	P <sup>10</sup>	P <sup>10</sup>		<sup>10</sup> Impound, storage and tow yards shall comply with landscaping and screening requirements of Chapter 19.39 EMC.
Casino, mini				P <sup>11</sup>	P <sup>11</sup>				See EMC 19.13.170. <sup>11</sup> See EMC 19.13.170 for Mini-casino regulations, including Map 13-1 indicating where Mini-Casinos are prohibited.
Convention center				P	P				
Clinics		P <sup>1</sup>	P <sup>1</sup>	P <sup>17</sup>	A <sup>17</sup>				<sup>1</sup> Permitted only when meeting the requirements of EMC 19.05.045. <sup>17</sup> In Metro Everett on TOD or pedestrian streets: Clinics are a prohibited use on the ground floor; provided, however, that the following are not considered clinics for the purpose of this restriction: dentists, psychiatrists, chiropractors, physical

USE	NR-C	NR	UR4	MU4 MU7 MU15 MU25	LI-MU	LI	HI	AG	SPECIAL REGULATIONS
									therapists, optometrists or ophthalmologists. <sup>(a)</sup> Government public health agency uses providing clinical services shall be deemed to be a permitted use on the ground floor within the MU or LI1/LI2 zone. <sup>(b)</sup> Health events on a property within the MU or LI1/LI2 zone providing clinical health services to the general public, not exceeding three days in duration and occurring not more than once every ninety days, shall be exempt from the prohibition of clinics on the ground floor.
Day care center, commercial		P <sup>1</sup>	P <sup>1</sup>	P	P	P	P		
Entertainment and recreation—enclosed in building (e.g., theater, fitness facility)		P <sup>1</sup>	P <sup>1</sup>	P <sup>12</sup>	P <sup>12</sup>	P <sup>12</sup>			<sup>1</sup> Permitted when meeting the requirements of EMC 19.05.045. <sup>12</sup> In Metro Everett on TOD or pedestrian streets: Private clubs are a prohibited use on the ground floor.
Entertainment and recreation—not enclosed (e.g., amusement, outdoor arena)				C	A	A	P	C	
Food or beverage establishment		P <sup>1,</sup> <sub>13</sub>	P <sup>1,</sup> <sub>13</sub>	P <sup>14</sup>	P <sup>14</sup> <sub>15</sub>	P <sup>14,</sup> <sub>15</sub>	P <sup>14,</sup> <sub>15</sub>		<sup>1</sup> Permitted only when meeting the requirements of EMC 19.05.045. <sup>13</sup> Taverns, nightclubs and restaurants with live entertainment prohibited. <sup>14</sup> Taverns, nightclubs and restaurants with live, amplified entertainment shall be set back a minimum of one hundred feet from any residential zone. <sup>15</sup> Allowed as an accessory use only.
Lodging—hotels, motels				P	P				

USE	NR-C	NR	UR4	MU4 MU7 MU15 MU25	LI-MU	LI	HI	AG	SPECIAL REGULATIONS
Offices		P <sup>1</sup>	P <sup>1</sup>	P	P <sup>15</sup>	P <sup>15</sup>	P <sup>15</sup>		<sup>1</sup> Permitted only when meeting the requirements of EMC 19.05.045. <sup>15</sup> Allowed as an accessory use only.
Parking, commercial—applicable if principal use									
Retail sales and service		P <sup>1</sup>	P <sup>1</sup>	P	P <sub>20</sub>	P <sup>20</sup>	P <sup>20</sup>		<sup>1</sup> Permitted only when meeting the requirements of EMC 19.05.045.. <sup>20</sup> Permitted as an accessory use for those products produced on premises and related products.
Storage, commercial—enclosed in building (e.g., mini-storage)				A <sup>21, 24</sup>	P <sup>21, 24</sup>	P <sup>24</sup>			<sup>21</sup> TOD or pedestrian streets: prohibited use on the ground floor. <sup>24</sup> Minimum floor area ratio: 2.0
Storage, commercial—not enclosed in building (e.g., boat or RV storage)									
Veterinary clinic or animal day care—limited to small animal		P <sup>1</sup>	P <sup>1</sup>	P	P				Outside runs or other outside facilities for animals are not permitted. Buildings shall be constructed so noise from this use is not audible on residentially zoned lots.
Veterinary clinic or commercial kennels—large animal or commercial kennels					P <sup>4</sup>	P		A	Buildings and outside runs shall be placed and constructed so noise from this use is not audible on residentially zoned lots. <sup>4</sup> Prohibited in mixed-use centers.

<sup>1</sup> Permitted only when meeting the requirements of EMC 19.05.045.

<sup>2</sup> See Industrial Uses. Alcohol production is allowed as a primary use without the requirement to include a restaurant, retail, or tasting room.

<sup>3</sup> Drive through facilities restricted in mixed-use centers. See EMC 19.13.095 for automobile drive through facility requirements.

<sup>4</sup> Prohibited in mixed-use centers.

<sup>5</sup> Reserved.

<sup>6</sup> Reserved.

<sup>7</sup> Reserved.

<sup>8</sup> In the HI zone, light vehicle servicing is permitted only in multiple-tenant building or development.

<sup>9</sup> Permitted only when completely contained within an enclosed building.

<sup>10</sup> Impound, storage and tow yards shall comply with landscaping and screening requirements of Chapter 19.39 EMC.

<sup>11</sup> See EMC 19.13.170 for Mini-casino regulations, including Map 13-1 indicating where Mini-Casinos are prohibited.

<sup>12</sup> In Metro Everett on TOD or pedestrian streets: Private clubs are a prohibited use on the ground floor.

<sup>13</sup> Taverns, nightclubs and restaurants with live entertainment prohibited.

<sup>14</sup> Taverns, nightclubs and restaurants with live, amplified entertainment shall be set back a minimum of one hundred feet from any residential zone.

<sup>15</sup> Allowed as an accessory use only.

<sup>16</sup> Reserved.

<sup>17</sup> In Metro Everett on TOD or pedestrian streets: Clinics are a prohibited use on the ground floor; provided, however, that the following are not considered clinics for the purpose of this restriction: birthing centers, dentists, psychiatrists, chiropractors, physical therapists, optometrists or ophthalmologists.

<sup>(a)</sup> Government public health agency uses providing clinical services shall be deemed to be a permitted use on the ground floor ~~within the MU or LI1/LI2 zone mixed use or industrial zones~~.

<sup>(b)</sup> Health events on a property ~~within the MU or LI1/LI2 zone mixed use or industrial zones~~ providing clinical health services to the general public, not exceeding three days in duration and occurring not more than once every ninety days, shall be exempt from the prohibition of clinics on the ground floor.

<sup>18</sup> Reserved.

<sup>19</sup> Reserved.

<sup>20</sup> Permitted as an accessory use for those products produced on premises and related products.

<sup>21</sup> TOD or pedestrian streets: prohibited use on the ground floor.

<sup>22</sup> Reserved.

<sup>23</sup> Reserved.

<sup>24</sup> Minimum floor area ratio: 2.0.

**Section 7.** EMC 19.06.070 is hereby amended as follows, with strikeout text deleted and underlined text added.

#### **19.06.070, Minimum lot area—Averaging in land divisions.**

In any formal subdivision within the NR and NR-C zones and in short subdivisions the individual lots shall be considered legal lots if the average of the areas of all lots meets the minimum requirement for the district in which the land division is located, and further provided:

A. That no lot shall be less than four thousand square feet with a minimum of fifty feet of width and eighty feet of depth unless in the NR zone where the lot abuts and takes vehicular access from a public alley;

B. On lots with alley access, no individual lot therein shall have an area less than three thousand square feet, be less than thirty feet in width, or less than eighty feet in lot depth. On such lots, the minimum lot frontage requirement shall be not less than thirty feet, and the lot frontage requirements listed elsewhere in this chapter shall not apply;

C. That lot area averaging may not be used to create lots for duplexes or multiple-family dwellings with less lot area than otherwise required by this title for the zone in which the property is located;

D. Not more than a thirty-five percent increase over the required minimum lot area for any single lot shall be credited in computing average lot area;

E. ~~The small lot single family development standards of EMC 19.08.020 shall apply to single-family dwellings on lots with less than five thousand square feet created using the lot area averaging process;~~

F. Critical areas and buffers may not be used as credit for lots utilizing lot size averaging.

**Section 8.** EMC 19.08.010 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.08.010 Intent, applicability, and overview.**

~~This chapter addresses:~~

~~A. Development standards for:~~

~~1. Development in the Neighborhood Residential or Neighborhood Residential Constrained zones, and~~

~~2. In other zones, development of detached one- and two-unit dwellings and any number of townhouses up to three stories in height, along with their accessory structures.~~

~~B. This Chapter provides standards to ensure that new development accomplishes the following:~~

~~1. Makes a positive contribution to the development pattern of the area;~~

~~2. New or altered structures are compatible with the design and use of existing structures on neighboring properties;~~

~~3. Does not impact in a substantial negative manner the habitability of neighboring properties;~~

~~4. Design sites to have both an external orientation to the streetscape and an internal orientation to the residential environment with unifying open space and pedestrian pathways; and~~

~~5. Design emphasis should be given to the pedestrian, rather than the auto environment, through placement of parking in a less prominent location~~

A. Purpose. This Chapter provides standards to ensure that new development accomplishes the following:

1. Makes a positive contribution to the development pattern of the area;

2. New or altered structures are compatible with the design and use of existing structures on neighboring properties;

3. Does not impact in a substantial negative manner the habitability of neighboring properties;

4. Design sites to have both an external orientation to the streetscape and an internal orientation to the residential environment with unifying open space and pedestrian pathways; and

5. Design emphasis should be given to the pedestrian, rather than the auto environment, through placement of parking in a less prominent location.

B. Applicability. The standards in this chapter apply to the following:

1. Development in the Neighborhood Residential or Neighborhood Residential-Constrained zones, and;

2. In other zones, development of detached one- and two-unit dwellings and any number of townhouses up to three stories in height, along with their accessory structures.

C. Exceptions. The following are excepted from the requirements of this chapter:

a. Minor exterior alterations, provided, however, the alteration shall meet the following:

i. The alterations to the exterior shall meet the applicable standards of this chapter;

ii. The alterations do not create a greater nonconformance unless otherwise allowed through modification of standards; and

iii. The alterations are not as a result in a change of use or occupancy (see subsection (B)(2)(c) of this section).

b. Interior alterations which do not change the exterior appearance of the building and/or site.

c. Change of use or occupancy which is either a minor exterior alteration or interior alterations; provided, however, that if the change in use or occupancy creates additional off-street parking, the development shall meet the parking requirements of this title, Chapter 19.34 EMC (Parking) and, as required, Chapter 19.35 EMC (Landscaping) and Chapter 19.33 EMC (Streets, Sidewalks and Pedestrian Circulation).

**Section 9.** EMC 19.08.020 is hereby amended as follows, with strikeout text deleted and underlined text added.

### **19.08.020 Neighborhood Residential General Standards.**

A. Standards shall be applied to irregularly-shaped lots in compliance with EMC 19.06.050

B. Front porch or entrance types are provided in EMC 19.08.050. These are not included in the calculation of maximum lot coverage by building, and are allowed to encroach into required front and side street setbacks by up to five feet, provided minimum clearance is maintained. For other encroachments, see EMC 19.06.030.

C. Where flat roofs are provided, a decorative parapet is required to conceal all roof areas/equipment from view of a public street or space. The parapet shall match the materials and finishes used on the building walls.

D. See Chapter 19.35 EMC for landscaping and street tree requirements.

**Section 10.** EMC 19.08.030 is hereby amended as follows, with strikeout text deleted and underlined text added.

#### **19.08.030 Neighborhood Residential Site Design**

A. New dwelling units that include any façade within thirty feet of a public street right-of-way must face the street, which means including a street-facing dwelling unit façade that includes one of the front porch or entrance types in EMC 19.08.050 facing the public street for each individual dwelling or shared building entry.

B. Building separation (clear space between buildings): per building code or as necessary for path.

C. Shared yards and private yards. New dwelling units permitted under this Chapter must have direct access to either a private yard or a shared yard. Direct access means available at all times for use by a resident of the associated dwelling unit and accessible by continuous pedestrian path without crossing a public right-of-way. Direct access may include passing a gate.

1. Private yard. A private yard is required for dwelling units without direct access to a shared yard.

a. Required private yards must have direct access from the associated dwelling unit.

b. A private yard shall be a minimum of eight feet in any direction, no less than eighty square feet in area

c. Required private yards may be located in a required landscaping area, required setback area, or on top of a roof.

d. Private yards shall not include driveways, pathways, parking areas, buildings, or critical areas or their buffers.

2. Shared yard. A shared yard is required for dwelling units without direct access to a private yard.

a. Required shared yards must have direct access from the associated dwelling unit.

- b. For shared yards with up to five associated dwelling units, the required shared yard must be a minimum of fifteen feet in any direction, no less than 300 square feet in area.
- c. For shared yards with six or more associated dwelling units, the required shared yard(s) must be a minimum of twenty feet in any direction, no less than 10% of the lot in area.
- c. Required shared yards may be located in a required landscaping area or required setback area.
- d. Shared yards shall not include driveways, pathways, parking areas, buildings, or critical areas or their buffers.

**Section 11.** EMC 19.08.040 is hereby amended as follows, with strikeout text deleted and underlined text added.

### **19.08.040 Neighborhood Residential Building design standards**

A. Applicability. The design standards in this section apply to ~~front façades, side street façades, side interior façades, and rear façades~~ new dwelling units that include any façade within thirty feet of a public street right-of-way. ~~Fire walls, visible party walls, and side interior façades less than 5 feet from a shared lot line are exempt..~~

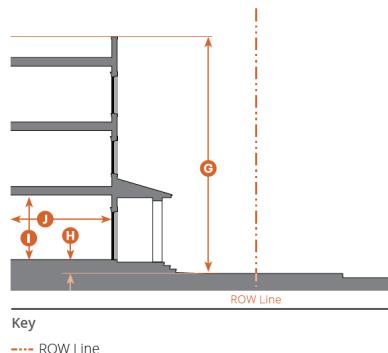
B. Facades, Ground Floor, Roofs, Exterior Stairs, and Transparency.

1. Facades.

a. New dwelling units permitted under this chapter must include a front porch or entrance pursuant to EMC 19.08.050; different dwelling units on a lot may have different front porch or entrances.

2. Ground Floor

**Figure 8-1: Building Form**



a. Ground floor finish level {H}: 6" minimum, except shared entries may be set at grade in compliance with local and federal accessibility standards.

- b. Ground floor ceiling height {I}: 9' minimum.
- c. Ground floor depth {J}: 12' minimum distance from the street-facing façade to the rear interior wall of the ground-floor habitable space in compliance with this Chapter.

2 3. Roofs.

- b a. Roofs, excepting rooftop decks or flat roofs, must incorporate at least one of the following architectural elements in roof forms: vertical or horizontal changes in rooflines; varied roof forms; dormers; deep roof overhangs (more than twenty-four inches); rafter tails, brackets, corbels, or other decorative supports; and/or prominent cornice, soffit, or fascia details.

3 4. Exterior Stairs. Fire escapes and exterior stairs providing access to an upper floor are not allowed on any facade that faces a street unless another building is between the façade and the public street.

4 5. Transparency. At least fifteen percent of the area of each street-facing facade must be windows or main entrance doors. Windows used to meet this standard must allow views from the building to the street. Glass block does not meet this standard. Windows in garage doors do not count toward meeting this standard.

C. Exterior Materials

1. Durability

- a. Exterior timber shall be protected from decay by at least one of the following:
  - (1) Staining and sealing;
  - (2) Painting; and/or
  - (3) Material properties. Pressure treated lumber is not allowed as a façade finish material. The following types of unpainted wood are allowed:
    - (A) Teak or Iroko
    - (B) Cedar
    - (C) Redwood
    - (D) White Oak or Garry Oak
    - (E) Ipe/Brazilian Walnut
    - (F) Bald Cypress
    - (G) Black Locust

b. Exterior ~~ferrous~~ metals shall be protected from corrosion and leaching by at least one of the following:

- (1) Painting or other impermeable coating; and/or
- (2) Metallurgical properties.

2. Materials Defining Building Elements

a. Bays. Changes in wall finish material shall occur at the boundaries between bays rather than within a bay.

b. Parapet.

- (1) Parapets shall terminate in a parapet cap of stone, brick, concrete, tile, metal, or molded stucco.

c. Materials Allowed for Building Details/Ornament

- (1) Wood
- (2) Metal (steel, copper, aluminum, tin)
- (3) Glass fiber reinforced concrete (GFRC)/fiberglass
- (4) Terra-cotta
- (5) Tile
- (6) Plaster

D. Landscaping/Screening

1. ~~See Chapter 19.35 EMC for landscaping and street tree requirements.~~

2. ~~Screening of waste containers from view of neighboring properties is required.~~

**Section 12.** EMC 19.08.050 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.08.050 Front porch and entrance requirements.**

A. Purpose. This section provides the standards for residential front porches and entrances. Residential front porches and entrances are the components of a building that provide the transition and interface between the building and the sidewalk or path leading to the sidewalk.

B. General Standards.

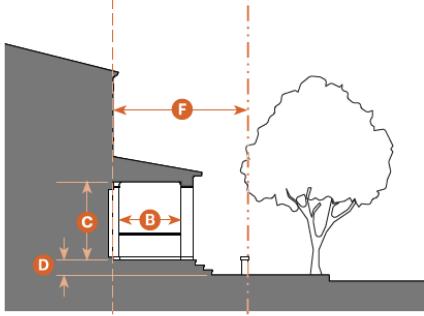
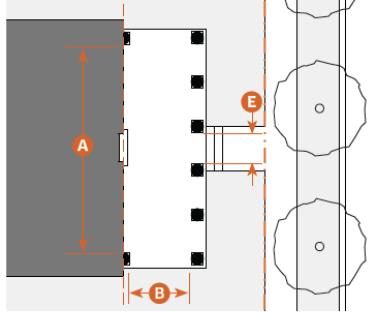
1. The names of the front porches and entrances indicate their particular configuration or function and are not intended to limit uses within the associated building.

2. The ground floor, for a minimum depth as identified in 19.08.040(B)(1), is required to be habitable/occupiable space in compliance with this Chapter. Accessibility is provided through the front porch or entrances.

### C. Porch Projecting.

1. **Description:** The main façade of the building is set back from the front or side street lot line with a covered structure (the porch) encroaching into the front setback. The resulting setback area may be defined by a fence or hedge to spatially maintain the edge of the street. The Porch may be one or two stories, is open on three sides, with all habitable space located behind the building setback line.

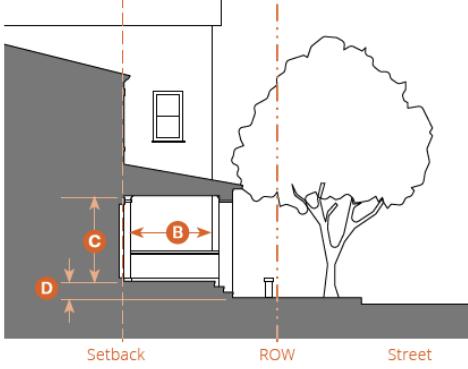
**Table 8-1: Porch Projecting**

		
<b>Key</b> <span style="color: orange;">—</span> ROW/ Design Site Line <span style="color: red;">—</span> Setback Line		
<b>Size</b>		
Width, Clear		8' min. {A}
Depth, Clear		6' min. {B}
Height, Clear		8' min. {C}
Stories		2 stories max.
Finish Level above grade		12" min. <sup>1</sup> {D}
Pedestrian Access		3' wide min. {E}
<b>Notes:</b>		
<sup>1</sup> Shared entries may be set at grade per local and federal accessibility standards. Porch shall be open on three sides. Clear glass may be installed between the porch columns. <del>The porch is not required to be covered.</del> The Porch is allowed to encroach into the front and side street setbacks in compliance with this Chapter. Ramps are required to be integrated along the side of the building to connect with the Projecting Porch.		

### D. Porch, Engaged

Engaged Porch may project into the front or street side setback. The resulting setback may be defined by a fence or hedge to spatially maintain the edge of the street. The Engaged Porch may be one or two stories and has two adjacent sides that are engaged to the building, while the other two sides are open.

**Table 8-2: Porch Engaged**



The diagram illustrates an engaged porch on a building. The building is set back from the front street. The porch is a two-story structure with a clear width of 8' (min. {A}), a clear depth of 6' (min. {B}), and a clear height of 8' (min. {C}). The porch is 12" (min. {D}) above grade. It has a 3' wide min. {E} for pedestrian access. The porch encroaches into the front and side street setbacks. The side setback is 6' max. {F}, and the overall width is 1/3 min. of the overall building facade {G}. The diagram also shows the Right of Way (ROW) and the Street line.

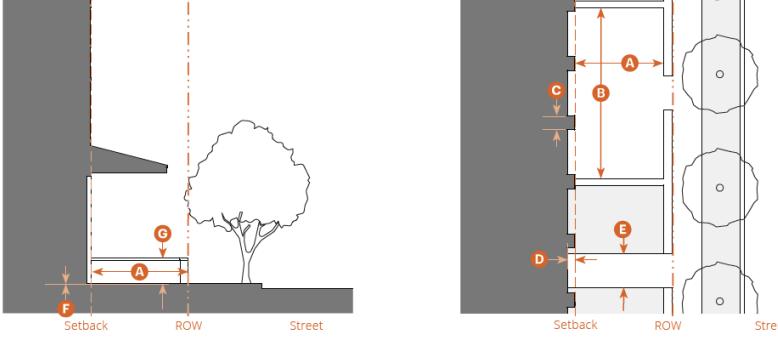
**Key**

- ROW/ Design Site Line
- Setback Line

Size	
Width, Clear	8' min. {A}
Depth, Clear	6' min. {B}
Height, Clear	8' min. {C}
Stories	2 stories max.
Finish Level above Grade	12" min. <sup>1</sup> {D}
Pedestrian Access	3' wide min. {E}
Encroachment Area of Building Façade	
Depth	6' max. {F}
Width	1/3 min. of overall building façade {G}
Notes:	
1 Shared entries may be set at grade per local and federal accessibility standards.	
Porch shall be open on two sides. Clear glass may be installed between the porch columns.	
The Porch is allowed to encroach into the front and side street setbacks	
Ramps are required to be integrated along the side of the building to connect with the Engaged Porch.	

**E. E. Dooryard.** The main façade of the building is set back from the front or side street lot line, which is defined by a low wall or hedge, creating a small private area between the sidewalk and the façade. Each Dooryard is separated from adjacent Dooryards. The Dooryard may be raised or at grade.

**Table 8-3: Dooryard**



**Key**  
 - - - - - ROW/ Design Site Line    - - - - - Setback Line

Size	
Depth, Clear	6' min. {A}
Length	8' min. {B}
Distance between Glazing	4' max. {C}
Pedestrian Access	3' wide min. {E}
Finish Level above grade	24" max. <sup>1</sup> {F}
Height of Dooryard Fence/Wall above Finish Level	36" max. {G}

**Notes:**

<sup>1</sup> Shared entries may be set at grade per local and federal accessibility standards.

Each Dooryard shall provide access to only one ground floor entry.

The Dooryard is allowed to encroach into the front and side street setbacks

Ramps are required to be integrated along the side of the building to connect with the Dooryard.

**D. F. Stoop.** The main façade of the building is near the front or side street lot line with steps to an elevated entry. The Stoop is elevated above the sidewalk to provide privacy along the sidewalk-facing rooms. Stairs or ramps from the Stoop may lead directly to the sidewalk or may be parallel to the sidewalk.

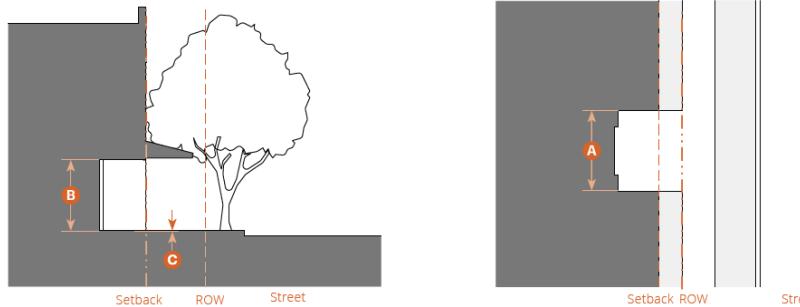
**Table 8-4: Stoop**



Size	
Width, Clear	4' min. {A}
Depth, Clear	3' min. {B}
Height, Clear	8' min. {C}
Stories	1 story max. {C}
Finish Level above grade or sidewalk	12" min. {D}
Distance between façade and Lot Line	Required setback {E}
Notes:	
Stairs may be perpendicular or parallel to the building façade.	
Entry doors shall be covered or recessed to provide shelter from the elements.	
Doors shall face the street.	
The Stoop is allowed to encroach into the front and side street setbacks.	
Ramps are required to be integrated along the side of the building to connect with the Stoop.	

**E. G. Common Entry.** The main façade of the building is near or set back from the front or side street lot line, with a covered entry within the main façade, providing a transition between the sidewalk and the interior. The entryway leads to a lobby or foyer that provides interior access to units.

**Table 8-5: Common Entry**



Size	
Width, Clear	6' min. {A}
Height to Canopy/Ceiling, Clear	2.5 x Clear Width max.; min 9' {B}
Finish Level above grade	0" min.; 36" max. {C}

Notes:

Entry doors shall be covered and/or recessed to provide shelter from the elements.  
Gates are not allowed.  
Entry doors shall face the street.  
Canopy, where provided, shall be at least as wide as the opening.

**Section 13.** EMC 19.08.060 is hereby amended as follows, with strikeout text deleted and underlined text added.

### **19.08.060 Attached garage requirements**

**A. Applicability.** The design standards in this section apply to new dwelling units that include any façade within thirty feet of a public street right-of-way.

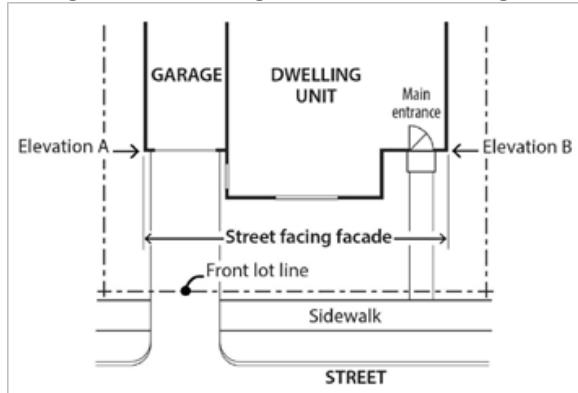
**A B. Attached Garage Setbacks and ~~Lengths~~ Widths.** The purpose of these standards is to encourage residential character and lessen the visual prominence of garages along public street frontages where applicable.

1. See Chapter 19.34 EMC for access and driveway requirements, including the requirement to obtain access from an alley if available.
2. Except along alleys, all garage wall facades facing the street shall be set back a minimum of five feet behind the ~~front~~ street-facing wall of the primary building mass.
3. The ~~length~~ width of the garage wall facade facing a public street may be up to fifty percent of the ~~length~~ width of the street-facing ~~dwelling unit~~ facade, except that a garage wall facade set back a minimum of twenty feet behind the ~~front~~ street-facing

facade of the dwelling unit is allowed a two-car-wide garage facade of up to twenty feet wide. (See Figure 8-2 below.)

4. Where the public street-facing facade of the dwelling unit is less than twenty-two feet in length, an attached garage is prohibited as part of that facade.
5. Semi-subterranean garages are allowed to project above the adjacent finished grade by up to 4 feet.

**Figure 8-2: Garage Setbacks and Lengths**



**Section 14.** EMC 19.08.110 is hereby amended as follows, with strikeout text deleted and underlined text added.

#### **19.08.110 Residential accessory buildings.**

The following requirements apply to all buildings which are accessory to residential uses ~~in the NR or NR-C zones~~:

A. Accessory buildings or uses may not be established until the principal dwelling or dwellings are constructed on the lot.

B. Use of Accessory Buildings.

1. Detached accessory buildings are limited to accessory uses.
2. The following spaces are allowed within a detached accessory building: bathrooms, hobby rooms, home occupations, home offices, recreation rooms, or laundry rooms. The following rooms are not allowed in accessory buildings: bedrooms, or kitchens.

C. General Standards. The following table is a summary of the standards required for residential accessory buildings:

**Table 8-6: Residential Accessory Building Standards**

Subject	Standard
1) Maximum Size:	a) The footprint shall not exceed the lesser of 1) 15% of the total lot area; 2) 3,000 square feet; or 3) the dwelling's building footprint.

Subject	Standard
	<p>I. Exceptions for Attached Garage. An attached garage constructed as an integral part of the dwelling is not included in this limitation. "Integral" means that at least two sides, or a side and ceiling, of the garage abuts habitable space of the dwelling.</p> <p>II. Porches. Any porch, including any covered decks or patios which are an integral part of the porch are not considered an accessory building and subject to these provisions. See Chapter 19.06 EMC for lot coverage requirements <u>and EMC 19.08.050 for front porch and entrance requirements</u>.</p> <p>III. Exceptions for Other Structures. Up to 200 square feet of the following accessory buildings or structures are not included in the size calculations above: child's playhouse or treehouse, play structure, gazebo, doghouses, patio or garden trellis. This exception does not include sheds or other storage buildings.</p> <p>b) A detached accessory building(s) shall be compatible with the dwelling including roof pitch and building materials.</p> <p>c) If the city finds that the impacts of accessory buildings which are larger than 1,000 square feet will create noise, vibrations or impact privacy to adjoining properties in excess of what a smaller accessory building would create, the city shall have the authority to impose greater setback requirements, landscape buffers, or other requirements as necessary to mitigate the impacts.</p> <p>d) <del>If the principal use is a housing type with maximum floor to area ratios (FAR), please see FAR limits that may affect the size of residential accessory buildings.</del></p>
2) Setbacks, Front and Side Street:	<p>a) <del>Any accessory residential structure located within the rear setback area required for a principal dwelling shall have a minimum separation from the principal dwelling of 10 feet, not including eaves or other building appurtenances.</del></p> <p>b) See Chapter 19.06 EMC.</p>
3) Maximum Height:	See Chapter 19.22 EMC.
4) Design Standards:	<p>a) Metal siding or corrugated metal roofing material shall be prohibited on all accessory buildings with a gross floor area larger than two hundred square feet, unless materials similar in appearance are used in the majority of the principal building or if approved by the planning director.</p> <p>b) The planning director, using the review process described in EMC Title 15, Local Project Review Procedures, may allow accessory buildings with metal siding or corrugated metal roofing.</p>
5) Temporary Covers:	<p>Structures that are covered or partially covered with tarps, fabric, metal, plastic or any other similar type of materials shall:</p> <p>a) Be prohibited between any portion of the principal building and abutting streets. This prohibition shall apply to any area of the lot that is located between the street and a line that is parallel to the street and extended from any facade of the principal</p>

Subject	Standard
	building that faces the street to the side lot line(s), or to the rear lot line on the street side of a corner lot; and b) Be immediately removed or repaired in the event of disrepair or in the event of damage caused by weather, fire, collision, accident or other forms of damage.
6) Shipping Containers	Shipping containers or other similar storage units do not qualify as accessory buildings under this section and shall be prohibited in residential zones.

**Section 15.** EMC 19.09.010 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.09.010 Purpose and applicability.**

A. Purpose. The purpose of the requirements contained in this chapter is to:

1. Promote a broad range of housing and commercial opportunities in the city.
2. Encourage building design that combines appropriate, compatible architectural scale with streetscape design and pedestrian amenities;
3. Protect less intensive zones and uses from impacts that could result from excessive mass and vertical scale of larger buildings. This objective can be accomplished by applying the standards in this chapter in conjunction with the building placement and height regulations in Chapters 19.06 and 19.22 EMC; and
4. Recognize that a flexible design approach providing a menu of options will result in buildings that are attractive, durable, and contribute to Everett's vitality as a community.

B. Applicability.

1. The standards in this chapter apply to residential development within the UR4, UR7, MU4, MU7, MU15, MU25, and LI-MU zones.
2. Exceptions. The following are excepted from the requirements of this chapter:
  - a. For development standards for detached one- and two-unit dwellings and any number of townhouses up to three stories in height, along with their accessory structures, refer instead to Chapter 19.08 EMC.
  - b. Minor exterior alterations, provided, however, the alteration shall meet the following:
    - i. The alterations to the exterior shall meet the applicable standards of this chapter;
    - ii. The alterations do not create a greater nonconformance unless otherwise allowed through modification of standards; and

- iii. The alterations are not as a result in a change of use or occupancy (see subsection (B)(2)(c) of this section).
- c. Interior alterations which do not change the exterior appearance of the building and/or site.
- d. Change of use or occupancy which is either a minor exterior alteration or interior alterations; provided, however, that if the change in use or occupancy creates additional off-street parking or uses outdoor areas to conduct business or store materials, the development shall provide the following:
  - i. The development shall meet the parking requirements of this title, Chapter 19.34 EMC (Parking, Loading and Access Requirements) and, as required, Chapter 19.35 EMC (Landscaping) and Chapter 19.33 EMC (Streets, Sidewalks and Pedestrian Circulation); and
  - ii. Any building alteration includes weather protection as required by this chapter.

**2.3.** Conflicts. In the event of a conflict between these requirements and the standards of other sections of the Unified Development Code, these requirements shall control; provided, however, the requirements established as part of the creation of any historic overlay zone shall take precedence over any conflicting requirements in this chapter.

**3-4.** Mixed Developments. For mixed developments refer to the following sections as applicable, provided that the Planning Director is authorized to interpret applicability to provide for reasonable accommodation of mixed-use and commercial development encouraged by the comprehensive plan:

- a. For development standards for detached one- and two-unit dwellings and any number of townhouses up to three stories in height, along with their accessory structures, refer to Chapter 19.08 EMC; and
- b. For development standards for residential development other than detached one- and two-family dwellings and townhouses up to three stories in height, along with their accessory structures, refer to this Chapter 19.09 EMC; and
- c. For development standards for nonresidential development, refer to EMC 19.09.200 through EMC 19.09.260

**4-5.** Future Phases. When residential development is proposed to be added as a later phase to an existing development which does not meet the requirements contained herein, the requirements contained herein shall apply, but may be modified by the planning director as needed to provide for continuity between the existing and proposed phases of development.

5. UR4, UR7, MU4, MU7, MU15, MU25, and LI-MU Zones. See EMC 19.09.200 through 19.09.260 for applicable development standards.

C. LI2 and HI Zones. See EMC 19.09.300 and 19.09.310 for applicable development standards.

D. The standards in this chapter apply primarily to building design. Refer to the following chapters in this title for additional regulations applicable to new development:

1. Chapter 19.06 EMC, Lots, Setbacks and Residential Densities.
2. Chapter 19.22 EMC, Building and Structure Heights.
3. Chapter 19.33 EMC, Streets, Sidewalks and Pedestrian Circulation.
4. Chapter 19.34 EMC, Parking, Loading and Access Requirements.
5. Chapter 19.35 EMC, Landscaping.
6. Chapter 19.36 EMC, Signs.

**Section 16.** EMC 19.09.050 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.09.050 Required amenity space, including outdoor and common areas.**

A. Purpose and Intent. The required outdoor and common area standards for residential development ensure opportunities for healthy outdoor relaxation, recreation, community gathering, and social interaction. The standards ensure that some of the land not covered by buildings is of adequate size, shape, and location to be usable for outdoor recreation or relaxation. Both indoor and outdoor areas are important for the livability of a residential property.

B. Outdoor and Common Area Requirements.

1. Definitions or terms used in this section:

- a. "Outdoor area" may be provided as private open space, such as a patio or balcony, or may be provided as common open space, such as outdoor courtyards and outdoor play area.
- b. "Common area" may include outdoor common open space, or indoor common open space such as recreational facilities, indoor community rooms, or other community gathering places.
- c. "Common open space" has the same meaning as set forth in EMC 19.04.030: "private open space provided within a development which is provided for, and which is permanently accessible to, all residents/tenants of the development."
- d. "Open space" has the same meaning as set forth in EMC 19.04.030: "land area not covered by buildings, roads, driveway and parking areas, or outdoor storage areas, including, but not limited to, landscape areas, gardens, woodlands, walkways, courtyards or lawns, and outdoor recreation areas."

Except as otherwise provided by this title, open space includes setback areas that meet the requirements defined in this title.”

- e. “Private open space” has the same meaning as set forth in EMC 19.04.030: “a small parcel of land or outside area (deck, lanai, patio) immediately adjacent to an individual dwelling unit maintained by and for its residents and reserved exclusively for their use.”
- f. “Amenity space” includes private open space, in addition to outdoor open space or indoor common area.

2. Amenity Space is required in the amounts stated below, based on unit size:

**Table 9-1: Amenity Space Area Requirements**

Unit Size	Area Required:
Studio, 1-bedroom, or sleeping unit	75 square feet per unit
2+ bedrooms	100 square feet per unit

3. Required Common Area.

For residential development with fifty or more units, at least twenty-five percent of the required amenity space area in subsection (B)(2) of this section shall be common area as further set forth below:

- a. At least fifty percent of the required common area must be outdoor open space. Outdoor open space may be passive or active, such as:
  - (1) Passive areas, such as outdoor courtyards, seating areas, tree groves, trails, or family picnic area with amenities such as landscaping, lighting, weather protection and other features that encourage use year-round;
  - (2) Active areas, such as tot-children’s play area, hard surface game court, or outdoor swimming pool.
- b. Up to fifty percent of the required common area may be indoor common area, such as indoor recreation facilities or indoor community rooms.
- c. Common areas shall be centrally located so as to be near a majority of the dwelling units and constructed so as to be accessible to residents and visible from dwellings on the site. Active areas shall be separated from Evergreen Way or any freeway, including interchanges, by building mass and distance.

4. Minimum Size Standards.

- a. Private open space shall be a minimum of four feet in any direction, no less than thirty-two square feet in area.

- b. Common open space shall include area a minimum of twenty feet in any direction, and total no less than four hundred square feet in area. Common open space must be located to provide convenient and accessible access from the residential units.
- 5. Top floors and/or roof top decks may be used for up to one hundred percent of required outdoor area provided:
  - a. Amenities such as seating areas, landscaping, lighting, weather protection and other features that encourage use year-round, as approved by the planning director, are incorporated.
  - b. The space must have hard durable surfacing for all trafficked areas.
- 6. Off-street parking and loading areas shall not be considered as outdoor or common areas, nor as other amenity space as required by this section.
- 7. Expansion of Residential Development. Where an increase in the number of dwelling units for a residential development is proposed, ~~common area amenity space~~ shall be provided in accordance with the requirements of this chapter, minus the amount of ~~common area amenity space~~ by which the previous residential development was deficient.
- 8. When setback areas can be included in calculations:
  - a. Private open space located at ground level may extend into the required setback areas, subject to minimum size standards in subsection (B)(4) of this section, but when located within a required street setback, the outdoor area must either be at least two feet above the grade of the closest adjoining sidewalk or separated from the street lot line by a minimum three-foot setback landscaped to create privacy.

**Figure 9-7: Example of Private Open Space in Front Setback**



- b. Common open space may include:
  - (1) Interior side setback areas which are contiguous with other on-site common open space areas;

(2) Rear setback areas which are contiguous with other on-site common open space areas and which are not part of a street side setback area on corner lots.

9. Plans for amenity space, including outdoor and common areas, shall be submitted for review and approval of the planning director prior to issuance of building permits.

10. A payment in lieu of providing the common or private open space may be approved by the planning director.

- a. The fee may be in lieu of up to fifty percent of the required on-site common or private open space; provided, that the fee may be in lieu of up to one hundred percent of the required on-site common or private open space where the subject property is within a half mile of an existing or planned public park or trail consistent with the Everett parks, recreation, and open space plan in effect at the time of application.
- b. The fee per square foot of common or private open space not provided shall be equal to the average capital cost per square foot of neighborhood parks as identified in the capital facilities element of the comprehensive plan.
- c. The payment shall be held in a reserve account by the city and may only be expended to fund a capital improvement for parks and recreation facility identified in the Everett parks, recreation, and open space plan in effect at the time of application.
- d. The payment shall be expended in all cases within five years of collection; provided, that any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the city and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

**Table 9-2: Multifamily Amenity Space Calculation (Example)**

Large Project (50+ Units)			
Unit Size	# of Units	Area per Unit (sq. ft.)	Area Required (sq. ft.)
Studio	15	75	1,125
1-bed	15	75	1,125
2-bed	10	100	1,000
3+ beds	10	100	1,000
<b>TOTALS</b>	<b>50</b>		<b>4,250</b>
Common Area Required (25% of total)			1,063
Outdoor Area (at least 50%)			531
Indoor Area (up to 50%)			531

Remaining amenity space to provide (Private or Common Open Space)			3,188
Small Project (<50 Units)			
Unit Size	# of Units	Area per Unit (sq. ft.)	Area Required (sq. ft.)
Studio	10	75	750
1-bed	15	75	1,125
2-bed	10	100	1,000
3+ beds	10	100	1,000
<b>TOTALS</b>	<b>45</b>		<b>3,875</b>
Common Area Required (25% of total)			0
Outdoor Area (at least 50%)			0
Indoor Area (up to 50%)			0
Remaining Amenity Space to Provide (Private or Common Open Space)			3,875

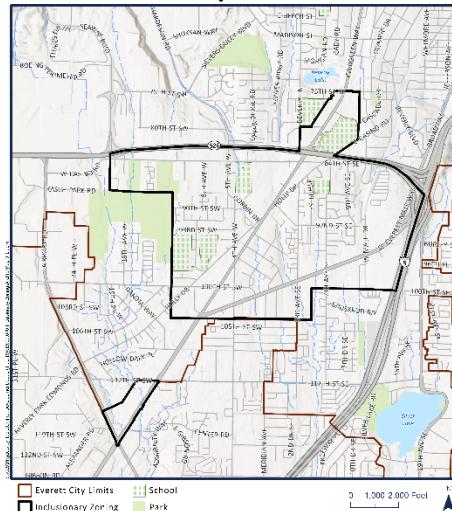
**Section 17.** EMC 19.09.070 which reads as follows

#### **19.09.070 Inclusionary zoning**

**A. Purpose.** The purpose of this section is to address the need for affordable housing and to provide opportunities for low-income households to live near transit and employment.

**B. Applicability.** Inclusionary housing requirements shall apply to new residential development under this chapter within the area indicated in Map 9-1.

**Map 9-1**



**C. Exemptions and reductions.**

1. Inclusionary zoning requirements under this section are waived for:
  - a. Projects resulting in fewer than six dwelling units.
  - b. Projects subject to a development agreement.
2. Inclusionary zoning requirements under this section, including the alternative compliance fee in lieu, shall be reduced by half for projects resulting in at least six but no more than fifteen dwelling units.

D. Requirements.

1. At least twenty percent of the dwelling units must be affordable to households whose income is at or below eighty percent of the median household income for Snohomish County, adjusted for household size;
2. Of the affordable dwelling units required under subsection (D)(1), at least one half must be affordable to households whose income is at or below sixty percent of the median household income for Snohomish County, adjusted for household size;
3. Dwelling units intended exclusively for owner occupancy: twenty percent of the units affordable to households whose income is at or below eighty percent of the median household income for Snohomish County, adjusted for household size;
4. Affordable housing units that are provided under this section shall remain as affordable housing for a minimum of 50 years, as provided in a recorded covenant running with the land. The covenant shall be approved by the Planning Director and filed for recording with the county auditor prior to the issuance of a certificate of occupancy for any applicable structure.

E. Review process. Prior to the issuance of any permit(s), the department shall review and approve the location and unit mix of the affordable housing units consistent with the following standards:

1. The location of the affordable housing units shall be intermingled with all other dwelling units within the development, with no more than three affordable units next to each other.
2. The tenure (ownership or rental) of the affordable housing units shall be the same as the tenure for the rest of the housing units in the development.
3. The bedroom mix of affordable housing units in any project shall be in the same ratio as the bedroom mix of the market rate units of the project;
4. The floor area of the affordable housing units shall not be less than 90 percent of the average gross floor area of the market rate units within the project with the same number of bedrooms; and

5. The exterior materials, interior materials, and design of the affordable housing units must be comparable with the other dwelling units in the development, with similarity in building finishes, rooflines, and landscaping.

6. Construction of the affordable housing units shall be concurrent with the construction of market-rate dwelling units

F. Alternative compliance. The Planning Director may approve a request for satisfying all or part of the affordable housing requirements with a fee in lieu equal to fifteen dollars per square foot of gross floor area subject to this section. A fee in lieu under this subsection may be deferred under subsection EMC 19.09.070(G).

G. Deferred fee in lieu. A fee in lieu under subsection EMC 19.09.070(F) may be deferred until six months after a certificate of occupancy is issued for a dwelling unit subject to this section.

1. An applicant seeking a deferral under this subsection (G) may be required to grant and record a deferred fee lien against the property in favor of the city in the amount of the deferred fee. The deferred fee lien, which must include the legal description, tax account number, and address of the property, must also be:

- a. In a form approved by the city;
- b. Signed by all owners of the property, with all signatures acknowledged as required for a deed, and recorded in Snohomish County;
- c. Binding on all successors in title after the recordation; and
- d. Junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

2. Upon receipt of final payment of all deferred fees for a property, the county, city, or town must execute a release of deferred impact fee lien for the property. The property owner at the time of the release, at the property owner's expense, is responsible for recording the lien release.

3. The extinguishment of a deferred impact fee lien by the foreclosure of a lien having priority does not affect the obligation to pay the impact fees as a condition of final inspection, certificate of occupancy, or equivalent certification, or at the time of closing of the first sale.

H. Eligibility for multifamily tax exemption. Dwelling units satisfying the affordability requirements of this section may also satisfy the affordable housing requirements of Chapter 3.78 EMC.

is hereby repealed.

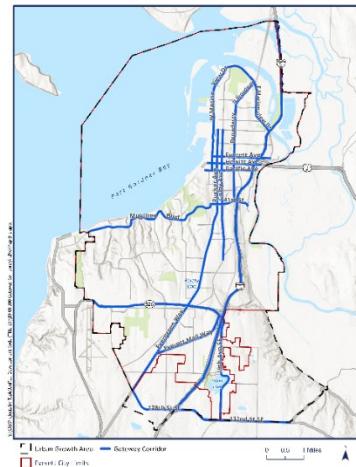
**Section 18.** EMC 19.09.300 is hereby amended as follows, with strikeout text deleted and underlined text added.

### **19.09.300 Building design standards applicable to the LI and HI zones.**

A. Applicability. The following standards apply to development of properties located within the LI and HI zones. For properties located within the airport/~~port~~/navy compatibility overlay zone, see Chapter 19.17 EMC for additional use and development standards. For properties located within shoreline jurisdiction, see the city's shoreline master program for additional permitting requirements. The design standards in this section apply when any of the following criteria are met. These standards are applicable only to the facade or portion(s) of the building meeting any of the following criteria:

1. The proposed building(s) faces, abuts and is visible from a designated gateway corridor street and is located within four hundred feet of a gateway corridor street. See Map 9-1;
2. The proposed building(s) faces or abuts and is visible from a residentially zoned property; or
3. The proposed building(s) abuts a shoreline public access trail, or is visible from publicly accessible navigable waters (e.g., Port Gardner Bay, Snohomish River).

**Map 9-1: Gateway Corridors**



#### **B. Building Design.**

1. Building Materials. Prefabricated metal buildings and buildings with corrugated metal siding shall be prohibited. Exterior building materials shall be selected so as not to project or reflect natural or artificial lighting or glare into residential areas. Building exterior materials shall be factory finished, stained, integrally colored, or otherwise suitably treated. Materials may include:

- a. Split face or fluted concrete masonry units (CMU).

- b. Factory glazed concrete masonry units (CMU).
- c. Face brick.
- d. Stone veneer.
- e. Insulated glazing and framing systems.
- f. Architectural pre-cast concrete.
- g. Painted or stained site-cast concrete.
- h. Architectural concrete.
- i. Factory finished, standing seam metal roofing (for application to pitched roof systems only).
- j. EIFS.
- k. Architectural metal. Do not use glossy metal.

2. Building Articulation Standards. Buildings with exterior walls greater than sixty feet in length in the LI zone and one hundred feet in length in the HI zone shall be required to provide architectural modulation, in accordance with the following standards:

- a. Vertical Articulation. Vertical articulation is required to distinguish the building's upper and lower levels of front and side street (corner) facades. Examples of vertical articulation include cornice lines, awnings or canopies, changes in materials or window patterns, recessed entries, reveals, or other architectural treatments.
- b. Horizontal Articulation. Horizontal articulation is required to visually break up the massing of the ground floor of the front and side street (corner) facades into segments no greater than sixty feet in width for the LI2 zone and one hundred feet in width for the HI zone. Examples of horizontal articulation include bays, mullions, columns, piers, pilasters, recessed entries, awnings, or other architectural treatments.
- c. The planning director may allow use of other methods to achieve the intent of the vertical/horizontal articulation standards. This includes use of landscaping which breaks up flat expanses of building walls, or a combination of techniques providing the desired effect.

3. Building Entrance and Window Design.

- a. Building Entrances. Primary building entrances should be easily identifiable and relate to human scale.

- (1) Locate main entrances to be clearly identifiable from primary driveways and drop-offs. For example:
  - (A) Design building entrances to contrast with the surrounding wall plane.
  - (B) Consider tinted glass, painted doors, or recessed features that will create a shaded effect.
  - (C) Create a frame around doorways by changing materials from the primary facade material.
- (2) All building entrances shall be well lit. Consider using building entranceways as a transition from the building to the ground. Incorporate walls, terraces, grading and plant materials to accomplish this transition.
  - b. Ground Floor Windows. A minimum of thirty percent of the portion of the facade abutting office and commercial uses that are contained within the industrial use shall be comprised of windows with clear, "vision" glass.

**Section 19.** EMC 19.13.250 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.13.250 Short-term rentals.**

Short-term rentals shall comply with the following provisions:

- A. License Required. A city business license is required to operate a short-term rental. No more than two short-term rental sites may be operated by any individual, marital group, a group of people, or a corporate entity such as an LLC, within the city.
- B. Location. A short-term rental use may be located in a dwelling unit ~~or an accessory dwelling unit. See EMC 19.08.100 for applicable accessory dwelling unit requirements, including owner occupancy if applicable.~~
- C. Number of Guests. The total number of guests occupying a dwelling unit may not exceed eight on a site, including any site with an accessory dwelling unit.
- D. Signs. No signs identifying the use as a short-term rental are permitted.

**Section 20.** EMC 19.22.020 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.22.020 Heights for principal and accessory buildings**

- A. *Maximum Building Heights.*

1. *Principal Buildings.* Maximum building heights for principal buildings are set forth in Table 22-1 below. Maximum building heights may be modified in certain areas using overlays on the zoning map. A building must meet the standards in Table 22-1 (maximum feet) and any zoning overlay standard.

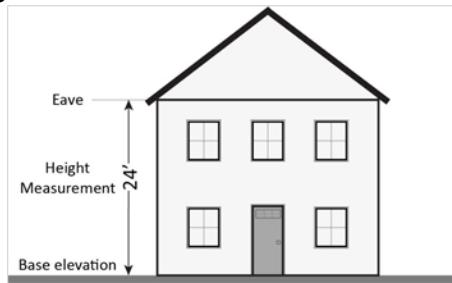
**Table 22-1: Maximum Building Heights**

Height standard	Zone											
	NRC	NR	UR4 <sup>1</sup>	UR7	MU4	MU7	MU15	MU25	LI-MU	LI	HI	AG
Intended Number of Floors	3	3	4	7	4	7	15	25	7	10	10	3
Maximum Feet	35'	35'	45'	75'	50'	80'	160'	260'	80'	100'	100' <sup>(2)</sup>	35'

<sup>1</sup> If located within an historic overlay, the maximum height is limited to three floors or thirty-eight feet in maximum height, with the maximum height to the eaves at the side lot line twenty-four feet. (see Figure 22-1).

<sup>2</sup> See EMC 19.22.070

**Figure 22-1: Where to Measure Eave Height**



2. *Detached Accessory Residential Buildings.* Maximum building heights for detached accessory residential buildings are set forth in Table 22-2 below.

**Table 22-2: Maximum Detached Accessory Residential Building Heights**

Development Site	Zone		
	Neighborhood Residential	UR4	UR7
Alley lots	1. 6:12 pitch roof or greater: 2 floors up to 24' 2. Less than 6:12 pitch roof: 1 1/2 floors up to 18'	2 floors, up to 28' maximum	The greater of 2 floors, up to 28' maximum, or the height of the existing/proposed principal building
Nonalley lots	1 1/2 floors up to 18' maximum	2 floors up to 24' maximum	2 floors up to 24' maximum

3. See EMC 19.22.090 for height limits on other accessory uses and structures.

B. *Minimum Building Heights.* In order to encourage efficient use of property within mixed-use centers and along streets designated as transit-oriented development (see Map 33-1 in Chapter 19.33 EMC), minimum building heights are required for principal buildings as set forth below. There is no minimum height requirement for accessory buildings.

**Table 22-3: Minimum Building Heights**

	Neighborhood Nodes	Community Hubs	Metro Everett	TOD Streets
Minimum Building Height	2 floors	3 floors	3 floors	4 floors <sup>(1)</sup>

<sup>(1)</sup> Except in a historic overlay

C. Development of affordable housing for low-income households on real property owned or controlled by a religious organization may exceed the underlying building height limit by 10'.

**Section 21.** EMC 19.22.030 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.22.030 Where height reductions are required.**

A. *Intent.* The following requirements are intended to promote compatibility between areas with different permitted heights and different permitted uses. The following instances might require reduction in allowed building heights:

1. Where a zone that allows buildings over seventy feet tall abuts a neighborhood residential zone
2. Where industrial uses abut residential zones;
3. Where development is within the airport compatibility area.

B. *Height Reductions—Adjacency, Table.*

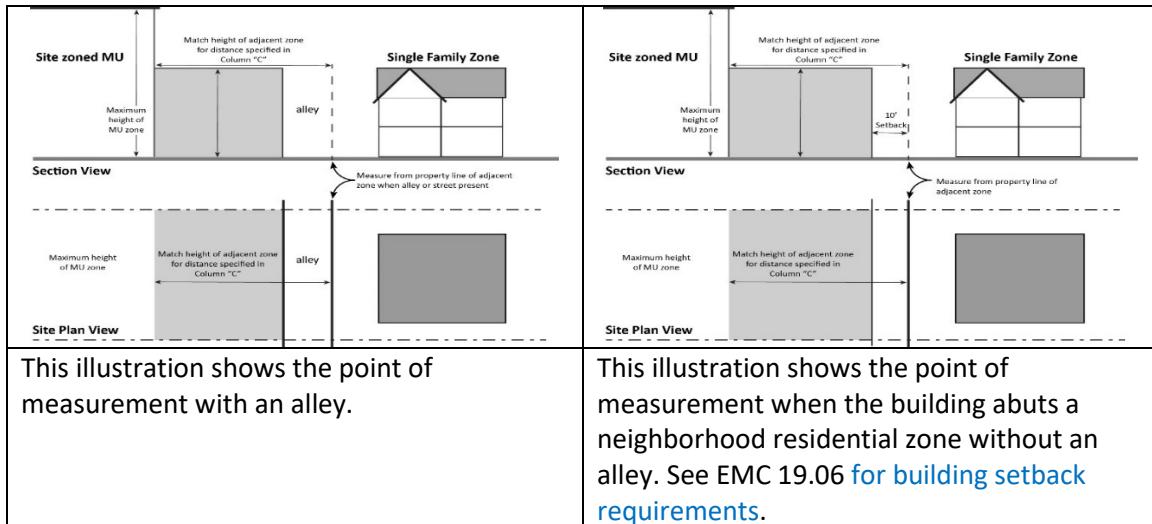
1. Table 22-4 requires height reductions where a development site is in a zone identified in Column A and which abuts an adjacent zone shown in Column B. In these circumstances, the development must adhere to the height limits in the adjacent zone (from Column B) for the distance specified in Column C. If the proposed development abuts a residential zone that is not within the city limits, the height limits assumed will be twenty-eight thirty-five feet.
2. The measurement of distance from the building to adjacent zone is from adjacent zone boundary, except where the adjacent zone boundary is along the centerline of a street or alley, the measurement shall be made from the property line across an alley or street in the adjacent residential zone.
3. See Table 22-5 for illustration of how these reductions are applied.

**Table 22-4: Height Reductions**

Column A	Column B	Column C*	Column E
Zone(s) (Development Site)	Adjacent Zone	Distance to Match Height to Adjacent Zone	Height Reduction
UR-7, MU-7, MU-15, <del>LI</del> MU, <del>LI</del>	NR	50'	Height limited to height allowed in adjacent zone within 50' (Column C), then height can meet height of the development zone (Column A).
LI-MU	NR or UR4	75'	Height limited to height allowed in adjacent zone within 75' (Column C), then height can meet height of the development zone (Column A).
LI	NR or UR4	100'	Height limited to height allowed in adjacent zone within 100' (Column C), then height can meet height of the development zone (Column A).
HI	NR or NR-C	150'	Height limited to height allowed in adjacent zone within 150' (Column C), then height can meet height of the development zone (Column A).

\* See EMC 19.22.060 for how this measurement is determined.

**Table 22-5: Building Height Reduction Illustration**



**Section 22.** EMC 19.25.040 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.25.040 Evaluation criteria—Subdivision, short subdivision, unit lot land division, alteration or vacation.**

An application that complies with all of the following general evaluation criteria listed below, the requirements of Chapters 19.24 through 19.27 EMC and this title, and applicable city

standards shall be approved. In any such approval, the city shall make written findings that the application has made appropriate provisions in accordance with the requirements of this section. An application that does not comply with these criteria shall be denied by the city.

A. *Public Use and Interest.* The proposed project and design shall promote the public use and interest in accordance with the standards established by the state, city, and Chapters 19.24 through 19.27 EMC and this title;

B. *Public Health, Safety, and General Welfare.* The proposed project and design shall promote the public health, safety and general welfare in accordance with the standards established by the state, city, and Chapters 19.24 through 19.27 EMC and this title;

C. *Comprehensive Plan.* The proposed project and design shall conform to the general purposes of the comprehensive plan;

D. *Unified Development Code.* The proposed project and design shall meet the requirements of this title, including but not limited to the following:

1. Chapter 19.06 EMC, Lots, Setbacks and Residential Densities;
2. Chapter 19.26 EMC, Land Division Development Standards or Chapter 19.27 EMC, Unit Lot Land Divisions;
3. Chapter 19.30 EMC, Flood Damage Prevention;
4. Chapter 19.33 EMC, Streets, Sidewalks and Pedestrian Circulation;
5. Chapter 19.34 EMC, ~~Parking, Loading and Access Requirements~~;
6. Chapter 19.35 EMC, Landscaping;

E. *Natural Environment.* The proposed project and design shall meet the requirements of environmentally sensitive area regulations of this title and Chapter 19.43 EMC, Environmental Policy, and the State Environmental Policy Act, Chapter 197-11 WAC, if applicable;

F. *Drainage.* The proposed project and design shall meet the requirements of the city's drainage regulations in EMC 14.28 and design and construction standards and specifications;

G. *Open Space and On-Site Recreation.* The proposed project and design shall meet the requirements for open space and on-site recreation as defined in Chapter 19.09 EMC. These requirements are based on the type of use proposed and zoning designation of the property;

H. *Public Facilities.* The proposed project shall be consistent with all regulations and requirements in EMC Titles 14 and 16, the design and construction standards and specifications, and other adopted plans and policies, including the following:

1. Adequate water supply to city standards;
2. Adequate sewage disposal to city standards;

3. Appropriate surface water management to city standards;
4. Adequate fire protection and hydrants to city standards;
5. Appropriate vehicular and nonmotorized access designed to meet city standards for anticipated uses within the project;
6. Provisions for all appropriate deeds, dedications, and all other easements;
7. Provisions made for access to and maintenance of all common facilities; and
8. Transportation systems for both motorized and nonmotorized travel modes, including: streets, alleys, sidewalks, transit stops, bike lanes, and safe pedestrian routes to schools and schoolgrounds. This includes connections to existing and planned facilities;

I. *Existing Public Services.* The proposed project shall be designed to not adversely impact the following public services:

1. Police;
2. Fire;
3. Parks; and
4. Schools;

J. *Floodplain.* The proposed project and design shall meet the requirements of this title and flood damage prevention requirements in Chapter 19.30 EMC;

K. *Landscaping Standards.* The proposed project and design shall meet the landscaping standards as established in Chapter 19.35 EMC.

**Section 23.** EMC 19.34.050 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.34.050, Exceptions to off-street Vehicle parking space requirements.**

To prioritize land for buildings and people and reduce dependence on single-occupant vehicles, the following are not required to provide off-street parking, provided that bicycle facilities shall be provided as set forth in EMC 19.34.160 and 19.34.170.

- A. Development in Mixed-Use Centers.
- B. Development under EMC 19.08 within one-half mile walking distance of a public transit stop served by bus rapid transit or rail.
- C. Dwelling units with less than 1,200 square feet gross floor area.
- D. Affordable housing as defined in RCW 36.70A.030.

E. Uses in structures and on sites that are individually listed on the Everett register of historic places.

F. Dwelling units that are specifically for seniors or people with disabilities; provided, however, off-street parking for staff and visitors may be required as determined by the city engineer and planning director based on a parking analysis.

G. Emergency Shelters. Emergency Shelters are not required to provide off-street parking; provided, however, that off-street parking for staff and visitors will be required as determined by city engineer and planning director based on a parking analysis. See EMC 19.34.050(B) for off-street parking calculations on sites with combination of uses.

**Section 24.** EMC 19.34.060 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.34.060, Reductions to off-street Vehicle parking space requirements.**

A. Parking Study as Alternative to Reduce Parking. The planning director, in consultation with the city engineer, may approve a modification to the off-street parking set forth in Table 34-1 using the review process described in EMC Title 15.

1. A parking study for the proposed use(s) must be prepared by a professional with expertise in preparing traffic and parking analysis and 2. must demonstrate to the satisfaction of the planning director that a lesser standard is adequate.
3. A transportation demand management plan (see EMC 19.34.080) shall be required as a condition of any approved modification.

B. Access to frequent transit service. Off-street parking requirements are reduced by 25% within any of the following areas:

1. Parcels within one-quarter mile walking distance of a public transit stop ~~with~~ that receives transit service at least four times per hour for twelve or more hours per day
2. Parcels within one-half mile walking distance of a public transit stop with service by rail or bus rapid transit.

**Section 25.** EMC 19.34.100 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.34.100, Location of off-street Vehicle parking.**

A. Vehicle Parking Location—General Requirements for Residential Uses.

1. Off-street auto parking spaces may include spaces in garages, carports, parking lots, and/or driveways if vehicles are not parked in a vehicle travel lane or a required front setback. Off-street parking for electric vehicles may be included in auto parking required by this chapter. Refer to the International Building Code for requirements on electric vehicle charging infrastructure.

2. Vehicle parking is only allowed within required setbacks in:
  - a. Residential zones in driveways meeting the standards of EMC 19.34.110, except easement access lots or in historic overlay zones; or
  - b. Rear setbacks in residential zones when complying with landscaping standards of EMC 19.35; or
  - c. When vehicle parking is located completely below grade and required landscaping is provided on top of the parking structure.
3. Private Access Drives. Vehicle parking on any private access drive shall be prohibited except when authorized through a land division or other land use permit. Off-street vehicle parking may be located adjacent to an approved access drive outside of the minimum required dimensions of the access drive. Where applicable, the homeowners' association shall be responsible for enforcing this requirement.
4. Historic Overlay. Off-street parking in an historic overlay zone shall not be located closer to the public street than the building located closest to the street unless approved by the planning director due to street and site topography which precludes other placement.

B. Vehicle Parking Location—General Requirements for Nonresidential Uses.

1. Vehicle parking, except as otherwise allowed for automobile, light truck or RV sales or rental, shall not be located within a required building setback, required landscape area, or open space.
2. For nonresidential uses, required off-street vehicle parking shall be located on property within five hundred feet of the building or use which it is required to serve. This distance shall be measured along the access route. The property upon which the off-street parking is provided shall be located in the same zone as, or a zone which allows, the use for which the parking is required.
3. Separation of Surface Vehicle Parking Lots from Public Right-of-Way. Surface parking lots shall be set back either ten feet from the public sidewalk, or five feet from the property line, whichever is greater. The intent of this requirement is to provide a minimum ten-foot landscape separation between surface parking lots and public streets in accordance with Chapter 19.35 EMC. There shall be no setback required from a public alley.
4. Surface parking lots shall be set back from interior lot lines consistent to meet the landscaping and screening requirements of Chapter 19.35 EMC.
5. Marijuana retailers shall comply with the parking location requirements set forth in EMC 19.13.160.

C. Vehicle Parking Location Requirements, Mixed-Use Centers.

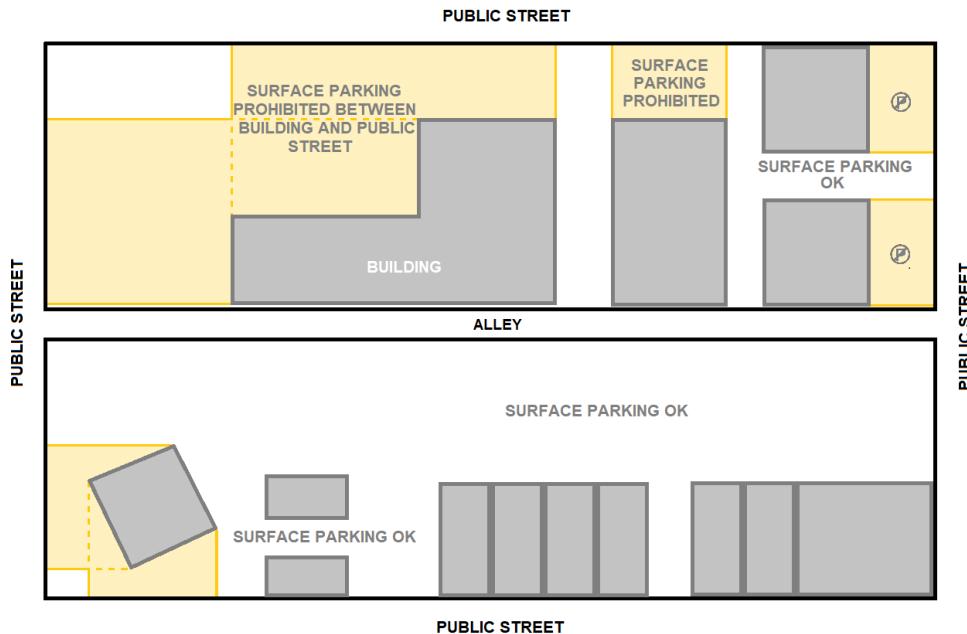
1. Separation of Surface Parking from Public Right-of-Way. All surface parking lots within Metro Everett shall have a minimum front setback of forty feet. For corner lots, the minimum setback from a street side lot line shall be five feet. Exception: within the LI-MU zone, the minimum front setback for surface parking shall be fifteen feet. Where surface parking is provided, it shall be separated from any public sidewalk by a minimum of five feet to allow screening/landscaping in accordance with Chapter 19.35 EMC.
2. There shall be no setbacks required for rear and side interior lot lines unless otherwise necessary to accommodate landscaping/screening in accordance with Chapter 19.35 EMC.

D. Vehicle parking Location—Alley Requirements for Multifamily and Nonresidential Structured vehicle parking garages. Structured vehicle parking garages accessed from the rear with no internal turnaround shall be set back at least twenty-five feet from the far side of the alley, except as otherwise approved by city engineer.

E. Parking between buildings and streets. Surface parking lots shall not be located directly between a public street and a building unless another building is closer to the public street, as illustrated in Figure 34-2, except:

1. Residential zones in driveways meeting the standards of EMC 19.34.110; or
2. When vehicle parking is located completely below grade and any required landscaping is provided on top of the parking structure.

**Figure 34-2: Parking Prohibited Between Buildings and Streets**



**Section 26.** EMC 19.34.110 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.34.110 Vehicular Access to Off-Street parking – Alleys and driveways.**

A. Alleys. Access to off-street parking areas shall be provided from the alley where available. The intent of this requirement is to:

1. Enhance the safety of parking areas;
2. Minimize potential conflicts between vehicles and pedestrians;
3. Efficiently manage traffic in off-street parking areas;
4. Reduce visual impacts on surrounding properties and improve streetscape appearance.

B. Alley Access Exception. Access from the public street where the lot abuts an alley will only be allowed as an exception to the alley access requirement. The city engineer, in consultation with the planning director, may allow access to required off-street parking from the street in lieu of, or in addition to, using the alley in the following circumstances:

1. The topography of the site and/or adjacent alley makes use of the alley infeasible; or
2. The requirement for access from the alley would create a traffic or pedestrian safety hazard, such as sight distance problems or conflicts with other ingress/egress locations; or

3. There is an existing improvement that prevents use of the alley for vehicular access and the improvement cannot reasonably be relocated or removed; or
4. For nonresidential or mixed uses, driveway access from the street is necessary to provide access for commercial customer traffic; this exception may not be used to justify a street access point that primarily provides access to employee or resident parking areas; or
5. Providing access from the street will reduce or minimize adverse impacts on adjacent properties; or
6. Street access for multiple levels of off-street parking within a structure when access from an alley to all parking levels is not feasible due to topography or lot geometry.

C. Driveways. The design of all driveways and internal vehicle circulation shall be in accordance with EMC Title 13 and the city design standards. Maximum driveway width within the public right-of-way shall be as provided in Chapter 13.16 EMC. For residential zones, the following additional requirements shall apply to the portion of the driveway located outside the right-of-way for:

1. For non-alley access lots, the maximum driveway width within twenty feet of the ~~right-of-way abutting the front lot line or within ten feet of the street side lot line~~ shall not exceed thirty feet, or fifty percent of the lot frontage width, whichever is less. However, where a driveway is permitted, a minimum driveway width of ten feet will be allowed;

**Section 27.** EMC 19.34.120 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.34.120, Parking area design and construction.**

- A. Parking Design Specifications. The minimum requirements for parking stall and aisle dimensions, striping, pavement thickness, and subgrade shall be as set forth in the city design standards.
- B. Surfacing.
  1. All parking areas shall consist of durable surface materials approved by the planning director and city engineer. Depending upon site and soil conditions, low impact development (LID) stormwater management facilities are encouraged, and may be required by the city's stormwater management manual.
  2. Residential Exception. For residential uses with six or fewer dwellings on a property, nonrequired vehicle parking that is located outside of the front and street side setbacks areas may use surface materials in accordance with city design standards including grass block pavers and reinforced grass paving systems; provided, however, that parking in the area between a street-facing facade and the street must be on a paved surface as allowed by EMC 19.34.110(C).

3. Residential Dimensional exception. Existing, legally established vehicle parking spaces for residential development established prior to June 6, 2024 are not required to be resized or modified to meet current parking requirements, except for compliance with the Americans with Disabilities Act, per RCW 36.70A.

C. Landscaping and Screening. Landscaping and screening for parking lots shall be in accordance with the standards of Chapter 19.35. Parking of trucks or fleet vehicles is considered off-street parking for the purposes of calculating the parking lot interior landscaping required by Chapter 19.35 EMC.

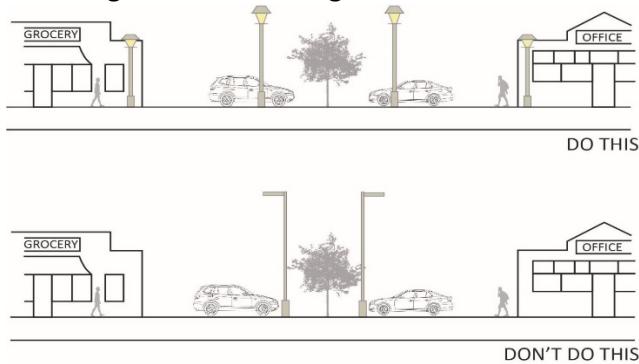
D. Tandem and Lift Parking. For all uses of parking systems that lift or stack individual vehicles, each vehicle accommodated by the stacker counts as an individual parking space. Tandem parking, which means parking spaces in a series without independent access, may be used for nonrequired parking. For required residential parking, each space must be no less than 20 feet in length and each dwelling unit's assigned vehicle parking space must have independent access. Neither tandem nor lift parking may be used for required ADA parking stalls.

E. Accessible Parking. Accessible parking stalls shall meet the requirements of Washington State Regulations for Barrier Free Facilities (Chapter 51-50 WAC).

F. Parking Area Illumination. Surface parking areas for residential uses with nine or more parking spaces or for any nonresidential uses shall provide illumination to improve site security and minimize light spill and glare impacts on adjacent properties. Parking area illumination shall meet the following standards:

1. Parking area lighting fixtures shall be full cut-off (zero percent candlepower at ninety degrees horizontal and ten percent maximum candlepower at eighty degrees from vertical), dark sky rated, and mounted no more than thirty feet above the ground, with lower fixtures preferable so as to maintain a human scale.
2. All fixtures over fifteen feet in height shall be fitted with a full cut-off luminaire.
3. Figure 4. Acceptable and unacceptable parking area lighting.

**Figure 34-2: Parking Area Illumination**



4. Except within industrial zones, pedestrian-scaled lighting (light fixtures no taller than fifteen feet) is encouraged in areas of pedestrian activity.

- Lighting must not trespass onto adjacent private parcels. All building-mounted lights shall be directed onto the building itself and/or the ground immediately adjacent to it. The light emissions shall not be visible above the roof line of the building.

G. Maintenance.

- All off-street parking spaces shall be maintained to the design standard as shown on approved permit documents. Such spaces shall not be used at any time or in any manner that precludes use for off-street parking of operable motor vehicles regularly used by occupants, employees, guests, or customers.
- Where parking is owned in common (e.g. by a homeowners' association), the covenants shall clearly indicate which parties are responsible for parking facility maintenance.

**Section 28.** EMC 19.34.170 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.34.170 – Bicycle Facilities, Required Counts**

Bicycle secure storage spaces are required for most uses to provide secure and convenient places to park bicycles and other forms of micromobility devices. These regulations ensure adequate short and long-term bicycle spaces based on the demand generated by different uses. Minimum bicycle facilities acknowledge the usage rates for different uses, and that this will vary by geography, being higher in mixed-use centers than in the rest of the city.

In the following table, the right column names the uses, while the second, third, and fourth columns provide formulas for how many long term (LT) and short term (ST) spaces must be provided in the city generally, or in mixed-use centers.

- For uses not otherwise listed, required number of long and short term bicycle spaces are to be determined by the planning director and city engineer.
- For all nonresidential uses, a minimum of 2 long term and 2 short term bicycle spaces are required.

**Table 34-6 Bicycle Facilities, Required Counts**

Land Use	Long Term	Short Term	Mixed-Use Centers
<b>Residential</b>			
Day care (family home), childcare	1.0 per dwelling	2.0 per site; both must be oversize spaces	2 LT / dwelling 4 ST (can substitute secure area on plan)
Day or overnight care (family home), caring for adults	1.0 per dwelling unit	1.0 per dwelling unit	2 LT / dwelling 2 ST / dwelling

Dwelling unit, unless otherwise noted here	1.00 per dwelling unit	0.20 per dwelling unit, except none required for five or fewer dwellings on a lot	1.25 LT / dwelling 0.30 ST / dwelling (only required for 3 or more dwellings on a lot)
Dwelling, Co-Living, Dormitory, Emergency Housing, Secure Community Transition	.75 per sleeping unit or bed	.25 per sleeping unit or bed	1.0 LT / sleeping unit or bed 0.3 ST / sleeping unit or bed
Live-Work Units	1.00 per dwelling unit	0.50 per dwelling unit	1.50 LT / dwelling 0.75 ST / dwelling
Group housing, residential care facility, senior housing, or extended care facility, including independent living units in congregate care facility, convalescent or nursing homes	0.50 per bed	0.20 per bed	0.75 LT / bed 0.25 ST / bed
Permanent Supportive Housing	As determined by planning director and city engineer, with no fewer than 0.5 per bedroom and 1 for every 2 employees on shift (2 minimum)	As determined by planning director and city engineer, with no fewer than 0.1 per bedroom (2 minimum)	As determined by planning director and city engineer, with no less than 0.75 LT and 0.2 ST (3 each, minimum)
Short term rentals; hotels, motels	0.05 per rentable room 0.05 ST / rentable room, <del>PLUS 0.20 ST / 1,000 sf for conference/meeting rooms</del>	0.05 per rentable room and 0.20 per 1,000 square feet of conference/meeting rooms	0.075 LT / rentable room 0.10 ST / rentable room, <del>PLUS 0.35 ST / 1,000 sf for conference/meeting rooms</del>
<b>Office, Retail, &amp; Restaurants</b>			
General or professional offices, incl. government uses	0.25 per 1,000 square feet	0.10 per 1,000 square feet	0.50 LT / 1,000 sf 0.25 ST / 1,000 sf

Retail stores & service, all forms not otherwise listed	0.25 per 1,000 square feet	0.25 per 1,000 square feet; at least 10% must accommodate oversize bicycles	0.50 LT / 1,000 sf 0.50 ST / 1,000 sf; at least 20% must accommodate oversize bicycles
Restaurants, bars	0.25 per 1,000 square feet	0.50 per 1,000 square feet	0.50 LT / 1,000 sf 1.0 ST / 1,000 sf
<b>Other Commercial, and Industrial</b>			
Clinics and Veterinary Clinics	0.10 per 1,000 square feet	0.25 per 1,000 square feet	0.25 LT / 1,000 sf 0.50 ST / 1,000 sf
Commercial Storage, enclosed	0.02 per 1,000 square feet	0.05 per 1,000 square feet; at least 50% of ST spaces must accommodate oversize bicycles	0.04 LT / 1,000 sf 0.10 ST / 1,000 sf (≥50% spaces accommodate oversize bikes)
Daycare, Commercial	0.075 LT per employee	0.05 ST per child peak attendance; at least 25 percent must accommodate oversize bicycles	0.15 LT/employee; 0.1 ST/child (≥30% must accommodate oversize bicycles)
Dismantling & Impound Yard; Outdoor Storage; Heliport; Marine Terminal; Railyard	0.25 per 1,000 square feet of office space	1.0 per site	0.50 LT / 1,000 sf of office space none beyond 3 ST
Entertainment and recreation, indoor – theaters, gathering halls	1 per 1,000 square feet, or 0.02 per seat	1.25 per 1,000 square feet, or 4% of projected max attendance	4 LT / 1,000 sf or 0.04 LT / seat; 2.5 per 1000 sf, or 8% of projected max attendance
Entertainment and recreation, indoor – all others	0.5 per 1,000 square feet	0.75 per 1,000 square feet	0.75 LT / 1,000 sf; 1.5 ST /1000sf
Entertainment and recreation, outdoor, and major event venues	Per planning director and city engineer	Per planning director and city engineer	Per planning director and city engineer
Manufacturing & Production, light or heavy	0.067 per 1,000 square feet	0.05 per 1,000 square feet	0.13 LT / 1,000 sf 0.1 ST / 1,000 sf

Vehicle & Equipment sales, repair, and rental (light and heavy)	0.25 per 1,000 square feet of office space	0.1 per 1,000 square feet of building area	0.50 LT / 1,000 sf of office space 0.2 / 1,000 sf of enclosed space
Warehouse & Freight terminal	0.025 per 1,000 square feet	0.01 per 1,000 square feet	0.05 LT / 1,000 sf 0.02 / 1,000 sf
Public and Institutional			
Community Service & Civic Centers not otherwise described	0.05 per employee	0.25 per 1,000 square feet	0.15 LT / employee 0.50 ST/1000sf.
Community Club/Center; Private Clubs and Lodges	0.25 LT / 1,000 sf	0.25 per 1,000 square feet	0.50 LT / 1,000 sf 0.50 ST/1000sf.
Hospitals	Per planning director and city engineer	Per planning director and city engineer	Per planning director and city engineer
Libraries	0.05 LT / employee	0.25 per 1,000 square feet	0.15 LT / employee 0.50 ST/1000sf.
Museums	0.05 LT / employee	0.25 per 1,000 square feet	0.15 LT / employee 0.50 ST/1000sf.
Parks	Per planning director and city engineer	Per planning director and city engineer	Per planning director and city engineer
Places of Worship	0.1 LT / 1,000 sf	0.4 per 1,000 square feet	0.2 LT / 1,000 sf 0.8 ST/1000sf.
Schools, K-12 and College	Per planning director and city engineer	Per planning director and city engineer	Per planning director and city engineer

**Section 29.** EMC 19.35.020 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.35.020, Purpose.**

The purpose of this chapter is to

- A. enhance compatibility between land uses and zones;
- B. support compact development;
- C. new development is compatible and graceful transitions between differing land use densities, intensities, and uses.;
- D. screen undesirable views which have a blighting effect upon adjoining streets and properties;
- E. provide a visual buffer and physical separation between land uses of varying intensities on abutting properties;

- F. visually screen unwanted features in the pedestrian environment, soften blank walls, visually reduce large and continuous building mass, and add visual interest to building rooflines when used on terraces and upper levels;
- G. minimize the impacts of noise, light and glare;
- H. reduce urban heat island effects through development, building, and infrastructure design;
- I. provide privacy;
- J. reduce dust;
- K. reduce the visual monotony of large expanses of paved parking lots;
- L. implement the policies of the Everett general plan;
- M. reduce stormwater runoff and pollution of surface waters, reduce erosion and sedimentation;
- N. conserve energy;
- O. aid in regulating vehicle circulation; and
- P. retain existing natural vegetation and protect and preserve urban wildlife habitat;.
- Q. support ecological health, enhance habitat connectivity for native plants and wildlife
- R. maintain a continuous, consistent, walkable, and human-scaled pedestrian environment at the interface of buildings and the public realm. Promote interaction between indoor and outdoor activities to create an inclusive and vibrant public realm.
- S. strive to achieve a “greener” character over time, reflecting the spectacular natural landscape within and surrounding the City of Everett;
- T. expand the city’s overall tree canopy;
- U. create a safe and comfortable environment by using design cues to differentiate/demarcate public, semi-private, and private spaces, incorporate clear sightlines and eyes on the street, and other CPTED-crime prevention through environmental design features;
- V. use landscaping elements to delineate spaces and frame views. In pedestrian areas, provide a clear zone from 2' to 7' above the ground to support clear lines of sight and safety, particularly near to intersections or potential points of conflict; and
- W. buffer between designated ~~MICs~~ Manufacturing Industrial Centers and adjacent residential or mixed-use areas to protect both the viability of long-term industrial operations and the livability of adjacent areas.

**Section 30.** EMC 19.35.060 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.35.060 Application of landscape categories and type (Tables 35-1 and 35-2).**

- A. *General.* Table 35-1 specifies landscape categories for all use zones within the city, while Table 35-2 lists the applicable landscape type and width. The specific regulations pertaining to each landscape category are contained in this section. Where there is a conflict between the general and specific regulations, the more specific regulations shall control.
- B. *Instructions for Tables 35-1 and 35-2.* First, determine the property’s zoning from the city’s zoning map (see Chapter 19.03 EMC, Map 3-1). Then refer to Table 35-1 to determine which landscape category applies to that zone. Use Table 35-2 to determine which perimeter

landscape types apply for that category. Also refer to the applicable footnotes and detailed requirements standards for specific uses in the following sections of this chapter.

**Table 35-1: Landscape Categories for Use Zones**

Use Zone	Landscape Category
UR4; UR7	A
MU4; MU7; MU15; <u>MU25</u> ; LI-MU	B
HI	C
LI	D
NR; NR-C; AG	E <sup>(4)</sup>

C. *Perimeter Landscaping.* Table 35-2 of this section establishes the type and width of landscaping required along property lines for the landscape category required in each individual zone in Table 35-2. This chart establishes the minimum requirements for each landscape category. However, additional standards may be required for uses being reviewed under review processes involving the hearing examiner, planning commission or city council as set forth in EMC Title 15, Local Project Review Procedures, when necessary to enhance compatibility between zones and uses. Where a minimum width of landscaping is specified, the actual width of the planting area shall be measured. Curbs, paving or other protective or boundary marking devices shall not be included in the measurement of landscape width.

D. *Application of Type IV Landscaping.* Type IV landscaping shall be used in the following circumstances:

1. All uses which are indicated as requiring Landscape Category E in the use-standards tables of individual zones.
2. All interior portions of lots which are not developed with buildings, parking area and uses and which are not regulated by subsection (A) of this section, or EMC 19.35.080 or 19.35.090, or by other more specific landscape regulations contained in this title.

**Table 35-2: Perimeter Landscape Standards**

Street Frontage <sup>(1)</sup>			Interior Lot Lines <sup>(2)</sup>		
<sup>(1)</sup> All public right-of-way behind the sidewalk, walking path, parking strip, or travel lane shall also be landscaped to Type III standards. Additional trees are not required in the portion of the landscaping in the public right-of-way.			<sup>(2)</sup> Interior lot lines which do not abut an alley.		
Landscape Category	Type	Width of Landscaping	Abutting Zone	Type	Width of Landscaping

<b>Street Frontage<sup>(1)</sup></b>			<b>Interior Lot Lines<sup>(2)</sup></b>		
<p><sup>1</sup>All public right-of-way behind the sidewalk, walking path, parking strip, or travel lane shall also be landscaped to Type III standards. Additional trees are not required in the portion of the landscaping in the public right-of-way.</p>			<p><sup>2</sup>Interior lot lines which do not abut an alley.</p>		
A	III Ornamental	<p>10 feet or distance between lot line and building, whichever is less <sup>(3)</sup></p> <p><sup>3</sup>See EMC 19.35.080 for landscaping requirements for off-street parking and outdoor display areas.</p>	NR and NR-C	II See-Through Buffer	10 feet or distance between building and lot line, whichever is less
			Others	III Ornamental	5 feet or distance between building and lot line, whichever is less
B	III Ornamental	<p>10 feet or distance between lot line and building, whichever is less <sup>(3)(11)(3)</sup></p> <p><sup>3</sup>See EMC 19.35.080 for landscaping requirements for off-street parking and outdoor display areas.</p> <p><sup>11</sup>Tree standards for streets designated TOD, pedestrian and connector</p>	Residential <sup>(5)</sup> <sup>5</sup> AG, NR-C, NR, UR4, UR7 zones.	I Visual Screen	10 feet
			Others	III Ornamental	5 feet or distance between building and lot line, whichever is less
C	III Ornamental	<p>15 feet or distance between building and lot line, whichever is less <sup>(3)(8)(10)</sup></p> <p><sup>3</sup>See EMC 19.35.080 for</p>	Residential <sup>(5)</sup> <sup>5</sup> AG, NR-C, NR, UR4, UR7 zones.	I Visual Screen	25 feet
			Mixed use <sup>(6)(11)</sup> <sup>6</sup> MU4, MU7, MU15, MU25 zones. <sup>11</sup> Tree standards for streets designated TOD, pedestrian and connector	III Ornamental	10 feet

<b>Street Frontage<sup>(1)</sup></b>			<b>Interior Lot Lines<sup>(2)</sup></b>		
<p><sup>1</sup>All public right-of-way behind the sidewalk, walking path, parking strip, or travel lane shall also be landscaped to Type III standards. Additional trees are not required in the portion of the landscaping in the public right-of-way.</p>			<p><sup>2</sup>Interior lot lines which do not abut an alley.</p>		
		<p>landscaping requirements for off-street parking and outdoor display areas.  <sup>3</sup>See EMC 19.35.110 for additional requirements in LI zone.  <sup>4</sup>The minimum landscape width for off-street parking areas abutting street right-of-way shall be fifteen feet.</p>	Industrial <sup>(7)</sup> <sup>7</sup> LI-MU, LI and HI zones.	III Ornamental	5 feet
D	III Ornamental	<p>20 feet or distance between building and lot line, whichever is less<sup>(3) (8) (10)</sup></p> <p><sup>3</sup>See EMC 19.35.080 for landscaping requirements for off-street parking and outdoor display areas.  <sup>8</sup>See EMC 19.35.110 for additional requirements in LI zone.  <sup>10</sup>The minimum landscape width for off-street parking areas abutting street right-of-way shall be fifteen feet.</p>	Residential <sup>(5)</sup> <sup>5</sup> AG, NR-C, NR, UR4, UR7 zones.	I Visual Screen	25 feet
			Others	II See-Through Buffer	15 feet
E	IV Lawn/Soil Stabilizing	(9) <sup>9</sup> See subsection (D) of this section for application of	All zones	IV Lawn/Soil Stabilizing	(9) <sup>9</sup> See subsection (D) of this section for application of

<b>Street Frontage<sup>(1)</sup></b>	<b>Interior Lot Lines<sup>(2)</sup></b>
<sup>(1)</sup> All public right-of-way behind the sidewalk, walking path, parking strip, or travel lane shall also be landscaped to Type III standards. Additional trees are not required in the portion of the landscaping in the public right-of-way.	<sup>(2)</sup> Interior lot lines which do not abut an alley.
	Category IV landscaping.

Footnotes for Table 35-2:

1 All public right-of-way behind the sidewalk, walking path, parking strip, or travel lane shall also be landscaped to Type III standards. Additional trees are not required in the portion of the landscaping in the public right-of-way.

2 Interior lot lines which do not abut an alley.

3 See EMC 19.35.080 for landscaping requirements for off-street parking and outdoor display areas.

4 Repealed by Ord. 4102-25. Landscape category B for permitted nonresidential uses

5 AG, NR-C, NR, UR4, UR7 zones.

6 MU4, MU7, MU15, MU25 zones.

7 LI-MU, LI and HI zones.

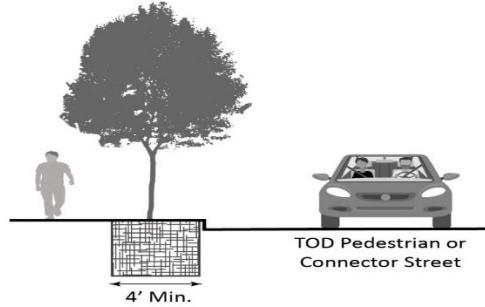
8 See EMC 19.35.110 for additional requirements in LI zone.

9 See subsection (D) of this section for application of Category IV landscaping.

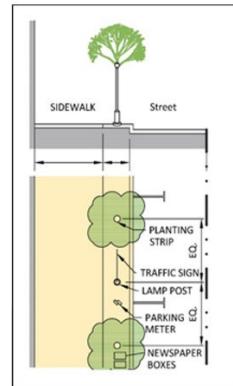
10 The minimum landscape width for off-street parking areas abutting street right-of-way shall be fifteen feet.

11 For streets designated TOD, pedestrian and connector on Map 33-1, the required street trees shall be provided between the sidewalk and curb edge within the public right-of-way in a minimum four-foot by six-foot vault or other method as approved by the city to prevent root penetration and sidewalk damage. Spacing of trees shall average not more than thirty feet. Spacing is subject to city of Everett public works standard clearances for sight triangles, driveways, street lights, and other street features or safety concerns. Tree spacing may be reduced to increase visibility of signs and buildings if approved by the city. The city shall maintain a recommended tree list that includes species selection and spacing requirements. See Figures 35-2 and 35-3 below.

**Figure 35-2: Street Trees on TOD, Pedestrian and Connector Streets**



**Figure 35-3: Street Trees on TOD, Pedestrian and Connector Streetscapes**



**Section 31.** EMC 19.35.090 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.35.090, Special landscape requirements applicable to neighborhood residential zone.**

A. In addition to providing landscaping pursuant to Tables 35-1 and 35-2, trees are required within eight feet of the front and side streets. Trees shall be two inches in diameter at 4.5 feet in height, planted every twenty feet on center.

~~C~~ B. For developments with residential uses all street-facing elevations must have landscaping along any exposed foundation. The landscaped area may be along the outer edge of a porch instead of the foundation. This landscaping requirement does not apply to portions of the building facade that provide access for pedestrians or vehicles to the building. The foundation landscaping must meet the following standards:

1. The landscaped area must be at least three feet wide.
2. There must be at least one shrub for every three lineal feet of foundation.
3. Ground cover plants must fully cover the remainder of the landscaped area.

**Section 32.** EMC 19.38.040 is hereby amended as follows, with strikeout text deleted and underlined text added.

### **19.38.040, Substandard lots—Nonconforming lots.**

This section addresses lots that do not meet minimum lot area and/or dimensional requirements of this title, and lots that have been created or altered prior to there being a formal land division requirement in the city. This section also addresses how such lots may be considered legal lots for zoning purposes.

A. ~~R-S, R-1 and R-2 NR and NR-C Zones~~. In the ~~R-S, R-1 and R-2 NR and NR-C~~ zones, subject to other limitations imposed by other provisions of this title, ~~a single family one~~ dwelling may be erected on any single “lot” as defined in this title. A lot shall meet the following criteria, as applicable:

1. A lot created via the subdivision process of Chapter 58.17 RCW;
2. A lot which was created prior to December 1, 1956;
3. Any lot which met minimum lot area requirements under the regulations or standards of Snohomish County prior to annexation or incorporation into the city of Everett; and
4. A lot reduced below minimum zoning requirements as a result of public acquisition of property.

B. Substandard Lots—~~Multifamily, Commercial and Industrial Other~~ Zones. Any substandard lot may be used for any of the uses permitted in the respective zone, subject to the special regulations and end notes in Chapter 19.05 EMC, and in accordance with the review process and general evaluation criteria in EMC Title 15 and all other regulations including minimum yards, provided:

1. All such lots shall meet the definition of “nonconforming lot” as defined in this title and shall not have been merged or otherwise created illegally.
2. Commercial or industrial lots which have been created through the binding site plan process are exempt from this section.
3. The use complies with all other requirements of this title.

C. Substandard Lots—Merger Clause. The following applies to substandard lots in the R-S, R-1 and R-2 zones which otherwise meet the criteria in subsection (A) of this section:

1. If two or more substandard lots or a combination of lots or substandard lots and portion(s) of lots and substandard lots are contiguous and were acquired by common conveyance prior to the above dates, or which have been legally combined at any time subsequent to the above dates, and if all or part of the lots do not meet the requirements established for minimum lot area and width, the lands involved shall be merged and considered to be a single undivided lot. No portion of the lot shall be used, altered or sold in a manner which diminishes compliance with lot area and width requirements, nor shall any division of any such lot be made which creates a lot with area or width below the requirements permitted by this chapter.

2. If two or more substandard lots or a combination of lots or substandard lots and portions of lots or substandard lots are contiguous and a structure is constructed on or across the lot line(s) which make the lots contiguous, then the lands involved shall be merged and considered to be a single undivided lot. No portion of said lot shall be used, altered or sold in any manner which diminishes compliance with lot area or width requirements, nor shall any division be made which creates a lot with area or width below the requirements permitted by this title.

For purposes of this section, "structure" means anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground and includes, but is not limited to, houses, garages, carports and accessory structures.

**Section 33.** EMC 19.39.030 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.39.030 Garbage receptacles, dumpsters and recycle bins—placement and screening.**

The following requirements apply in all areas except single family zones:

- A. Placement. Garbage receptacles, dumpsters, and recycle bins shall be provided in all multifamily, commercial, industrial and institutional developments and shall not be located in a required front yard setback area, or street side setback area for corner lots. Where an alley abuts a lot in any zone, the garbage receptacles, dumpsters, or recycle bin shall be located adjacent to the alley.
- B. Screening. All garbage receptacles, dumpsters and recycle bins must be screened from view from the street and from adjacent properties. This screening may be done using dense vegetation or by placing the dumpster or recycle bin in a structural enclosure.

**Section 34.** EMC 19.39.050 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.39.050 Outdoor use, activity and storage**

- A. Residential Zones. Uses and activities normally associated with a residential use are allowed in a residential zone. The outdoor storage of firewood may not be located within front setback areas but may be located in other required setback areas.
- B. Commercial and Industrial Zones.
  1. General. Subject to the requirements of subsections (B)(2) through (6) of this section, the uses and activities that are allowable on a site in commercial and industrial zones may be conducted out of doors unless individual zones of this title limit outside activity for a particular use in a particular zone. Where there is a conflict in requirements in this chapter and elsewhere in this title, the more restrictive requirements shall apply.

2. Site Plan. The applicant shall submit a site plan for approval by the planning department. The site plan shall be accompanied by an application form provided by the planning department and shall include all information requested on the application form.

3. Specific Use and Development Requirements. The city will review an application for outdoor use, activity and storage using the appropriate review process for the principal use. If the principal use is established, the review process described in EMC Title 15, Local Project Review Procedures, shall be used. The review authority will make a decision based upon the following standards:

- a. All outdoor use, activity and storage areas must comply with setback requirements for the primary use.
- b. A solid sight-obscuring fence or other appropriate screening approved by the planning department is required around the outside edges of the area devoted to the outdoor use, activity or storage. The height of outdoor storage abutting public streets or residential zones shall not be higher than the height of the screen device approved by the planning department.
- c. Except in the LI2 zone, outdoor use, activity or storage areas located adjacent to property in the same zone may be located in the required interior side and rear setback yards. All outdoor use, activity and storage areas located adjacent to residential zones must meet required setbacks for the primary use.
- d. When gross floor area or lot coverage requirements are applicable, an outdoor use, activity or storage area will be used in calculating the permitted gross floor area or lot coverage of a use or development if this area will be used as an outdoor use, activity or storage area for at least two months in every year.
- e. If located on an unimproved area of the site, the underlying ground must be improved as required by the department of public works.

4. Exceptions to Outdoor Use, Activity or Storage. The following outdoor uses and activities, when located in commercial and industrial zones, are exempt from the requirement of this subsection as stated below:

- a. Exceptions to subsections (B)(3)(a) through (d) of this section; provided, that a temporary certificate of occupancy from the building department is obtained:
  - (1) Outdoor Christmas tree lots and fireworks stands if these uses will not exceed forty-five days.
  - (2) Outdoor amusement rides; carnivals and circuses; and parking lot sales which are ancillary to the indoor sale of the same goods and services if these uses will not exceed ten days.
- b. Exception to subsections (B)(3)(a) and (b) of this section:

- (1) Outdoor dining areas, where permitted.
- (2) Outdoor display of vehicles for sale or lease; provided, that they meet all of the standards of EMC 19.35.080.

5. Modification. The applicant may request a modification of the requirements of subsections (B)(2) through (4) of this section by submitting a written request with their site plan to the planning director for review. The planning director may approve a modification using the review process as described in EMC Title 15, Local Project Review Procedures, if:

- a. The modification will not create a greater impact on any nearby residential use than would be created without the modification; and
- b. The modification will not detract from the character of nearby uses; and
- c. The modification will not be injurious to public health, safety or welfare; and
- d. The modification is consistent with the policies of the Everett general plan; and
- e. Landscaping or other means of screening is provided to reduce the visual impact of the outdoor use, activity or storage areas on surrounding properties and public right-of-way.

6. Appeals of Outdoor Use, Activity and Storage Modification Requests. The planning director's determination may be appealed as provided for in EMC Title 15, Local Project Review Procedures, for the applicable review process.

**Section 35.** EMC 19.40.010 is hereby amended as follows, with strikeout text deleted and underlined text added.

**19.40.010 Fences height and location.**

- A. Residential Zones—Fence Height and Setbacks. Fences shall not exceed a height of:
  1. Forty-two inches within twenty feet of the right-of-way abutting the front lot line.
  2. Six feet within the street side setback or the abutting right-of-way.
  3. Seven feet within the interior side or rear setbacks.
  4. Exceptions.
    - a. Fences within twenty feet of ~~the right-of-way~~ abutting the front lot line may be up to six feet in height if the fence is at least ten feet from the sidewalk, is at least seventy percent transparent from three feet to six feet, and is not chain link or other type of similar material. If no sidewalk exists, the minimum distance required is determined by the city engineer.

- b. For corner lots or double fronting lots, the front and street side or rear fence heights can be switched if the front of the house faces the street side or rear.
- c. Arbors. Arbors may exceed the maximum fence height within ~~the front setback twenty feet of the front lot line~~ for a distance of up to twenty percent of the lot frontage on the street, provided the height of the arbor does not exceed eight feet.
- d. Where a structure is within twenty feet ~~of the right of way abutting~~ the front lot line, a fence along the street-facing facade line is not required to comply with the fence height limitation of EMC 19.40.010(4)(a).
- e. Conditional Uses. For development subject to the conditional use process, fences may deviate from the standards in this section as approved by the review authority.
- f. Corner Sites and Vision Clearance. See EMC 19.41.060(B).

B. MU Zones.

- 1. Height and Location. Fences may be up to six feet in height if the fence is at least ten feet from the back of the sidewalk and is at least seventy percent transparent. The transparency requirement shall not apply to any fence thirty-six inches or less in height. If no sidewalk exists, the fence must be set back a minimum of ten feet from where the sidewalk will be placed in the future as determined by the city engineer.
- 2. Materials. Chain link, wire, corrugated, sheet metal or other similar types of fences are prohibited.

C. Freeways (I-5 and SR-526). Fences abutting freeways shall have no height limit.

D. Mixed-Use and Industrial Zones. Fences in mixed-use and industrial zones shall not exceed ten feet in height, including barbed wire located on top of the fence except:

- 1. Any fence taller than forty-two inches must be set back a minimum of ten feet or the required landscape width, whichever is greater, from any lot line along a street; and
- 2. Any fence within ten feet of a residentially zoned property shall not exceed seven feet in height.
- 3. See subsection (B) of this section for fence height restrictions in the MU zones.

E. Retaining Walls and Berms. Fences placed on top of berms shall be constructed so as not to exceed the maximum height allowed if the berm were not there. Fences placed upon rockeries or retaining walls shall be permitted to be constructed to the maximum allowable fence height above the rockery or retaining wall, provided the rockery or retaining wall does not exceed a height of six feet. Fences constructed on top of retaining walls which are greater than six feet in height shall not exceed a maximum fence height of forty-two inches.

**Section 36.** A new chapter is added to Title 19 EMC as follows:

## CHAPTER 19.54 INCLUSIONARY ZONING

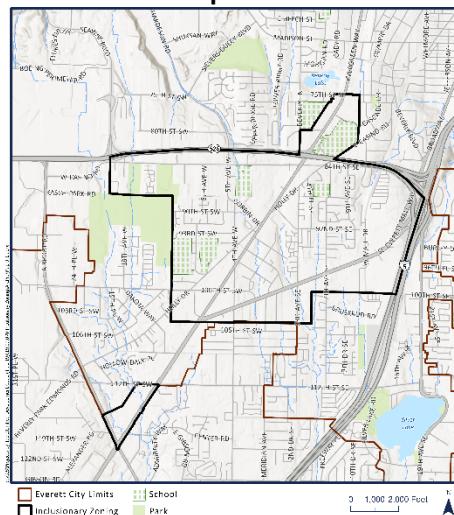
### 19.54.010 Purpose.

The purpose of this section is to address the need for affordable housing and to provide opportunities for low-income households to live near transit and employment.

### 19.54.020 Applicability

Inclusionary housing requirements shall apply to new residential development under this chapter within the area indicated in Map 54-1.

**Map 54-1**



### 19.54.030 Exemptions and reductions.

A. Inclusionary zoning requirements under this section are waived for:

1. Projects resulting in fewer than six dwelling units.
2. Projects subject to a development agreement.

B. Inclusionary zoning requirements under this section, including the alternative compliance fee in lieu, shall be reduced by half for projects resulting in at least six but no more than fifteen dwelling units.

### 19.54.040 Requirements.

A. For dwelling units intended for rent:

1. At least twenty percent of the dwelling units must be affordable to households whose income is at or below eighty percent of the median household income for Snohomish County, adjusted for household size; and

2. Of the affordable dwelling units required under subsection (A)(1), at least one half must be affordable to households whose income is at or below sixty percent of the median household income for Snohomish County, adjusted for household size;
- B. For dwelling units intended for owner occupancy:
  1. At least twenty percent of the units affordable to households whose income is at or below one hundred percent of the median household income for Snohomish County, adjusted for household size;
- C. Affordable housing units that are provided under this section shall remain as affordable housing for a minimum of 50 years, as provided in a recorded covenant running with the land. The covenant shall be approved by the Planning Director and filed for recording with the county auditor prior to the issuance of a certificate of occupancy for any applicable structure.

**19.54.050 Review process.**

- A. Prior to the issuance of any permit(s), the department shall review and approve the location and unit mix of the affordable housing units consistent with the following standards:
  1. The location of the affordable housing units shall be intermingled with all other dwelling units within the development, with no more than three affordable units next to each other.
  2. The tenure (ownership or rental) of the affordable housing units shall be the same as the tenure for the rest of the housing units in the development.
  3. The bedroom mix of affordable housing units in any project shall be in the same ratio as the bedroom mix of the market rate units of the project;
  4. The floor area of the affordable housing units shall not be less than 90 percent of the average gross floor area of the market rate units within the project with the same number of bedrooms; and
  5. The exterior materials, interior materials, and design of the affordable housing units must be comparable with the other dwelling units in the development, with similarity in building finishes, rooflines, and landscaping.
  6. Construction of the affordable housing units shall be concurrent with the construction of market-rate dwelling units

**19.54.060 Alternative compliance – fee in lieu.**

The Planning Director may approve a request for satisfying all or part of the affordable housing requirements with a fee in lieu equal to fifteen dollars per square foot of gross floor area subject

to this section. A fee in lieu under this subsection may be deferred under subsection EMC 19.54.070.

A. For dwelling units intended for rent, the fee in lieu under this section is equal to fifteen dollars per square foot of gross floor area subject to this section.

B. For dwelling units intended for owner occupancy, the fee in lieu under this section is equal to nine dollars per square foot of gross floor area subject to this section. The reduced fee in lieu granted under this subsection must be conditioned upon requiring the applicant to record a covenant approved by the planning director to assure owner occupancy. At a minimum, the covenant must require owner occupancy of each dwelling unit subject to this subsection for a period of twelve years and require that, if the property is converted to a rental, the property owner must pay the applicable difference in between the fee in lieu for dwelling units intended for rent and the fee in lieu for dwelling units intended for owner occupancy in effect at the time of conversion or in effect at the time of construction, whichever is greater. Covenants required by this subsection must be recorded with the Snohomish County auditor.

#### **19.54.070 Deferred fee in lieu.**

A fee in lieu under subsection EMC 19.54.060 may be deferred until six months after a certificate of occupancy is issued for a dwelling unit subject to this section.

A. An applicant seeking a deferral under this subsection (G) may be required to grant and record a deferred fee lien against the property in favor of the city in the amount of the deferred fee. The deferred fee lien, which must include the legal description, tax account number, and address of the property, must also be:

1. In a form approved by the city;
2. Signed by all owners of the property, with all signatures acknowledged as required for a deed, and recorded in Snohomish County;
3. Binding on all successors in title after the recordation; and
4. Junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees.

B. Upon receipt of final payment of all deferred fees for a property, the county, city, or town must execute a release of deferred impact fee lien for the property. The property owner at the time of the release, at the property owner's expense, is responsible for recording the lien release.

C. The extinguishment of a deferred impact fee lien by the foreclosure of a lien having priority does not affect the obligation to pay the impact fees as a condition of final inspection, certificate of occupancy, or equivalent certification, or at the time of closing of the first sale.

#### **19.54.080 Eligibility for multifamily tax exemption.**

Dwelling units satisfying the affordability requirements of this section may also satisfy the affordable housing requirements of Chapter 3.78 EMC.

**Section 37.** The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references and ordinance numbering.

**Section 38.** The City Council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this Ordinance independent of the elimination of any such portion as may be declared invalid.

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Cassie Franklin, Mayor

ATTEST:

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City Clerk

## STAFF MEMORANDUM

**TO:** Everett City Council  
**FROM:** Yorik Stevens-Wajda, Planning Director  
**DATE:** December 18, 2025  
**SUBJECT:** Everett 2044 Housekeeping Ordinance

### BACKGROUND

The Everett 2044 Comprehensive Plan and Development Regulation Periodic Update was adopted June 18, 2025, via ordinances [4101-25](#) and [4102-25](#), with an effective date of July 8, 2025. The [comprehensive plan](#) is available at [everettwa.gov/3365/2044-Comprehensive-Plan](http://everettwa.gov/3365/2044-Comprehensive-Plan). The updated [development regulations](#) are available through the online municipal code viewer at [everett.municipal.codes/EMC/](http://everett.municipal.codes/EMC/)

In the months since adoption of the development regulations, staff have identified errors and provisions that are difficult to interpret accurately and consistently. This is the first of what could be several housekeeping ordinances to correct errors and clarify provisions in the development regulations.

The planning commission adopted [PC Resolution 25-02](#) on November 18, 2025, recommending approval of a set of amendments to correct errors and clarify regulations.

### REVIEW CRITERIA

Criteria for amending the development regulations (unified development code) include:

- a. The proposed amendment is consistent with the applicable provisions of the Everett comprehensive plan; and
- b. The proposed amendment bears a substantial relation to public health, safety or welfare; and
- c. The proposed amendment promotes the best long-term interests of the Everett community.

### STATE ENVIRONMENTAL POLICY ACT

The city has issued a Determination of Significance and Adoption of [Everett 2044 Periodic Update Final Environmental Impact Statement](#) for this proposal, meaning that the environmental impacts of the proposal have already been studied and reported earlier in the [Everett 2044 Periodic Update](#).

### EXHIBITS

Exhibit A – Proposed Code Amendments and explanations



2930 Wetmore Ave., Ste. 8-A  
Everett, WA 98201



425.257.8731  
425.257.8742 fax



planning@everettwa.gov  
everettwa.gov

## EXHIBIT A – PROPOSED CODE AMENDMENTS

Ordinance/Code Section	Proposed Amendment	Comments
Ord. Section 1  EMC 14.16.430 Single and multiple metered services—regulations and charges.	<p>A. <i>Residential dwelling units – Separate meters required.</i> Each residential dwelling unit (as defined by the current edition of the International Residential Code for one- and two- unit dwellings) shall require a separate metered service. The required permit(s) shall be obtained, and a separate metered service shall be installed to each dwelling unit. Each meter shall be charged for water service independently and shall remain liable for a lien for water charges as provided in Section 14.16.850.</p> <ol style="list-style-type: none"> <li>1. Where multiple existing dwelling units share a single metered service, separation of the service and installation of a separate metered service to each dwelling unit may be required at the discretion of Public Works.</li> <li><u>2. At the discretion of Public Works, a single shared water service and meter may be permitted for a new dwelling unit being added within or attached to an existing one-unit dwelling, provided both units remain under single ownership.</u></li> </ol> <p>B. <i>Commercial structures – Single metered service.</i> Commercial structures (as defined by the current edition of the International Building Code, including multi-family structures with three or more dwelling units) shall provide a single metered service per structure, sized per the current edition of the Uniform Plumbing code.</p> <ol style="list-style-type: none"> <li>1. Multiple metered services may be permitted for separate non-residential tenant spaces within a commercial structure at the discretion of Public Works.</li> </ol>	Provides flexibility for the city to allow shared water service and meter for addition of one dwelling unit to an existing one-unit dwelling.
Ord. Section 2  EMC 19.03.030 Purpose and application of zone districts	4. <i>Airport/Port/ and Navy Compatibility Overlay Zone (APN).</i> The purpose of the APN <u>Airport and Navy compatibility zones</u> is to protect Paine Field Airport, <del>Port of Everett</del> , and Naval Station Everett from nearby incompatible land uses and development by implementing special development standards and project permit notice procedures.	Corrects name of the zone in EMC 19.17. Does not change any regulations, standards, or applicability.
Ord. Section 3  EMC 19.04.030 Lot, building, and structure definitions	<p><del>“Street-facing dwelling unit facade” means a ground or first floor of a dwelling unit facade facing, and within thirty feet of, a front or side street lot line on a public street.</del></p>	<p>This definition, carried over from previous code, is only used in two places and it does not add value to either.</p> <p><b>19.08.030(A)</b> New dwelling units that include any façade within thirty feet of a public street right-of-way must face the street, which means including a <b>street-facing unit façade</b> that includes one of the front porch or entrance types in EMC 19.08.050 facing the public street for each individual dwelling or shared building entry.</p> <p><b>19.08.060(A)(3)</b> The width of the garage wall facade within thirty-five feet of a public street may be up to fifty percent of the width of the <b>street-facing dwelling unit façade</b>, except that a garage wall facade set back a minimum of twenty feet behind the front facade of the dwelling unit is allowed a two-car-wide garage facade of up to twenty feet wide. (See Figure 8-2 below.)</p> <p>A similar term, <b>street-facing façade</b>, appears in the updated regulations in a few places:</p> <p><b>19.08.040(B)(5)</b> Transparency. At least fifteen percent of the area of each <b>street-facing facade</b> must be windows or main entrance doors. Windows used to meet this standard must allow views from the building to the street. Glass block does not meet this standard. Windows in garage doors do not count toward meeting this standard.</p> <p><b>19.08.060(4)</b> Where the public <b>street-facing facade</b> of the dwelling unit is less than twenty-two feet in length, an attached garage is prohibited as part of that facade.</p> <p><b>19.09.030(C)</b> Distance from Grade. The main entrance required by subsection (B)(3) of this section must be within four feet of average grade, measured at the outermost corners of the <b>street-facing facade</b>.</p> <p><b>19.34.120(B)(2)</b> ... parking in the area between a <b>street-facing facade</b> and the street must be on a paved surface as allowed by EMC 19.34.110(C)</p> <p><b>19.40.010(4)(d)</b> Where a structure is within twenty feet of the right-of-way abutting the front lot line, a fence along the <b>street-facing facade</b> line is not required to comply with the fence height limitation of EMC 19.40.010(4)(a).</p> <p>Only the transparency standard might be affected by the definition... it could be interpreted that the transparency standard only applies to the ground floor.</p>

Ordinance/Code Section	Proposed Amendment	Comments
Ord. Section 4 EMC 19.04.050 Use definitions, residential	“Transit Stop, Frequent” means stops for a bus or other transit mode providing actual fixed route service at intervals no longer than 15 minutes per hour for at least five full hours during the peak hours of operation on weekdays	Term is not used elsewhere. There is a reference to frequent transit in the parking chapter (EMC 19.34.060) but the term is defined within the sentence in that section.
Ord. Section 5 EMC 19.05.045 Neighborhood Commercial	B. Neighborhood Commercial uses are permitted in residential zones in the following areas: 2. In buildings historically used for and built for commercial/ <del>residential</del> or mixed use, including buildings for which a legal nonconforming use has discontinued or ceased; and	Simplifying the definition of mixed use, which will almost always include residential as one component.
Ord. Section 6 EMC 19.05.090 Table 5-2 (commercial use table)	<p><sup>17</sup>In Metro Everett on TOD or pedestrian streets: Clinics are a prohibited use on the ground floor; provided, however, that the following are not considered clinics for the purpose of this restriction: birthing centers, dentists, psychiatrists, chiropractors, physical therapists, optometrists or ophthalmologists.</p> <p>(a) Government public health agency uses providing clinical services shall be deemed to be a permitted use on the ground floor within the MU or LI1/LI2 zone mixed use or industrial zones.</p> <p>(b) Health events on a property within the MU or LI1/LI2 zone mixed use or industrial zones providing clinical health services to the general public, not exceeding three days in duration and occurring not more than once every ninety days, shall be exempt from the prohibition of clinics on the ground floor.</p>	Zoning districts have been renamed and redefined. LI1/LI2 no longer exists.
Ord. Section 7 EMC 19.06.070 Minimum lot area—averaging in land divisions.	E. The small lot single family development standards of EMC 19.08.020 shall apply to single family dwellings on lots with less than five thousand square feet created using the lot area averaging process;	EMC 19.08.020 no longer includes small lot single-family development standards.
Ord. Section 8 EMC 19.08.010 Intent applicability, and overview.	<p><u>This chapter addresses:</u></p> <p><u>A. Development standards for:</u></p> <ol style="list-style-type: none"> <li><u>1. Development in the Neighborhood Residential or Neighborhood Residential Constrained zones, and</u></li> <li><u>2. In other zones, development of detached one and two unit dwellings and any number of townhouses up to three stories in height, along with their accessory structures.</u></li> </ol> <p><u>B. This Chapter provides standards to ensure that new development accomplishes the following:</u></p> <ol style="list-style-type: none"> <li><u>1. Makes a positive contribution to the development pattern of the area;</u></li> <li><u>2. New or altered structures are compatible with the design and use of existing structures on neighboring properties;</u></li> <li><u>3. Does not impact in a substantial negative manner the habitability of neighboring properties;</u></li> <li><u>4. Design sites to have both an external orientation to the streetscape and an internal orientation to the residential environment with unifying open space and pedestrian pathways; and</u></li> <li><u>5. Design emphasis should be given to the pedestrian, rather than the auto environment, through placement of parking in a less prominent location</u></li> </ol> <p><u>A. Purpose. This Chapter provides standards to ensure that new development accomplishes the following:</u></p> <ol style="list-style-type: none"> <li><u>1. Makes a positive contribution to the development pattern of the area;</u></li> <li><u>2. New or altered structures are compatible with the design and use of existing structures on neighboring properties;</u></li> <li><u>3. Does not impact in a substantial negative manner the habitability of neighboring properties;</u></li> <li><u>4. Design sites to have both an external orientation to the streetscape and an internal orientation to the residential environment with unifying open space and pedestrian pathways; and</u></li> </ol>	Makes the intent, applicability, and overview section of EMC 19.08 consistent with EMC 19.09. No change to purpose statements or applicability. Adds exemptions, consistent with EMC 19.09, for internal remodels and conversions (with minor exterior changes); e.g., converting a basement to a dwelling.

Ordinance/Code Section	Proposed Amendment	Comments
	<p>5. Design emphasis should be given to the pedestrian, rather than the auto environment, through placement of parking in a less prominent location.</p> <p><u>B. Applicability.</u> The standards in this chapter apply to the following:</p> <ol style="list-style-type: none"> <li>1. Development in the Neighborhood Residential or Neighborhood Residential-Constrained zones, and;</li> <li>2. In other zones, development of detached one- and two-unit dwellings and any number of townhouses up to three stories in height, along with their accessory structures.</li> </ol> <p><u>C. Exceptions.</u> The following are exempted from the requirements of this chapter:</p> <ol style="list-style-type: none"> <li>a. Minor exterior alterations, provided, however, the alteration shall meet the following: <ol style="list-style-type: none"> <li>i. The alterations to the exterior shall meet the applicable standards of this chapter;</li> <li>ii. The alterations do not create a greater nonconformance unless otherwise allowed through modification of standards; and</li> <li>iii. The alterations are not as a result in a change of use or occupancy (see subsection (B)(2)(c) of this section).</li> </ol> </li> <li>b. Interior alterations which do not change the exterior appearance of the building and/or site.</li> <li>c. Change of use or occupancy which is either a minor exterior alteration or interior alterations; provided, however, that if the change in use or occupancy creates additional off-street parking, the development shall meet the parking requirements of this title, Chapter 19.34 EMC (Parking) and, as required, Chapter 19.35 EMC (Landscaping) and Chapter 19.33 EMC (Streets, Sidewalks and Pedestrian Circulation).</li> </ol>	
<u>Ord. Section 9</u> EMC 19.08.020 Neighborhood Residential General Standards.	<p><u>D. See Chapter 19.35 EMC for landscaping and street tree requirements.</u></p>	Moved this reference here from EMC 19.08.040(D)(2)
<u>Ord. Section 10</u> EMC 19.08.030 Neighborhood Residential Site Design	<p>A. New dwelling units that include any façade within thirty feet of a public street <u>right-of-way</u> must face the street, which means including a street-facing dwelling unit façade that includes one of the front porch or entrance types in EMC 19.08.050 facing the public street for each individual dwelling or shared building entry.</p> <p>1. Private yard. A private yard is required for dwelling units without direct access to a shared yard.</p> <ol style="list-style-type: none"> <li>a. Required private yards must have direct access from the associated dwelling unit.</li> <li>b. A private yard shall be a minimum of eight feet in any direction, no less than eighty square feet in area</li> <li>c. Required private yards may be located in a required <u>landscaping area</u>, <u>required setback area</u>, or on top of a roof.</li> <li>d. Private yards shall not include driveways, pathways, parking areas, buildings, or critical areas or their buffers.</li> </ol> <p>2. Shared yard. A shared yard is required for dwelling units without direct access to a private yard.</p> <ol style="list-style-type: none"> <li>a. Required shared yards must have direct access from the associated dwelling unit.</li> <li>b. For shared yards with up to five associated dwelling units, the required shared yard must be a minimum of fifteen feet in any direction, no less than 300 square feet in area.</li> <li>c. For shared yards with six or more associated dwelling units, the required shared yard(s) must be a minimum of twenty feet in any direction, no less than 10% of the lot in area.</li> <li>d. Required shared yards may be located in a <u>required landscaping area</u> or <u>required setback area</u>.</li> </ol>	<p>Clarify that the edge of a public street is the edge of the street's right-of-way.</p> <p>This subsection does not indicate whether private/shared yards under 19.08 may be located in a required landscaping area. Historically, required common/open space under EMC 19.09.050 has not been allowed within required landscaping areas, resulting in a staff proposal to clarify that yards may not be located within required perimeter or street-frontage landscaping areas.</p> <p>The planning commission recommended, at its September 16, 2025 meeting, allowing private and shared yards to overlap required landscaping areas. The proposed code amendments were then updated accordingly to allow yards to overlap landscaping areas.</p>

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	<p><del>d e.</del> Shared yards shall not include driveways, pathways, parking areas, buildings, or critical areas or their buffers.</p>	
<u>Ord. Section 11</u> EMC 19.08.040 Neighborhood Residential Building design standards	<p>A. Applicability. The design standards in this section apply to <u>front façades, side street façades, side interior façades, and rear façades</u> <u>new dwelling units that include any façade within thirty feet of a public street right-of-way. Fire walls, visible party walls, and side interior façades less than 5 feet from a shared lot line are exempt.</u></p>	<p>Limit applicability of this section to new dwelling units having any façade within 30' of a public street right-of-way, consistent with policies in the comprehensive plan that focus on streetscape, e.g., <i>DD-1 Maintain a continuous, consistent, walkable, and human-scaled pedestrian environment at the interface of buildings and the public realm. Promote interaction between indoor and outdoor activities to create an inclusive and vibrant public realm.</i></p>
	<p><b>2 3.</b> Roofs.</p> <p><b>b a.</b> Roofs, excepting rooftop decks or flat roofs, must incorporate at least one of the following architectural elements in roof forms: vertical or horizontal changes in rooflines; varied roof forms; dormers; deep roof overhangs (more than twenty-four inches); rafter tails, brackets, corbels, or other decorative supports; and/or prominent cornice, soffit, or fascia details.</p> <p><b>3 4.</b> Exterior Stairs. Fire escapes and exterior stairs providing access to an upper floor are not allowed on any facade that faces a street unless another building is between the façade and the public street.</p> <p><b>4 5.</b> Transparency. At least fifteen percent of the area of each street-facing facade must be windows or main entrance doors. Windows used to meet this standard must allow views from the building to the street. Glass block does not meet this standard. Windows in garage doors do not count toward meeting this standard.</p>	<p>Correct lettering/numbering.</p>
	<p><b>D. Landscaping/Screening.</b></p> <ol style="list-style-type: none"> <li><del>See Chapter 19.35 EMC for landscaping and street tree requirements.</del></li> <li><del>Screening of waste containers from view of neighboring properties is required.</del></li> </ol>	<p>Moved the reference to the landscaping chapter to EMC 19.08.020(D)</p> <p>Consolidated the waste screening requirement for Neighborhood Residential zones into Chapter 19.39 EMC.</p>
<u>Ord. Section 12</u> EMC 19.08.050 Front porch and entrance requirements.	<p><del>2. The ground floor, for a minimum depth as identified in [sic] 19.08.040(B)(1), is required to be habitable/occupiable space in compliance with this Chapter. Accessibility is provided through the front porch or entrances.</del></p>	<p>This subsection duplicates EMC 19.08.040(B)(2) without adding anything new.</p>
	<p><b>C. Porch Projecting.</b> <del>1. Description.</del> The main façade of the building is set back from the front or side street lot line with a covered structure (the porch) encroaching into the front setback. The resulting setback area may be defined by a fence or hedge to spatially maintain the edge of the street. The Porch may be one or two stories, is open on three sides, with all habitable space located behind the building setback line.</p> <p>Table 8-1 ... Notes: ... <del>The porch is not required to be covered.</del></p>	<p>Makes similar each porch subsection format.</p> <p>The description of Porch Projecting refers to "a covered structure".</p>
	<p><b>E. E. Dooryard.</b> ...</p>	<p>Correct lettering/numbering.</p>
	<p><b>D. F. Stoop.</b></p>	
	<p><b>E. G. Common Entry.</b></p>	
<u>Ord. Section 13</u> EMC 19.08.060 <u>Attached</u> Garage requirements	<p><b>A. Applicability.</b> <u>The design standards in this section apply to new dwelling units that include any façade within thirty feet of a public street right-of-way.</u></p> <p><b>A B. Attached Garage Setbacks and Lengths Widths.</b> The purpose of these standards is to encourage residential character and lessen the visual prominence of garages along public street frontages where applicable.</p> <ol style="list-style-type: none"> <li>See Chapter 19.34 EMC for access and driveway requirements, including the requirement to obtain access from an alley if available.</li> <li>Except along alleys, all garage wall facades facing the street shall be set back a minimum of five feet behind the <u>front</u> <u>street-facing</u> wall of the primary building mass.</li> </ol>	<p>Limit applicability of this regulation to garage facades within 35' of the street (for a front façade within 30' of the street, plus the 5' garage setback). Clarify "facing the street" and "front wall". Use "width" instead of "length" for this dimension.</p> <p>Limit applicability to <i>attached</i> garages.</p>

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	<p>3. The <del>length</del> <ins>width</ins> of the garage wall facade facing a public street may be up to fifty percent of the <del>length</del> <ins>width</ins> of the street-facing dwelling unit facade, except that a garage wall facade set back a minimum of twenty feet behind the <del>front</del> <ins>street-facing</ins> facade of the dwelling unit is allowed a two-car-wide garage facade of up to twenty feet <ins>wide</ins>. (See Figure 8-2 below.)</p> <p>4. Where the public street-facing facade of the dwelling unit is less than twenty-two feet in length, an attached garage is prohibited as part of that facade.</p> <p>5. Semi-subterranean garages are allowed to project above the adjacent finished grade by up to 4 feet.</p>	
Ord. Section 14 EMC 19.08.110 Residential accessory buildings.	The following requirements apply to all buildings which are accessory to residential uses <del>in the NR or NR-C zones</del> :	Applicability for EMC 19.08 is provided in 19.08.010
	<p>II. Porches. Any porch, including any covered decks or patios which are an integral part of the porch are not considered an accessory building and subject to these provisions. See Chapter 19.06 EMC for lot coverage requirements <del>and EMC 19.08.050 for front porch and entrance requirements</del>.</p> <p>1) Maximum Size:...  <del>d) If the principal use is a housing type with maximum floor to area ratios (FAR), please see FAR limits that may affect the size of residential accessory buildings.</del></p> <p>2) Setbacks, Front and Side Street:  <del>a) Any accessory residential structure located within the rear setback area required for a principal dwelling shall have a minimum separation from the principal dwelling of 10 feet, not including eaves or other building appurtenances.</del>  <del>b) See Chapter 19.06 EMC.</del></p>	<p>Adding cross reference.</p> <p>Maximum floor-to-area ratios were removed from Title 19 EMC in the periodic update.</p> <p>The 10' separation between principal buildings had been removed in the periodic update. Likewise, staff believes that any required separation between principal buildings and accessory residential structures is best handled through the building code.</p>
Ord. Section 15 EMC 19.09.010 Purpose and applicability.	<p>B. Applicability.</p> <p>1. The standards in this chapter apply to <del>residential</del> development within the UR4, UR7, MU4, MU7, MU15, MU25, and LI-MU zones.</p> <p>2. Exceptions. The following are excepted from the requirements of this chapter:</p> <p>a. For development standards for detached one- and two-unit dwellings and any number of townhouses up to three stories in height, along with their accessory structures, refer instead to Chapter 19.08 EMC.</p> <p>b. Minor exterior alterations, provided, however, the alteration shall meet the following:</p> <p>i. The alterations to the exterior shall meet the applicable standards of this chapter;</p> <p>ii. The alterations do not create a greater nonconformance unless otherwise allowed through modification of standards; and</p> <p>iii. The alterations are not as a result in a change of use or occupancy (see subsection (B)(2)(c) of this section).</p> <p>c. Interior alterations which do not change the exterior appearance of the building and/or site.</p> <p>d. Change of use or occupancy which is either a minor exterior alteration or interior alterations; provided, however, that if the change in use or occupancy creates additional off-street parking or uses outdoor areas to conduct business or store materials, the development shall provide the following:</p> <p>i. The development shall meet the parking requirements of this title, Chapter 19.34 EMC (Parking, Loading and Access Requirements) and, as required, Chapter 19.35 EMC (Landscaping) and Chapter 19.33 EMC (Streets, Sidewalks and Pedestrian Circulation); and</p> <p>ii. Any building alteration includes weather protection as required by this chapter.</p>	<p>Chapter 19.09 Urban Development Standards should apply to all development in applicable zones, not just residential buildings. The distinction is a holdover from when 19.09 addressed residential buildings and 19.12 addressed non-residential buildings... the two are now combined in 19.09.</p> <p>Corrected zone names and lettering/numbering.</p>

Ordinance/Code Section	Proposed Amendment	Comments
	<p><b>2-3.</b> Conflicts. In the event of a conflict between these requirements and the standards of other sections of the Unified Development Code, these requirements shall control; provided, however, the requirements established as part of the creation of any historic overlay zone shall take precedence over any conflicting requirements in this chapter.</p> <p><b>3-4.</b> Mixed Developments. For mixed developments refer to the following sections as applicable, provided that the Planning Director is authorized to interpret applicability to provide for reasonable accommodation of mixed-use and commercial development encouraged by the comprehensive plan:</p> <ul style="list-style-type: none"> <li>a. For development standards for detached one- and two-unit dwellings and any number of townhouses up to three stories in height, along with their accessory structures, refer to Chapter 19.08 EMC; and</li> <li>b. For development standards for residential development other than detached one- and two-family dwellings and townhouses up to three stories in height, along with their accessory structures, refer to this Chapter 19.09 EMC; and</li> <li>c. For development standards for nonresidential development, refer to EMC 19.09.200 through EMC 19.09.260</li> </ul> <p><b>4-5.</b> Future Phases. When residential development is proposed to be added as a later phase to an existing development which does not meet the requirements contained herein, the requirements contained herein shall apply, but may be modified by the planning director as needed to provide for continuity between the existing and proposed phases of development.</p> <p><b>6.</b> UR4, UR7, MU4, MU7, MU15, MU25, and <u>LI1-MU</u> Zones. See EMC 19.09.200 through 19.09.260 for applicable development standards.</p> <p><b>C.</b> <u>LI2 and HI</u> Zones. See EMC 19.09.300 and 19.09.310 for applicable development standards.</p>	
<u>Ord. Section 16</u> EMC 19.09.050 Required amenity space, including outdoor and common areas.	7. Expansion of Residential Development. Where an increase in the number of dwelling units for a residential development is proposed, <u>common area amenity space</u> shall be provided in accordance with the requirements of this chapter, minus the amount of <u>common area amenity space</u> by which the previous residential development was deficient.	Term was revised to "amenity space"
<u>Ord. Section 17</u> EMC 19.09.070 Inclusionary zoning	Move section to own chapter, split subsections into sections. See Ordinance section 36 for new chapter structure.	Better fits organizational structure, more visible and accessible, avoids confusion over applicability.
<u>Ord. Section 18</u> EMC 19.09.300 Building design standards applicable to the LI and HI zones.	<p>A. Applicability. The following standards apply to development of properties located within the LI and HI zones. For properties located within the airport/port/navy compatibility overlay zone, see Chapter 19.17 EMC for additional use and development standards.</p> <p>...</p> <p>b. Horizontal Articulation. Horizontal articulation is required to visually break up the massing of the ground floor of the front and side street (corner) facades into segments no greater than sixty feet in width for the LI2 zone and one hundred feet in width for the HI zone. Examples of horizontal articulation include bays, mullions, columns, piers, pilasters, recessed entries, awnings, or other architectural treatments.</p>	Corrected zone names.
<u>Ord. Section 19</u> EMC 19.13.250 Short-term rentals.	<p>Short-term rentals shall comply with the following provisions:</p> <p>A. License Required. A city business license is required to operate a short-term rental. No more than two short-term rental sites may be operated by any individual, marital group, a group of people, or a corporate entity such as an LLC, within the city.</p> <p>B. Location. A short-term rental use may be located in a dwelling unit <del>or an accessory dwelling unit</del>. See EMC 19.08.100 for applicable <del>accessory dwelling unit</del> requirements, including <del>owner occupancy</del> if applicable.</p> <p>C. Number of Guests. The total number of guests occupying a dwelling unit may not exceed eight on a site, including any site with an accessory dwelling unit.</p> <p>D. Signs. No signs identifying the use as a short-term rental are permitted.</p>	Accessory dwelling units are dwelling units. 19.08.100 no longer exists. Hyphenating the term in the title for consistency.

Ordinance/Code Section	Proposed Amendment	Comments																						
Ord. Section 20 EMC 19.22.020 Heights for principal and accessory buildings	<table border="1" data-bbox="470 177 1256 375"> <tr> <td data-bbox="470 177 603 285">Height standard</td> <td colspan="8" data-bbox="603 177 1256 285">Zone</td> </tr> <tr> <td data-bbox="470 285 603 306"></td> <td data-bbox="603 285 669 306">NR-C</td> <td data-bbox="669 285 734 306">NR</td> <td data-bbox="734 285 799 306">UR-4<sup>1</sup></td> <td data-bbox="799 285 864 306">UR-7</td> <td data-bbox="864 285 930 306">MU-4</td> <td data-bbox="930 285 995 306">MU-7</td> <td data-bbox="995 285 1060 306">MU-15</td> <td data-bbox="1060 285 1126 306">MU-25</td> </tr> <tr> <td data-bbox="470 306 603 375">Zone</td> <td data-bbox="603 306 734 375">Neighborhood Residential</td> <td data-bbox="734 306 864 375">UR-4</td> <td data-bbox="864 306 1256 375">UR-7</td> </tr> </table>	Height standard	Zone									NR-C	NR	UR-4 <sup>1</sup>	UR-7	MU-4	MU-7	MU-15	MU-25	Zone	Neighborhood Residential	UR-4	UR-7	Remove hyphens from zone names in Table 22-1 and Table 22-2
Height standard	Zone																							
	NR-C	NR	UR-4 <sup>1</sup>	UR-7	MU-4	MU-7	MU-15	MU-25																
Zone	Neighborhood Residential	UR-4	UR-7																					
Ord. Section 21 EMC 19.22.030 Where height reductions are required.	<table border="1" data-bbox="897 401 1778 623"> <thead> <tr> <th data-bbox="897 401 1256 454">Column A</th> <th data-bbox="1256 401 1387 454">Column B</th> <th data-bbox="1387 401 1778 454">Column C*</th> </tr> <tr> <th data-bbox="897 454 1256 506">Zone(s) (Development Site)</th> <th data-bbox="1256 454 1387 506">Adjacent Zone</th> <th data-bbox="1387 454 1778 506">Distance to Match Height to Adjacent Zone</th> </tr> </thead> <tbody> <tr> <td data-bbox="897 506 1256 559">UR-7, MU-7, MU-15, LI-MU, LI</td> <td data-bbox="1256 506 1387 559">NR</td> <td data-bbox="1387 506 1778 559">50'</td> </tr> <tr> <td data-bbox="897 559 1256 612">LI-MU</td> <td data-bbox="1256 559 1387 612">NR or UR4</td> <td data-bbox="1387 559 1778 612">75'</td> </tr> <tr> <td data-bbox="897 612 1256 665">LI</td> <td data-bbox="1256 612 1387 665">NR or UR4</td> <td data-bbox="1387 612 1778 665">100'</td> </tr> </tbody> </table> <p data-bbox="470 633 2255 840">B. <i>Height Reductions—Adjacency, Table.</i> 1. Table 22-4 requires height reductions where a development site is in a zone identified in Column A and which abuts an adjacent zone shown in Column B. In these circumstances, the development must adhere to the height limits in the adjacent zone (from Column B) for the distance specified in Column C. If the proposed development abuts a residential zone that is not within the city limits, the height limits assumed will be <u>twenty-eight thirty-five feet</u>.</p>	Column A	Column B	Column C*	Zone(s) (Development Site)	Adjacent Zone	Distance to Match Height to Adjacent Zone	UR-7, MU-7, MU-15, LI-MU, LI	NR	50'	LI-MU	NR or UR4	75'	LI	NR or UR4	100'	LI-MU and LI are listed twice. Since LI-MU and LI have their own rows; the correction is to remove the duplicates from the first row.							
Column A	Column B	Column C*																						
Zone(s) (Development Site)	Adjacent Zone	Distance to Match Height to Adjacent Zone																						
UR-7, MU-7, MU-15, LI-MU, LI	NR	50'																						
LI-MU	NR or UR4	75'																						
LI	NR or UR4	100'																						
Ord. Section 22 EMC 19.25.040 Evaluation criteria—Subdivision, short subdivision, unit lot land division, alteration or vacation.	<p data-bbox="470 844 2255 918">D. <i>Unified Development Code.</i> The proposed project and design shall meet the requirements of this title, including but not limited to the following:</p> <p data-bbox="470 939 2255 960">...</p> <p data-bbox="470 982 2255 1024">5. Chapter 19.34 EMC, <u>Parking, Loading and Access Requirements</u>;</p>	Corrected to new name of Chapter 19.34 EMC																						
Ord. Section 23 EMC 19.34.050 Exceptions to off-street Vehicle parking space requirements.	B. Development under EMC 19.08 within one-half mile <u>walking distance</u> of a public transit stop served by bus rapid transit or rail.	Clarifying that the distance to transit is walking distance, consistent with other parking-related distance measurements and RCW.																						
Ord. Section 24 EMC 19.34.060 Reductions to off-street Vehicle parking space requirements.	1. Parcels within one-quarter mile walking distance of a public transit stop <u>with</u> that receives transit service at least four times per hour for twelve or more hours per day	Stray word.																						
Ord. Section 25 EMC 19.34.100 Location of off-street Vehicle parking.	D. Vehicle parking Location—Alley Requirements for <u>Multifamily and Nonresidential Structured vehicle parking garages</u> . Structured vehicle parking garages accessed from the rear with no internal turnaround shall be set back at least twenty-five feet from the far side of the alley, except as otherwise approved by city engineer.	This regulation provides for safe and efficient circulation in alleys and should apply to all development.																						
	E. Parking between buildings and streets. Surface parking <u>lots</u> shall not be located directly between a public street and a building unless another building is closer to the public street, as illustrated in Figure 34-2, except: 1. Residential zones in driveways meeting the standards of EMC 19.34.110; or 2. When vehicle parking is located completely below grade and any required landscaping is provided on top of the parking structure.	“Lots” is not defined.																						

Ordinance/Code Section	Proposed Amendment	Comments												
Ord. Section 26 EMC 19.34.110 Vehicular Access to Off-Street parking – Alleys and driveways.	1. For non-alley access lots, the maximum driveway width within twenty feet of the <del>right-of-way abutting the front lot line or within ten feet of the street side lot line</del> shall not exceed thirty feet, or fifty percent of the lot frontage width, whichever is less. However, where a driveway is permitted, a minimum driveway width of ten feet will be allowed;	Reverts the driveway width limitation along a street side lot line to pre-Everett 2044 regulation, which was inadvertently dropped in the update, and simplifies wording (the edge of the “front lot line” is the same as the edge of the “right-of-way abutting the front lot line”).												
Ord. Section 27 EMC 19.34.120 Parking area design and construction.	3. <u>Residential Dimensional</u> exception. Existing, legally established vehicle parking spaces <u>for residential development</u> established prior to June 6, 2024 are not required to be resized or modified to meet current parking requirements, except for compliance with the Americans with Disabilities Act, <u>per RCW 36.70A</u> .	RCW 36.70A.622 only applies to parking spaces for residential development. RCW does not need to be cited.												
Ord. Section 28 EMC 19.34.170 Bicycle Facilities, Required Counts	B. For all <u>nonresidential</u> uses, a minimum of 2 long term and 2 short term bicycle spaces are required.	Two long term and two short term bicycle spaces is more than necessary for a single dwelling unit. Removing this baseline minimum for residential would revert the minimum for a single dwelling unit to one long-term space, or two (because of rounding) within mixed-use centers.												
	<table border="1" data-bbox="460 658 1494 861"> <thead> <tr> <th data-bbox="460 658 613 720">Land Use</th><th data-bbox="613 658 809 720">Long Term</th><th data-bbox="809 658 1005 720">Short Term</th><th data-bbox="1005 658 1494 720">Mixed-Use Centers</th></tr> </thead> <tbody> <tr> <td data-bbox="460 720 613 861">Short term rentals; hotels, motels</td><td data-bbox="613 720 809 861">0.05 per rentable room <del>0.05 ST / rentable room, PLUS 0.20 ST / 1,000 sf for conference/meeting rooms</del></td><td data-bbox="809 720 1005 861">0.05 per rentable room and 0.20 per 1,000 square feet of conference/meeting rooms</td><td data-bbox="1005 720 1494 861">0.075 LT / rentable room 0.10 ST / rentable room,  PLUS 0.35 ST / 1,000 sf for conference/meeting rooms</td></tr> </tbody> </table>	Land Use	Long Term	Short Term	Mixed-Use Centers	Short term rentals; hotels, motels	0.05 per rentable room <del>0.05 ST / rentable room, PLUS 0.20 ST / 1,000 sf for conference/meeting rooms</del>	0.05 per rentable room and 0.20 per 1,000 square feet of conference/meeting rooms	0.075 LT / rentable room 0.10 ST / rentable room, PLUS 0.35 ST / 1,000 sf for conference/meeting rooms	Short term spaces inadvertently included in long term column.				
Land Use	Long Term	Short Term	Mixed-Use Centers											
Short term rentals; hotels, motels	0.05 per rentable room <del>0.05 ST / rentable room, PLUS 0.20 ST / 1,000 sf for conference/meeting rooms</del>	0.05 per rentable room and 0.20 per 1,000 square feet of conference/meeting rooms	0.075 LT / rentable room 0.10 ST / rentable room, PLUS 0.35 ST / 1,000 sf for conference/meeting rooms											
Ord. Section 29 EMC 19.35.020 Purpose	<p>The purpose of this chapter is to:</p> <p>...</p> <ul style="list-style-type: none"> <li>create a safe and comfortable environment by using design cues to differentiate/demarcate public, semi-private, and private spaces, incorporate clear sightlines and eyes on the street, and other <u>CPTED</u> <u>crime prevention through environmental design</u> features;</li> <p>...</p> <li>buffer between designated <del>MICs</del> Manufacturing Industrial Centers and adjacent residential or mixed-use areas to protect both the viability of long-term industrial operations and the livability of adjacent areas.</li> </ul>	Removing undefined acronyms.												
Ord. Section 3030 EMC 19.35.060 Application of landscape categories and type (Tables 35-1 and 35-2)	<p><b>Street Frontage<sup>(1)</sup></b> <sup>1</sup> All public right-of-way behind the sidewalk, walking path, parking strip, or travel lane shall also be landscaped to Type III standards. Additional trees are not required in the portion of the landscaping in the public right-of-way.</p> <p><b>Interior Lot Lines<sup>(2)</sup></b> <sup>2</sup> Interior lot lines which do not abut an alley.</p>	<p><i>Note: this correction was added to the ordinance December 2025, after the planning commission completed its review.</i></p> <p>Footnotes were not intended to be repeated in each cell – they were in the Everett 2044 materials for easier reference.</p>												
	<p><b>Table 35-1: Landscape Categories for Use Zones</b></p> <table border="1" data-bbox="1037 1374 1658 1839"> <thead> <tr> <th data-bbox="1037 1374 1364 1436">Use Zone</th><th data-bbox="1364 1374 1658 1436">Landscape Category</th></tr> </thead> <tbody> <tr> <td data-bbox="1037 1436 1364 1537">UR4; UR7</td><td data-bbox="1364 1436 1658 1537">A</td></tr> <tr> <td data-bbox="1037 1537 1364 1638">MU4; MU7; MU15; MU25; LI-MU</td><td data-bbox="1364 1537 1658 1638">B</td></tr> <tr> <td data-bbox="1037 1638 1364 1719">HI</td><td data-bbox="1364 1638 1658 1719">C</td></tr> <tr> <td data-bbox="1037 1719 1364 1799">LI</td><td data-bbox="1364 1719 1658 1799">D</td></tr> <tr> <td data-bbox="1037 1799 1364 1839">NR; NR-C; AG</td><td data-bbox="1364 1799 1658 1839">E<sup>(4)</sup></td></tr> </tbody> </table> <p>4 Repealed by Ord. 4102-25. Landscape category B for permitted nonresidential uses</p>	Use Zone	Landscape Category	UR4; UR7	A	MU4; MU7; MU15; MU25; LI-MU	B	HI	C	LI	D	NR; NR-C; AG	E <sup>(4)</sup>	<p><i>Note: this correction was added to the ordinance December 2025, after the planning commission completed its review.</i></p> <p>Commercial landscaping (Type B) for permitted nonresidential uses in the NR, NR-C, and AG zones was inadvertently dropped in the periodic update. This does not affect landscaping for Neighborhood Commercial development in those zones, which is defined in EMC 19.05.045)</p>
Use Zone	Landscape Category													
UR4; UR7	A													
MU4; MU7; MU15; MU25; LI-MU	B													
HI	C													
LI	D													
NR; NR-C; AG	E <sup>(4)</sup>													

Ordinance/Code Section	Proposed Amendment	Comments
Ord. Section 3131  EMC 19.35.090 Special landscape requirements applicable to neighborhood residential zone.	<p>A. In addition to providing landscaping pursuant to Tables 35-1 and 35-2, trees are required within eight feet of the front and side streets. Trees shall be two inches in diameter at 4.5 feet in height, planted every twenty feet on center.</p> <p><del>C</del> B. For developments with residential uses all street-facing elevations must have landscaping along any exposed foundation. The landscaped area may be along the outer edge of a porch instead of the foundation. This landscaping requirement does not apply to portions of the building facade that provide access for pedestrians or vehicles to the building. The foundation landscaping must meet the following standards:</p>	B comes after A.
Ord. Section 3232  EMC 19.38.040 Substandard lots—Nonconforming lots.	<p>A. <del>R-S, R-1 and R-2 NR and NR-C Zones</del>. In the <del>R-S, R-1 and R-2 NR and NR-C zones</del>, subject to other limitations imposed by other provisions of this title, <del>a single-family one</del> dwelling may be erected on any single “lot” as defined in this title. A lot shall meet the following criteria, as applicable:</p> <ol style="list-style-type: none"> <li>1. A lot created via the subdivision process of Chapter 58.17 RCW;</li> <li>2. A lot which was created prior to December 1, 1956;</li> <li>3. Any lot which met minimum lot area requirements under the regulations or standards of Snohomish County prior to annexation or incorporation into the city of Everett; and</li> <li>4. A lot reduced below minimum zoning requirements as a result of public acquisition of property.</li> </ol> <p>B. <i>Substandard Lots—Multifamily, Commercial and Industrial Other Zones</i>. Any substandard lot may be used for any of the uses permitted in the respective zone, subject to the special regulations and end notes in Chapter 19.05 EMC, and in accordance with the review process and general evaluation criteria in EMC Title 15 and all other regulations including minimum yards, provided:</p> <ol style="list-style-type: none"> <li>1. All such lots shall meet the definition of “nonconforming lot” as defined in this title and shall not have been merged or otherwise created illegally.</li> <li>2. Commercial or industrial lots which have been created through the binding site plan process are exempt from this section.</li> </ol>	Corrected to updated zone names and the updated term for a single family dwelling.
Ord. Section 3333  EMC 19.39.030 Garbage receptacles, dumpsters and recycle bins—placement and screening.	<p><del>The following requirements apply in all areas except single family zones:</del></p> <p>A. <i>Placement</i>. Garbage receptacles, dumpsters, and recycle bins <del>shall be provided in all multifamily, commercial, industrial and institutional developments and shall not be located in a required front yard setback area, or street side setback area for corner lots. Where an alley abuts a lot in any zone, the garbage receptacles, dumpsters, or recycle bin shall be located adjacent to the alley.</del></p> <p>B. <i>Screening</i>. All garbage <del>receptacles</del>, dumpsters, and recycle bins must be screened from view from the street and from adjacent properties. This screening may be done using dense vegetation or by placing the dumpster or recycle bin in a structural enclosure.</p>	Consolidated the waste screening requirement for Neighborhood Residential zones (EMC 19.08.040(D)(2): “Screening of waste containers from view of neighboring properties is required”) into this Chapter 19.39 EMC.
Ord. Section 3434  EMC 19.39.050 Outdoor use, activity and storage	c. Except in the LI2 zone, outdoor use, activity or storage areas located adjacent to property in the same zone may be located in the required interior side and rear setback yards. All outdoor use, activity and storage areas located adjacent to residential zones must meet required setbacks for the primary use.	Corrected zone name.
Ord. Section 3535  EMC 19.40.010 Fences height and location.	<p>A. Residential Zones—Fence Height and Setbacks. Fences shall not exceed a height of:</p> <ol style="list-style-type: none"> <li>1. Forty-two inches within twenty feet of <del>the right-of-way abutting</del> the front lot line.</li> <li>2. Six feet within the street side setback or the abutting right-of-way.</li> <li>3. Seven feet within the interior side or rear setbacks.</li> <li>4. Exceptions. <ul style="list-style-type: none"> <li>a. Fences within twenty feet of <del>the right-of-way abutting</del> the front lot line may be up to six feet in height if the fence is at least ten feet from the sidewalk, is at least seventy percent transparent from three feet to six feet, and is not chain link or other type of similar material. If no sidewalk exists, the minimum distance required is determined by the city engineer.</li> <li>b. For corner lots or double fronting lots, the front and street side or rear fence heights can be switched if the front of the house faces the street side or rear.</li> </ul> </li> </ol>	<p>Simplifies wording. The edge of the “front lot line” is the same as the edge of the “right-of-way abutting the front lot line”.</p> <p>Maintains the arbor height regulation at the depth of the prior front setback (20') rather than the current front setback (10'), which had been the intent with this fence height section.</p>



Ordinance/Code Section	Proposed Amendment	Comments
	<p>c. Arbors. Arbors may exceed the maximum fence height within <del>the front setback</del> twenty feet of the front lot line for a distance of up to twenty percent of the lot frontage on the street, provided the height of the arbor does not exceed eight feet.</p> <p>d. Where a structure is within twenty feet of <del>the right-of-way</del> abutting the front lot line, a fence along the street-facing facade line is not required to comply with the fence height limitation of EMC 19.40.010(4)(a).</p>	
Ord. Section 3636 EMC 19.54.040 Inclusionary Zoning – Requirements	<p><b>A. For dwelling units intended for rent:</b></p> <p>A 1. At least twenty percent of the dwelling units must be affordable to households whose income is at or below eighty percent of the median household income for Snohomish County, adjusted for household size; and</p> <p>B 2. Of the affordable dwelling units required under subsection <del>(D)(A)(1)</del>, at least one half must be affordable to households whose income is at or below sixty percent of the median household income for Snohomish County, adjusted for household size;</p> <p><b>C. For dwelling units intended for owner occupancy:</b></p> <p>1. <del>At least</del> twenty percent of the units affordable to households whose income is at or below <del>eighty one hundred</del> percent of the median household income for Snohomish County, adjusted for household size;</p> <p>D C. Affordable housing units that are provided under this section shall remain as affordable housing for a minimum of 50 years, as provided in a recorded covenant running with the land. The covenant shall be approved by the Planning Director and filed for recording with the county auditor prior to the issuance of a certificate of occupancy for any applicable structure.</p>	<p>Staff have received feedback that the inclusionary zoning provisions as included in the periodic update significantly disadvantage developments intended for owner-occupancy, which would conflict with policies in the comprehensive plan intended to support homeownership in the city, e.g., <i>HO-12 Boost homeownership opportunities through administrative, regulatory, and financial benefits</i>.</p> <p>This amendment would reduce the required affordability level for dwelling units intended for owner occupancy from 80% AMI to 100% AMI. The maximum initial sales price depends on a number of factors including household size and dwelling size.</p> <p>For reference:</p> <ul style="list-style-type: none"> <li>For a family of four, the 2025 income limit for income-qualified housing in Snohomish County at 80% area median income (AMI) is \$135,760; at 100% AMI the limit is \$157,100 (25% higher).</li> <li>For a three-bedroom dwelling, the 2025 rental limit for Snohomish County (which could be comparable to ownership cost limits) at 80% AMI is \$2,451; at 100% AMI the limit is \$3,268 (33% higher).</li> </ul>
EMC 19.54.060 Inclusionary Zoning – Alternative compliance – fee in lieu.	<p>The Planning Director may approve a request for satisfying all or part of the affordable housing requirements with a fee in lieu equal to fifteen dollars per square foot of gross floor area subject to this section. A fee in lieu under this subsection may be deferred under subsection EMC <del>19.09.070(G)</del> <u>19.54.070</u>.</p> <p><b>A. For dwelling units intended for rent, the fee in lieu under this section is equal to fifteen dollars per square foot of gross floor area subject to this section.</b></p> <p><b>B. For dwelling units intended for owner occupancy, the fee in lieu under this section is equal to nine dollars per square foot of gross floor area subject to this section. The reduced fee in lieu granted under this subsection must be conditioned upon requiring the applicant to record a covenant approved by the planning director to assure owner occupancy. At a minimum, the covenant must require owner occupancy of each dwelling unit subject to this subsection for a period of twelve years and require that, if the property is converted to a rental, the property owner must pay the applicable difference in between the fee in lieu for dwelling units intended for rent and the fee in lieu for dwelling units intended for owner occupancy in effect at the time of conversion or in effect at the time of construction, whichever is greater. Covenants required by this subsection must be recorded with the Snohomish County auditor.</b></p>	<p>This amendment is designed to align with the revised affordability level in the row above by reducing the alternative compliance fee in lieu for dwelling units intended for owner occupancy from \$15 to \$9 per square foot of gross floor area. For more analysis, see the <a href="#">November 18, 2025 planning commission memo</a>.</p>



## City Council Agenda Item Cover Sheet

**Project title:** Charter Review Committee Appointments.

**Council Bill #** *interoffice use*

**Agenda dates requested:**

Briefing  
Proposed action  
Consent  
Action 01/21/26  
Ordinance  
Public hearing  
Yes  No

**Budget amendment:**

Yes  No

**PowerPoint presentation:**

Yes  No

**Attachments:**

**Department(s) involved:**

**Contact person:**

Director

**Phone number:**

**Email:**

**Initialed by:**

Department head

Administration

Council President

**Project:** Charter Review Committee

**Partner/Supplier:** NA

**Location:** NA

**Preceding action:** NA, reference: Current City Charter

**Fund:** NA

**Fiscal summary statement:**

NA

**Project summary statement:**

The [Charter](#) is the City's constitution. It outlines how the city's legislative, judicial and executive branches operate. The City's charter was originally adopted in 1968.

Every 10 years, a Charter Review Committee is formed to examine and evaluate the Charter, take public input and provide a written recommendation to Council and the Mayor on any revisions. The Council reviews those recommendations and, via an ordinance, can send those amendments to voters for final approval in the November 2026 election (or any other general or primary election). Additional background information on the Charter Review Committee is [here](#).

Each Councilmember will choose one candidate and the Mayor will choose 7 appointees. Once formed, the Committee of 14 will select a 15<sup>th</sup> member.

**Recommendation (exact action requested of Council):**

Approve appointments to the Charter Review Committee.

**Project title:** Legislative Session Preview and Update

**Council Bill #**

**Agenda dates requested:**

Briefing 01/21/26

Proposed action

Consent

Action

Ordinance

Public hearing

Yes  No

**Budget amendment:**

Yes  No

**PowerPoint presentation:**

Yes  No

**Attachments:**

2026 Legislative Priorities Document

**Department(s) involved:**

Administration

**Contact person:**

Jennifer Gregerson

**Phone number:**

**Email:**

jgregerson@everettwa.gov

**Initialed by:**

Department head

Administration

Council President

**Project:** 2026 Legislative Session Advocacy Efforts

**Partner/Supplier:** Trevor Justin Government Relations LLC

**Location:**

**Preceding action:**

**Fund:**

**Fiscal summary statement:** NA

**Project summary statement:**

The 2026 Legislative Session began in Olympia on January 12. The City's state lobbyist, Trevor Justin, will deliver a session preview and update on the City's priorities and key issues for the upcoming session.

**Recommendation (exact action requested of Council):**

Council to receive a briefing from city staff and state lobbyist.



**EVERETT**  
WASHINGTON

# 2026

## STATE LEGISLATIVE AGENDA



The City of Everett is home to a diverse community of 115,000 people. Our goal is to build a safe, vibrant and affordable city by advancing work in our priority areas of quality of life, economic development, housing, workforce development, behavioral health and public safety.



### QUALITY OF LIFE, ECONOMIC DEVELOPMENT AND HOUSING

Everett is poised for prosperity. We have most of the ingredients we need to promote positive growth and create a vibrant, attractive community. While we have a strong foundation to grow from, we also have immediate needs to address to sustain our existing job centers and recruit new businesses and ideas to Everett.

- Retain \$6.7m in the Defense Community Compatibility Account for Everett's top-rated **Fire Training Facility** construction, a partnership with Naval Station Everett.
- Support the creation of new tools and incentives to increase the development and accessibility of **home ownership and affordable housing** at a variety of price points. This includes incentives for increased housing density around mass transit.



### REVENUE OPPORTUNITIES, TOOLS AND CHALLENGES

- Support **responsive revenue options** to address structural budget challenges, including revisions to the arbitrary 1% property tax cap that has been in place for more than a generation.
- Allow cities to access fire benefit charges as a tool to fund public safety.
- Provide support to **help cities respond to indigent defense standards** in effective ways that provide adequate defense without overburdening the system.
- With the exciting advent of the biggest ever **2026 FIFA World Cup event in the Seattle area**, identify ways to support this tourism boom in the greater Puget Sound.
- Oppose any state policies that impose new unfunded mandates on cities.



### WORKFORCE DEVELOPMENT

Everett is fortunate to have a very skilled workforce to fill the needs of Boeing and other critical industries, but we need to ensure our workforce pipeline continues for our industries and the economic well-being of our City.

- Support efforts to **improve childcare access and affordability** to support both the current and future workforce.
- Support investments to **behavioral health and general healthcare workforces**: improve career pathways for young adults, sustain the existing workforce and expand worker retraining opportunities to help meet regional workforce needs.

## 2026 STATE LEGISLATIVE AGENDA Continued...



### BEHAVIORAL HEALTH AND PUBLIC SAFETY

Everett is fortunate to have a progressive and highly trained police force but recognizes the need to transform criminal justice policies to provide greater safety for communities that historically have not been well-served by the existing system, with a focus on behavioral health.

- **Advocate for sustained investment in alternative, co-response, and community response teams** to ensure long-term viability beyond initial pilot funding—recognizing that lasting impact requires stable, scalable support. Allow for direct 911 dispatch where appropriate to our alternative response teams.
- We support increasing **voluntary treatment options**.
- Though the 2015 Trueblood decision has helped increase availability of **inpatient competency evaluation** around the State, **Snohomish County is still not included** in these investments for the foreseeable future.
- Support solutions that address the gap between competency and involuntary commitment for behavioral health related issues to **ensure individuals receive the support they need** in the least restrictive setting.
- Advocate to amend the Involuntary Treatment Act to make it less restrictive, allowing **more individuals to access involuntary treatment**, by
  - amending the requirement for imminent or serious harm to be less restrictive, and
  - clarifying that individuals who have limited capacity to care for their basic needs or are at risk of further deterioration without treatment are able to access treatment.
- Support long-term, sustainable state **funding to increase access to substance use disorder (SUD) treatment, detox beds, assessments, medications, 24-hour wrap-around services, transportation, and recovery housing** and provide ongoing and adequate funding for care coordination.
- Allow cities to use technology effectively for public safety.
- **Preserve the cost-effective public safety tool of automated license plate readers** and protect privacy by supporting bills to limit release of data and images.
- Ensure legislation regarding license plate reader cameras continues to allow local law enforcement agencies to use these tools to ensure public safety, solve crimes and serve victims.
- Support bills that would successfully amend HB 2015 to increase access to the local law enforcement grant program and local sales and use tax by revising the criteria currently used to evaluate agency eligibility.
- Do not support bills that restrict law enforcement ability to serve communities effectively.



#### Contact the City of Everett

2930 Wetmore Ave., Ste. 10-A  
Everett, WA 98201  
[everettwa.gov](http://everettwa.gov)

#### Jennifer Gregerson

Director, Government Affairs  
425.257.8671  
[jgregerson@everettwa.gov](mailto:jgregerson@everettwa.gov)

#### Trevor Justin

Lobbyist  
360.280.2847  
[trevor@tjgovrelations.com](mailto:trevor@tjgovrelations.com)



**To:** City Council Members  
**From:** Cassie Franklin, Mayor  
**Re:** Appointment to Boards and Commissions  
**Date:** January 15, 2026

Everett City Council Members,

It is my recommendation that the following applicants be appointed to a City of Everett Board or Commission (more information attached).

On Wednesday, January 21, I will be asking for your concurrence on the following appointments:

**To the Historical Commission**

- Harmony Cooper, Pos #1- term expiring 12/31/2031
- Marcus Nunez, Pos #8- term expiring 12/31/2027

If you have any comments or concerns regarding these appointments, please connect with my office.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cassie Franklin'.

Cassie Franklin  
Mayor, City of Everett

c. Jennifer Gregerson and Simone Tarver

**Office of the Mayor  
CASSIE FRANKLIN**

2930 Wetmore Ave., Ste. 10-A  
Everett, WA 98201

425.257.7115  
425.257.8729 fax

everettwa.gov



# Mukilteo School District

February 10, 2026 Ballot Measures  
Educational Program and Operations Levy Renewal  
and  
Capital Bond

# Mukilteo School District Overview

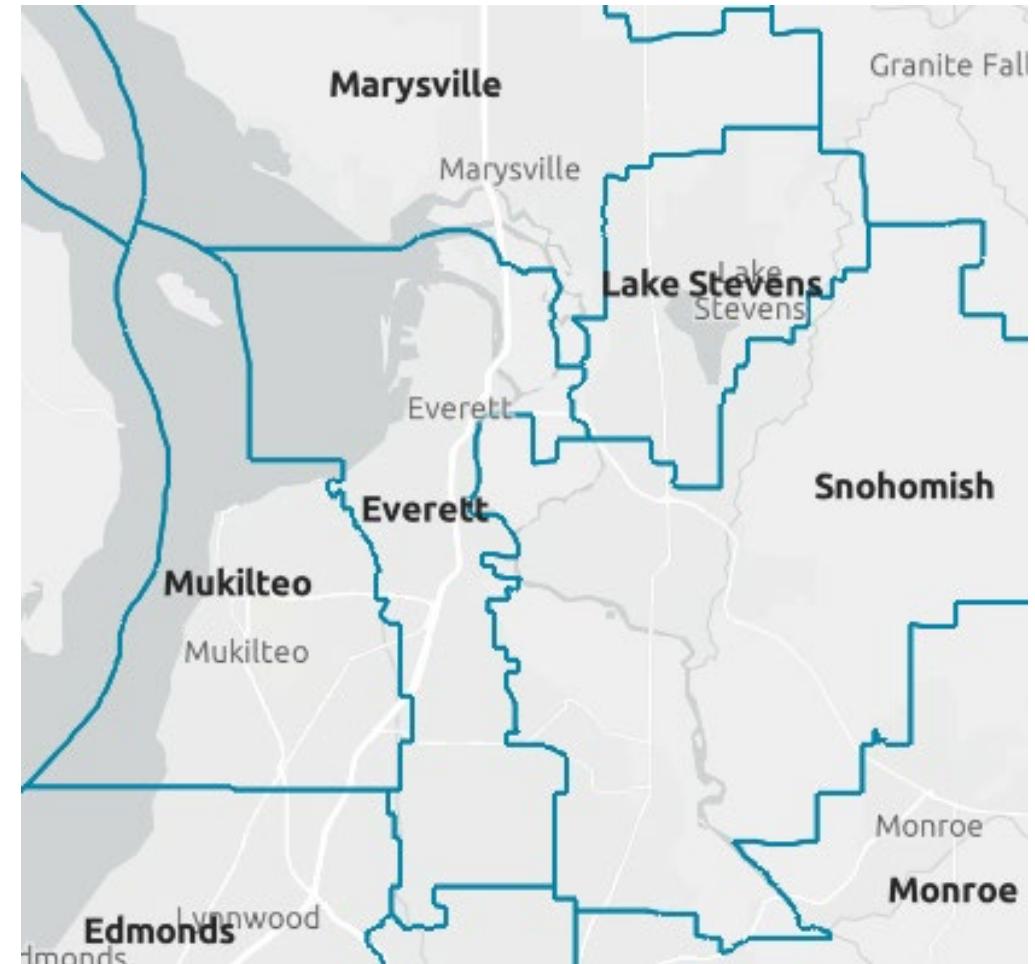
26 Square Miles

Mukilteo & parts of Everett, Lynnwood, Edmonds, Mill Creek, and Unincorporated Snohomish County

West of Everett Public Schools  
North of Edmonds School District



**Mukilteo** School District



# Mukilteo School District Overview

21 Schools

14,544 Students

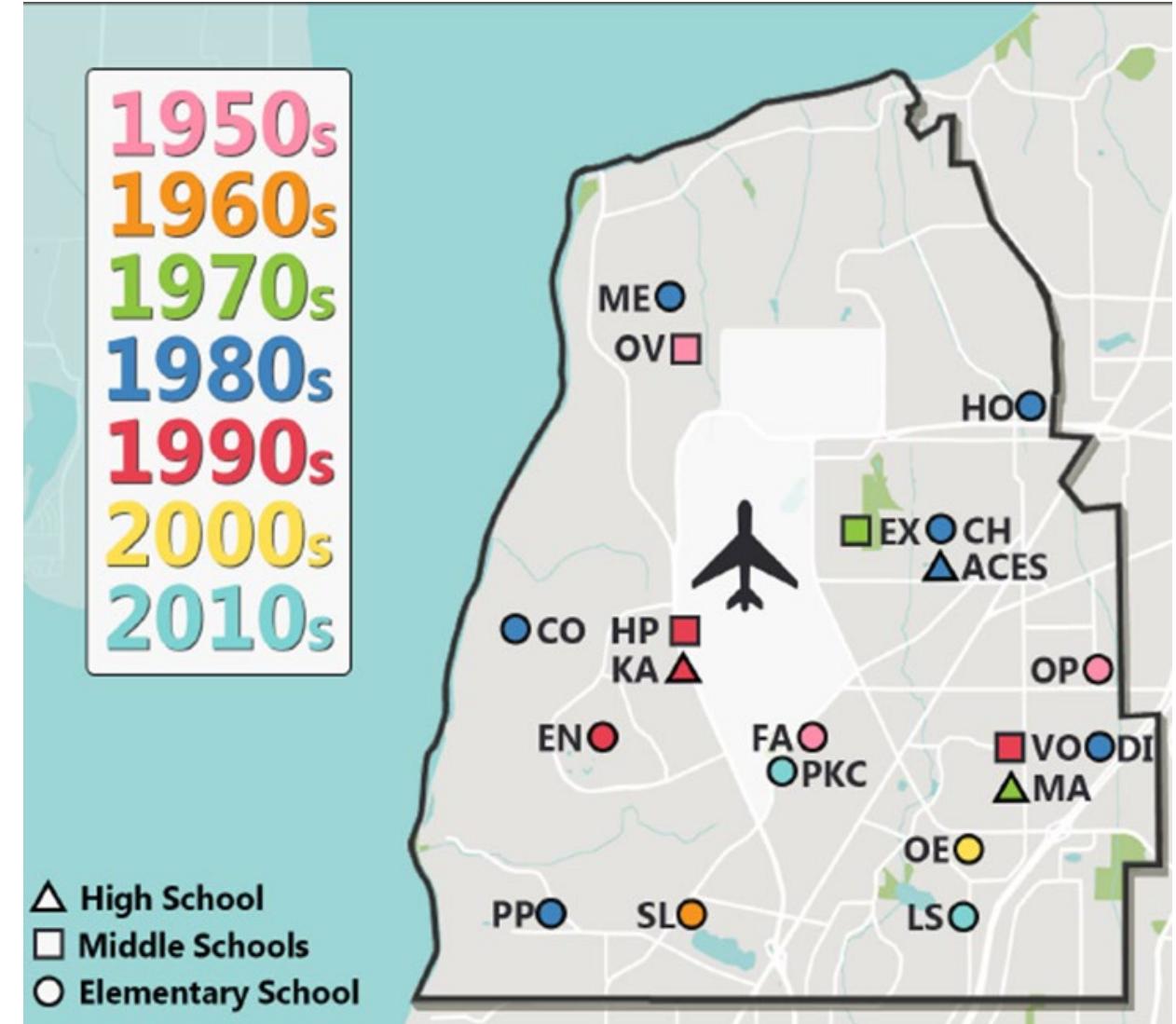
117 Languages

66% BIPOC

54.5% Low-Income



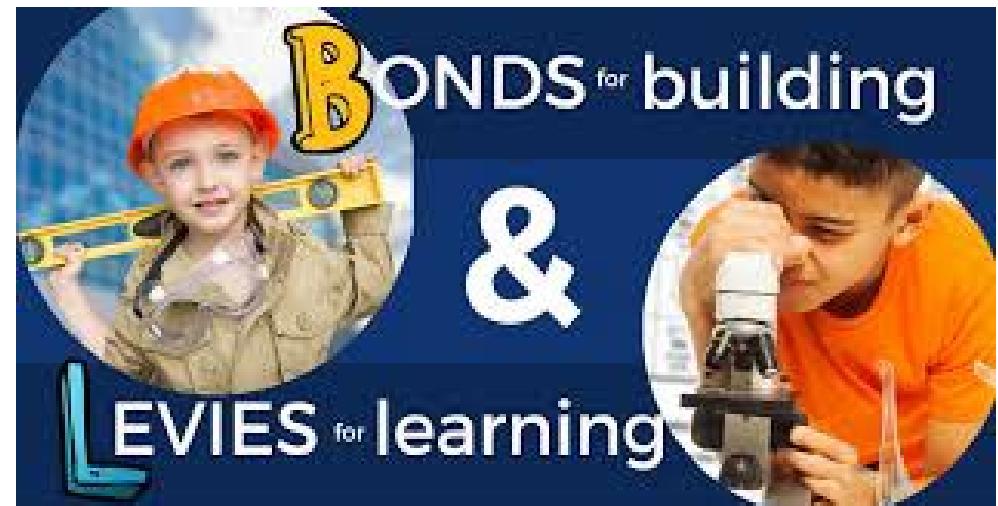
**Mukilteo** School District



# The difference between bonds & levies

**Educational Program Levies** are for learning. They are short-term, smaller dollar amounts

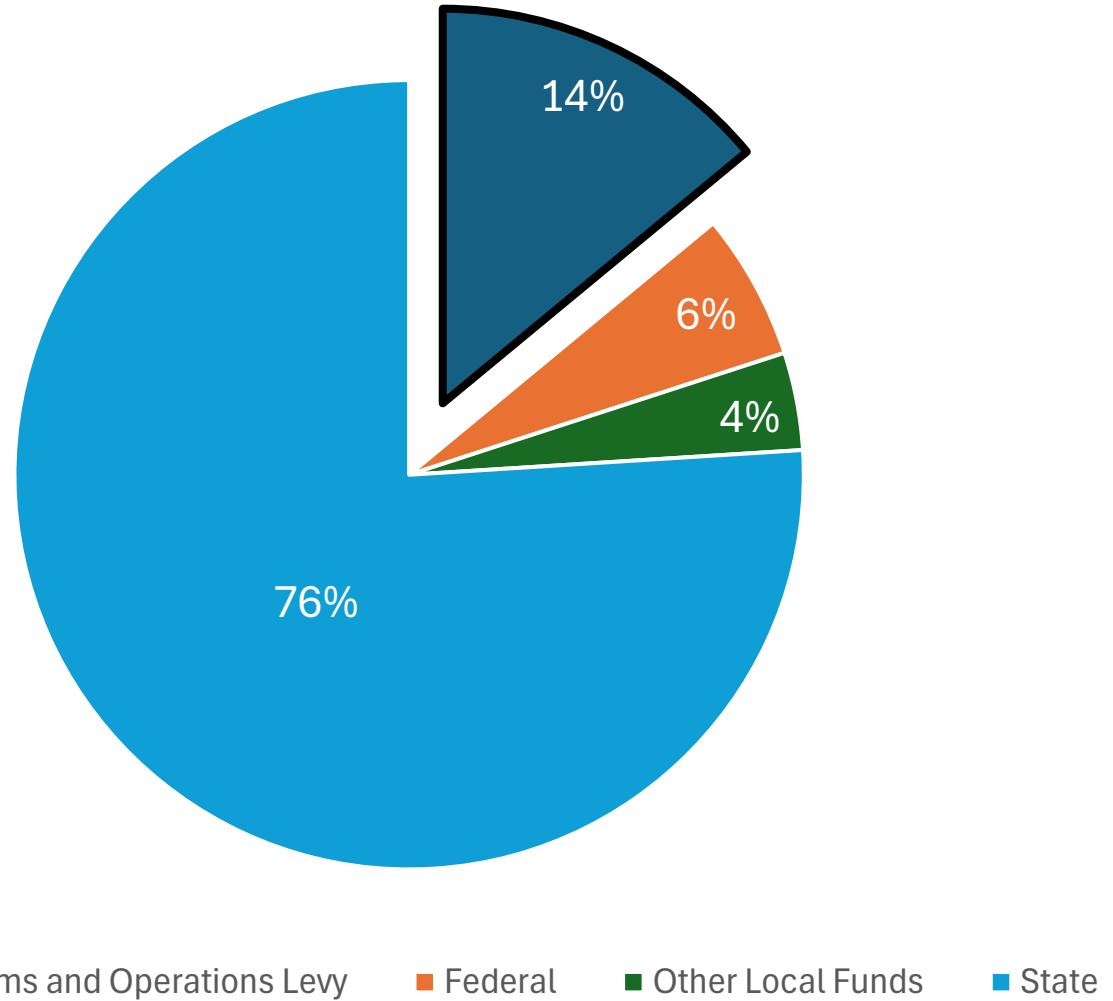
**Bonds** are for **building** of schools or replacing essential life safety infrastructure and provide financing for a long period of time, like home mortgages



**Mukilteo** School District

# Educational Programs Levy

- The current levy is for collection in 2023-2026 calendar years and expires on December 31, 2026
- The current levy **funds 14%** of the district's budget per fiscal year
- The **renewal** levy is for collection in 2027, 2028, 2029 and 2030 calendar years



**Mukilteo** School District

■ Educational Programs and Operations Levy      ■ Federal      ■ Other Local Funds      ■ State

# Educational Programs Levy funds:

The levy will pay for programs and activities **not** funded by the state. Among the items funded by this levy are:

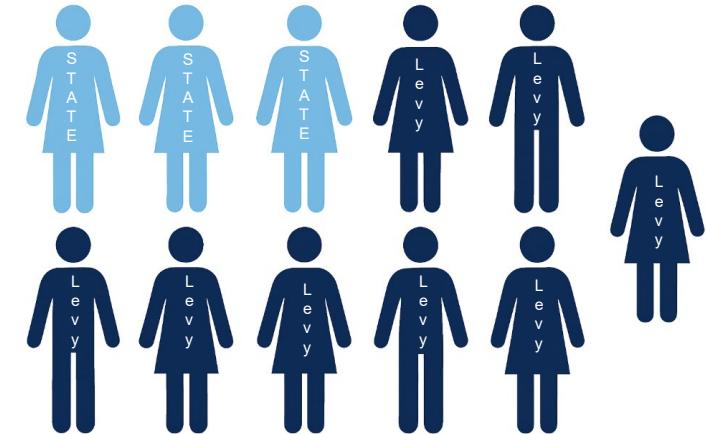
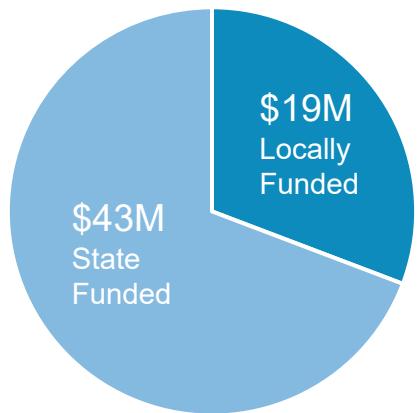
- Athletics and extra-curricular programs
- Elementary instrumental music programs
- Pay for substitutes
- New curriculum
- Services for students receiving specialized supports



# Example of the funding gap

## Security Staff

The **state funds 2.80 safety staff** for Mukilteo School District - the **district employs 11 staff for students and staff safety**.



## Special Education

To ensure our 2,200 students who need special education services have the supports they need, the **Levy funds \$19 million per year for special education services** not funded by the State.

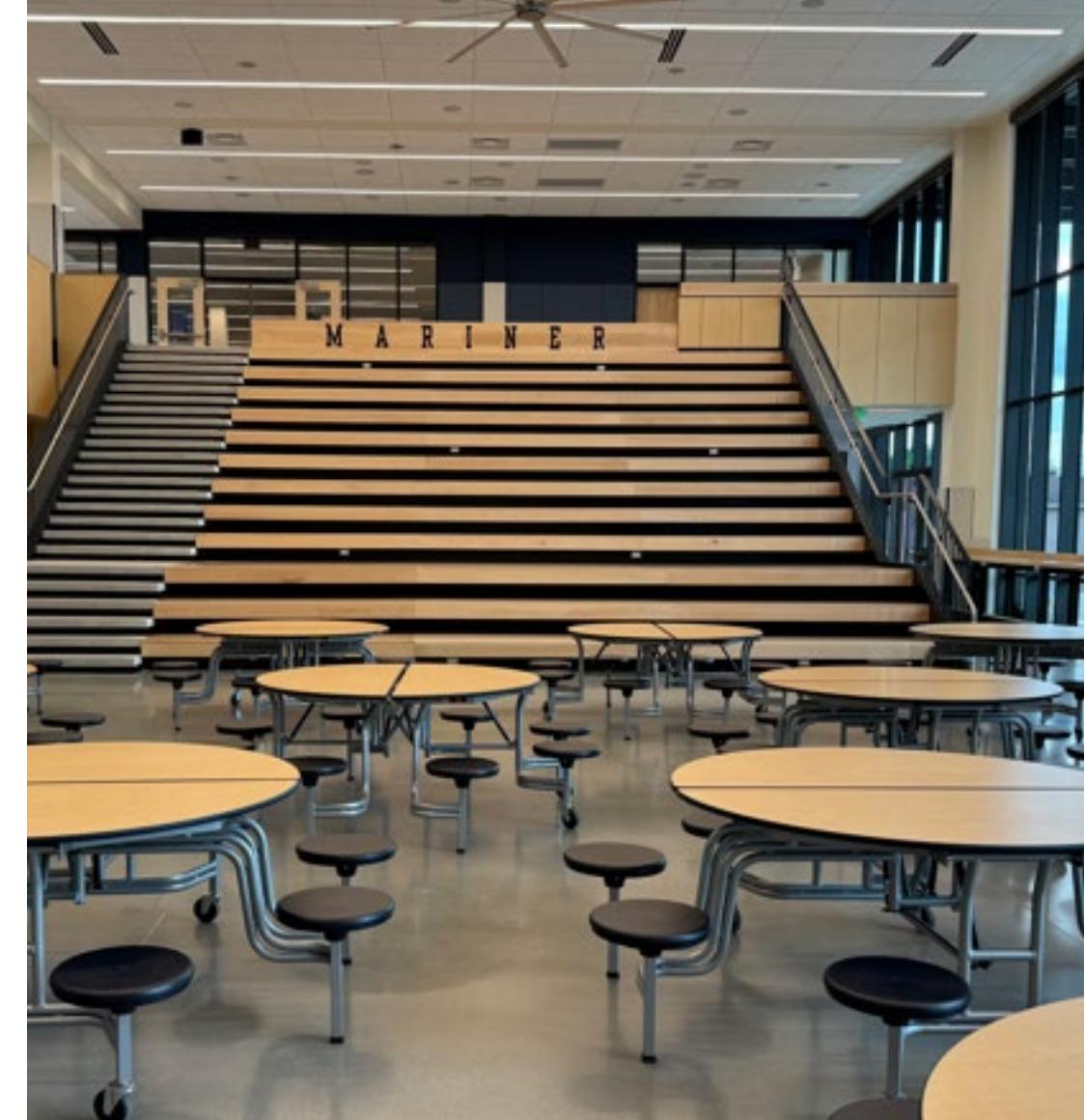


# Proposition No. 1 Replacement of Expiring Educational Programs Levy

This proposition would authorize an excess tax levy in the levy amounts and at the rates below to replace an expiring levy, on all taxable property within the District for enrichment of the state's statutory program of basic education, all as described in Resolution No. 1/2025-26:

Collection years	Levy Amount	Estimated levy rate per \$1,000 Assessed Value
2027	\$61,276,571	\$1.85
2028	\$64,585,563	\$1.87
2029	\$67,779,345	\$1.89
2030	\$71,324,217	\$1.91

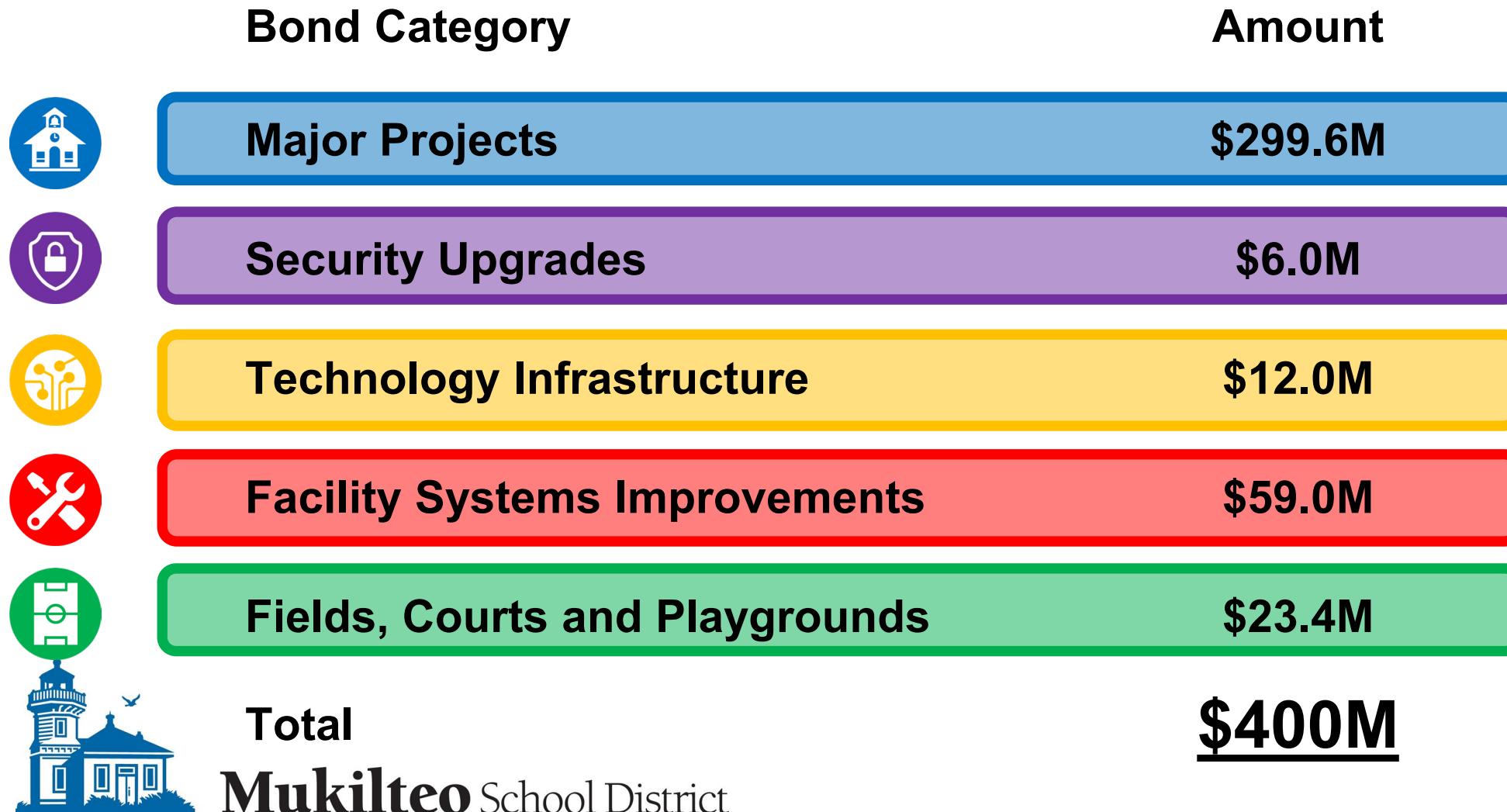




**Mukilteo** School District

**Proposition 2  
2026 Capital Bond**

# 2026 Capital Bond \$400M Breakdown





# Major Projects

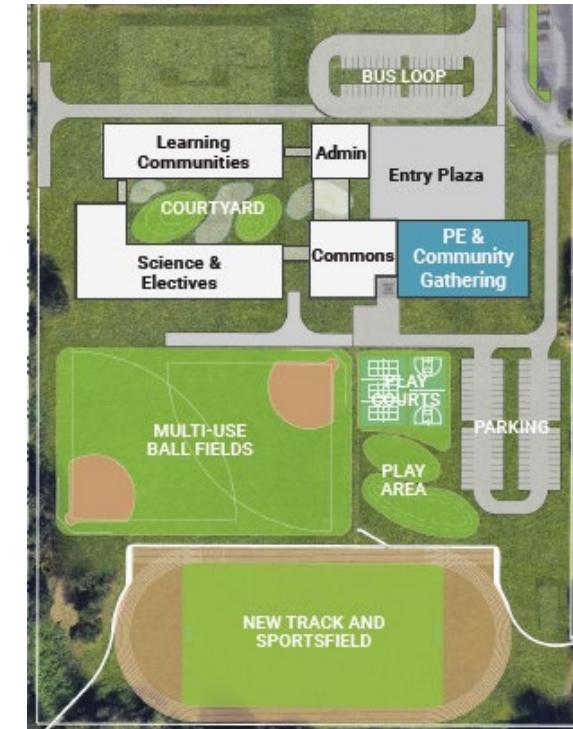
Explorer Middle School – Completion of Full School Replacement

Mukilteo Elementary School – Completion of Full School Replacement

Serene Lake Elementary School – Phase 2 of Replacement

Olivia Park Elementary School – Phase 1 of Replacement

Kamiak High School Gym – Expansion and Improvement



Explainer MS Master Plan



Mukilteo ES Rendering



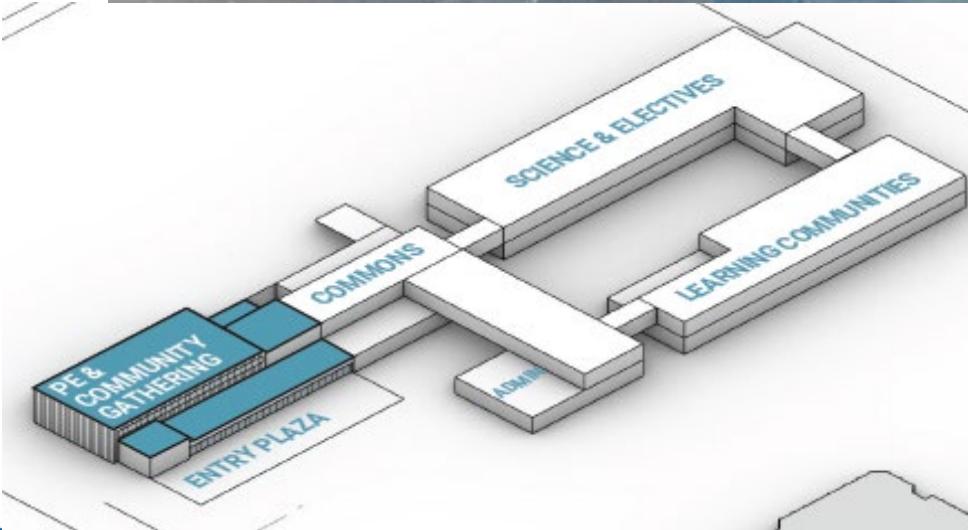
**Mukilteo** School District



Kamiak HS Assembly in Gym



# Explorer MS Phase 2



**Mukilteo** School District

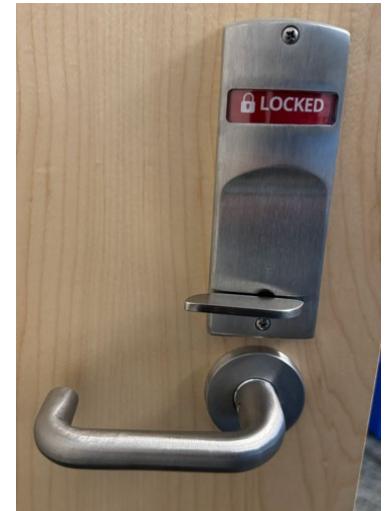


New Gymnasium funded by 2020 Capital Bond



## Security Upgrades

All schools will benefit from expanding security measures including integrated door hardware, access controls, and perimeter fencing



## Fields, Courts, and Playgrounds

Replace synthetic turf & tracks at 3 sites, resurface tennis courts at Mariner HS, improvements to multi-purpose fields at multiple sites, new playgrounds at 4 sites.





## Technology Infrastructure

All schools will benefit from replacing & upgrading aging network infrastructure and building a small disaster business continuity data center



## Facility System Improvements

Upgrade and replace aging systems such as roofs, windows, HVAC, electrical, plumbing, and flooring at multiple schools. Replace fire alarm systems at 6 sites. Upgrade elevators at 3 sites.



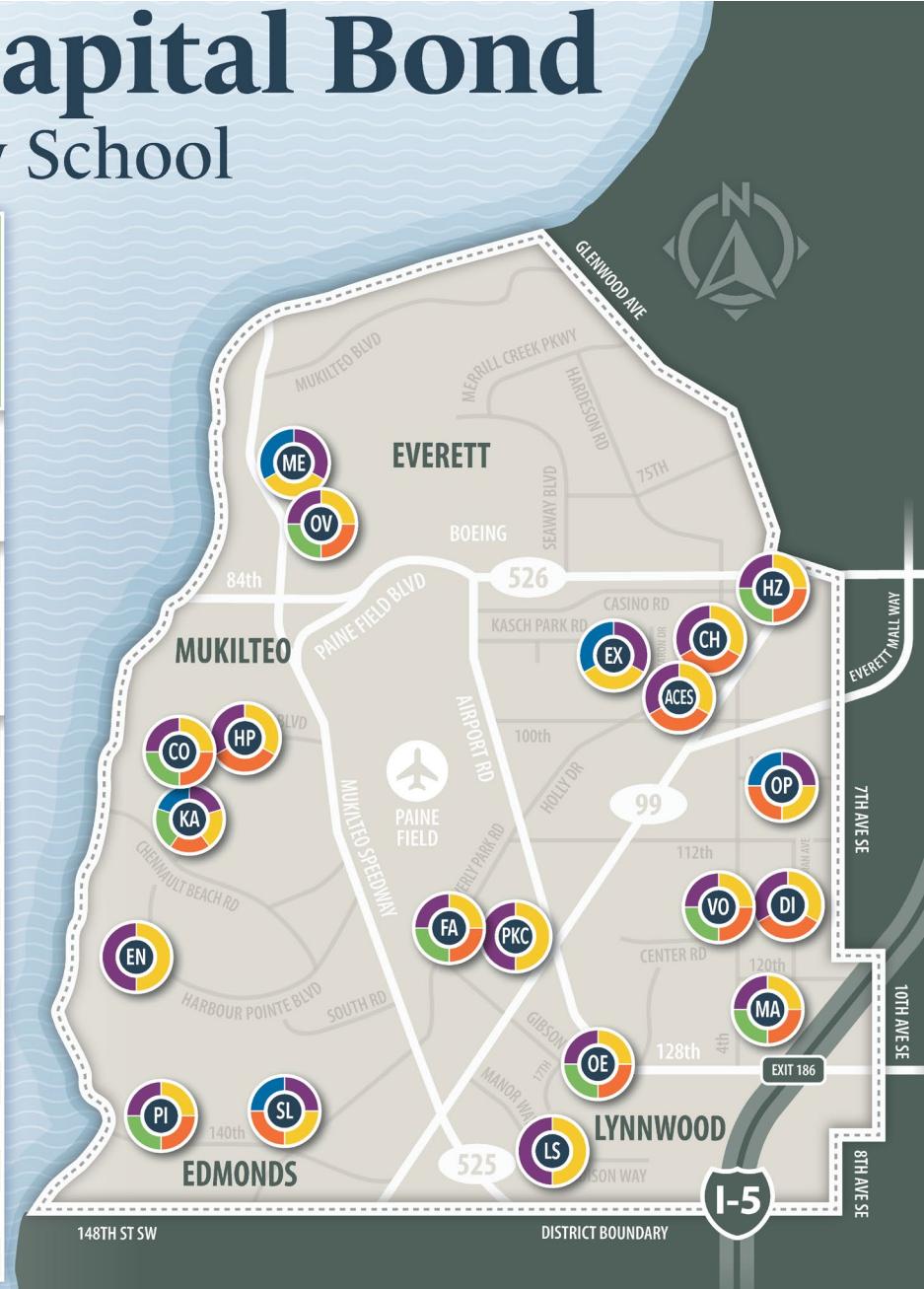


# Mukilteo School District

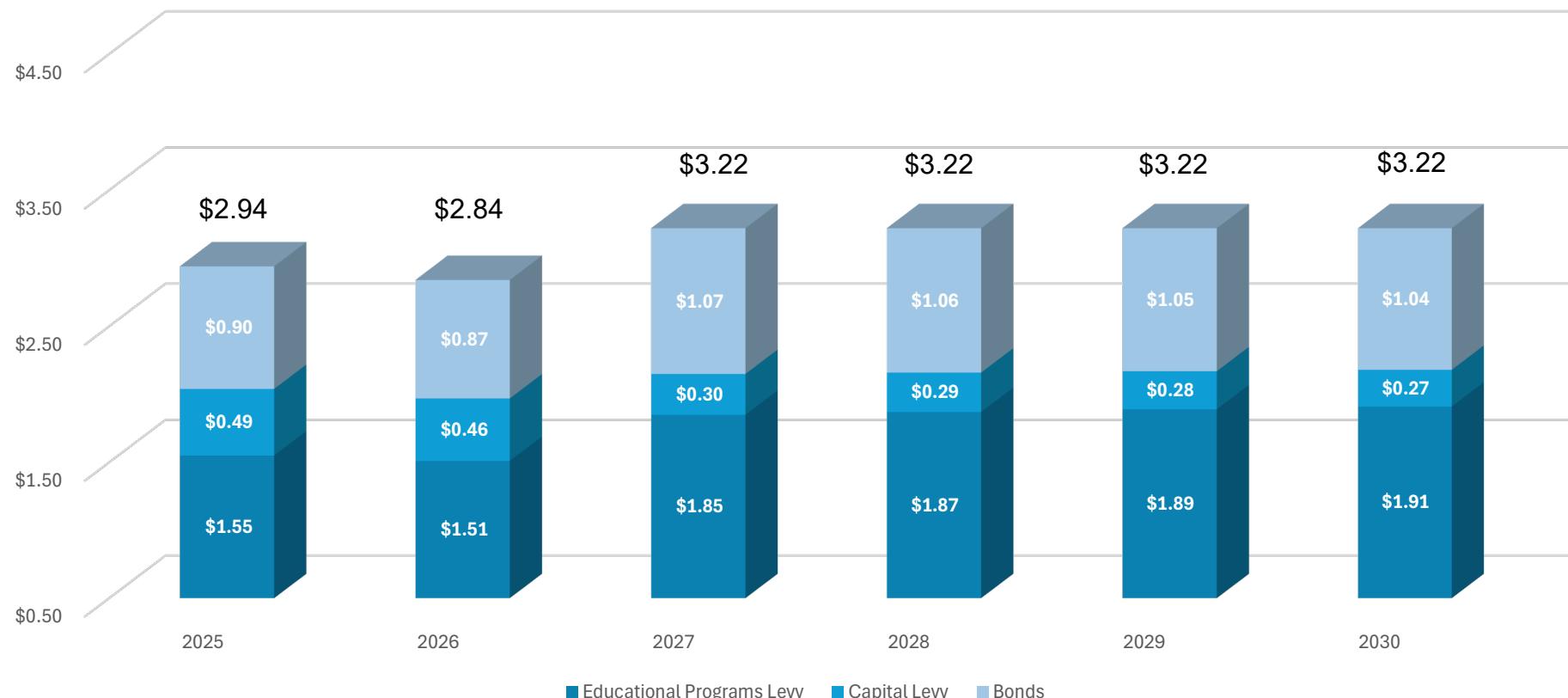
# 2026 Capital Bond

## Projects by School

	Major Projects	Security Upgrades	Technology	Facility Systems	Fields, Courts, Play
High Schools					
ACES	ACES / Big Picture	●	●	●	
KA	Kamiak High School	●	●	●	●
MA	Mariner High School	●	●	●	●
Middle Schools					
EX	Explorer Middle School	●	●	●	
HP	Harbour Pointe Middle School	●	●	●	
OV	Olympic View Middle School	●	●	●	●
VO	Voyager Middle School	●	●	●	●
Elementary Schools					
CH	Challenger Elementary School	●	●	●	
CO	Columbia Elementary School	●	●	●	●
DI	Discovery Elementary School	●	●	●	
EN	Endeavour Elementary School	●	●	●	
FA	Fairmount Elementary School	●	●	●	●
HZ	Horizon Elementary School	●	●	●	●
LS	Lake Stickney Elementary School	●	●	●	●
ME	Mukilteo Elementary School	●	●	●	
OE	Odyssey Elementary School	●	●	●	●
OP	Olivia Park Elementary School	●	●	●	
PKC	Pathfinder Kindergarten Center	●	●	●	
PI	Picnic Point Elementary School	●	●	●	●
SL	Serene Lake Elementary School	●	●	●	



# Total school district tax rate



# Thank you

**Vote by February 10, 2026**

For more information:

<https://www.mukilteoschools.org/bondlevy2026>



**Mukilteo** School District





## EVERETT CITY COUNCIL

### Public Comment Form

Thank you for being here today. Please fill out this form to speak at the council meeting.

**State your name and city of residence when you begin speaking.** Each person is asked to limit comments to three minutes. This allows everyone a fair opportunity to speak. Return this form to the council administrator before the meeting begins.

The following comments are not allowed:

- Comments on any kind of campaigning, whether for or against ballot measures or candidates running for office
- Comments focused on personal matters that are unrelated to City business

You can also submit a comment and attend meetings online at [everettwa.gov/city council](http://everettwa.gov/city council). Click on "Council meeting public comment sign up form." This must be done at least 30 minutes prior to the meeting. Additional instructions are available on the web page.

*City staff may wish to contact you for follow up, therefore, your contact information is appreciated.*

DATE: 1-21-26

NAME (required): JOHN MIRANTE / PACIFIC RIDGE HOMES

CITY (required): RESIDING IN UN-INCORP. SNO. CO. ZIP (required): 98208

EMAIL (optional): jvmirante@drhorton.com PHONE (optional): \_\_\_\_\_

DISTRICT (circle one): 1 2 3 4 5 Not sure  Don't live in city

Is your topic on today's agenda?

YES – the comment period will follow the agenda item

AGENDA ITEM #: 6

NO – speak during general public comment, topic you would like to speak on:

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## EVERETT CITY COUNCIL

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*City staff may wish to contact you for follow up, therefore, your contact information is appreciated.*

DATE: 1 / 21 / 2026

NAME (required): Russell Joo

CITY (required): Bellview ZIP (required): 98005

EMAIL (optional): rjoe@MBAKS.com PHONE (optional): \_\_\_\_\_

DISTRICT (circle one):  1  2  3  4  5  Not sure  Don't live in city

Is your topic on today's agenda?

YES – the comment period will follow the agenda item

AGENDA ITEM #: \_\_\_\_\_

NO – speak during general public comment, topic you would like to speak on:  
Everett 2044 Housekeeping Amendments 6

## **AMENDMENT SHEET 1**

### **COUNCIL BILL 2512-91**

An ORDINANCE Adopting Housekeeping Amendments to Development Regulations Recently Adopted through the Everett 2044 Periodic Update, AMENDING EMC Chapters 14.16, 19.03, 19.04, 19.05, 19.06, 19.08, 19.09, 19.13, 19.22, 19.25, 19.34, 19.35, 19.38, 19.39, and 19.40.

**Amendment Name:** Staff amendment – ensuring ownership status for reduced inclusionary fee in lieu.

**Brief Description:** This staff-proposed Amendment Sheet 1 adds two options for determining that developments intended for owners occupancy are, in fact, owner-occupied. This amendment sheet also adds an annual adjustment for inflation that had been recommended by the planning commission and missed by staff when drafting this proposed ordinance.

**Affected Ordinance Section:** Section 36

**Affected Code Section:** 19.54.060 (new)

**Amendment:**

In Ordinance section 36, replace:

**19.54.060 Alternative compliance – fee in lieu.**

The Planning Director may approve a request for satisfying all or part of the affordable housing requirements with a fee in lieu equal to fifteen dollars per square foot of gross floor area subject to this section. A fee in lieu under this subsection may be deferred under subsection EMC 19.54.070.

A. For dwelling units intended for rent, the fee in lieu under this section is equal to fifteen dollars per square foot of gross floor area subject to this section.

B. For dwelling units intended for owner occupancy, the fee in lieu under this section is equal to nine dollars per square foot of gross floor area subject to this section. The reduced fee in lieu granted under this subsection must be conditioned upon requiring the applicant to record a covenant approved by the planning director to assure owner occupancy. At a minimum, the covenant must require owner occupancy of each dwelling unit subject to this subsection for a period of twelve years and require that, if the property is converted to a rental, the property owner must pay the applicable difference in between the fee in lieu for dwelling units intended for rent and the fee in lieu for dwelling units intended for owner occupancy in effect at the time of conversion or in

effect at the time of construction, whichever is greater. Covenants required by this subsection must be recorded with the Snohomish County auditor.

With:

**19.54.060 Alternative compliance – fee in lieu.**

The Planning Director may approve a request for satisfying all or part of the affordable housing requirements with a fee in lieu equal to fifteen dollars per square foot of gross floor area subject to this section. A fee in lieu under this subsection may be deferred under subsection EMC 19.54.070.

- A. For rental dwelling units, the fee in lieu under this section is equal to fifteen dollars per square foot of gross floor area subject to this section.
- B. For ownership dwelling units, the fee in lieu under this section is equal to nine dollars per square foot of gross floor area subject to this section. The reduced fee in lieu granted under this subsection shall be conditioned to ensure compliance with the provisions of this section using any one of the following methods:
  1. The applicant records a covenant approved by the planning director to assure owner occupancy. At a minimum, the covenant must require owner occupancy of each dwelling unit subject to this subsection for a period of twelve years and require that, if the property is converted to a rental, the property owner must pay the applicable difference between the fee in lieu for dwelling units intended for rent and the fee in lieu for dwelling units intended for owner occupancy in effect at the time of conversion or in effect at the time of construction, whichever is greater.  
Covenants required by this subsection must be recorded with the Snohomish County auditor.
  2. The applicant enters into an agreement with the city under which no individual or entity may purchase from the applicant more than one dwelling unit. An “entity” includes any firm, company, trust, estate, partnership, limited liability company, corporation, joint venture, association or society. Entities with a common owner may collectively purchase only one dwelling unit from the applicant.
  3. The applicant proposes, and the Planning Director approves, an alternate method of ensuring owner occupancy
- C. Beginning January 1, 2027, and each January 1 thereafter, the fee in lieu rates under this section shall be adjusted based on the percentage change in the Seattle-Tacoma-Bellevue Consumer Price Index for All Urban Consumers (“CPI-U”) for the previous 12-month period or an equivalent consumer price index if CPI-U is no longer published.

## **AMENDMENT SHEET 1A**

### **COUNCIL BILL 2512-91**

An ORDINANCE Adopting Housekeeping Amendments to Development Regulations Recently Adopted through the Everett 2044 Periodic Update, AMENDING EMC Chapters 14.16, 19.03, 19.04, 19.05, 19.06, 19.08, 19.09, 19.13, 19.22, 19.25, 19.34, 19.35, 19.38, 19.39, and 19.40.

**Amendment Name:** Ensuring ownership status for reduced inclusionary fee in lieu, 1<sup>st</sup> time homebuyer set-aside, and no displacement clause.

**Brief Description:** This amendment sheet is an alternative to the staff-proposed Amendment Sheet 1. Amendment Sheet 1A includes staff-recommended amendments of Amendment Sheet 1: adding two options for determining that developments intended for owners occupancy are, in fact, owner-occupied and adding an annual adjustment for inflation that had been recommended by the planning commission and missed by staff when drafting this proposed ordinance. Additional amendments included in this Amendment Sheet 1A would prohibit developments receiving the reduced fee in lieu for dwellings intended for owner occupancy if any habitable dwellings were demolished as part of the development, and would require that 10% of the newly-developed units for developments receiving the reduced fee in lieu for dwellings intended for owner occupancy be reserved for first-time homebuyers.

**Affected Ordinance Section:** Section 36

**Affected Code Section:** 19.54.060 (new)

**Amendment:**

In Ordinance section 36, replace:

#### **19.54.060 Alternative compliance – fee in lieu.**

The Planning Director may approve a request for satisfying all or part of the affordable housing requirements with a fee in lieu equal to fifteen dollars per square foot of gross floor area subject to this section. A fee in lieu under this subsection may be deferred under subsection EMC 19.54.070.

A. For dwelling units intended for rent, the fee in lieu under this section is equal to fifteen dollars per square foot of gross floor area subject to this section.

B. For dwelling units intended for owner occupancy, the fee in lieu under this section is equal to nine dollars per square foot of gross floor area subject to this section. The

reduced fee in lieu granted under this subsection must be conditioned upon requiring the applicant to record a covenant approved by the planning director to assure owner occupancy. At a minimum, the covenant must require owner occupancy of each dwelling unit subject to this subsection for a period of twelve years and require that, if the property is converted to a rental, the property owner must pay the applicable difference in between the fee in lieu for dwelling units intended for rent and the fee in lieu for dwelling units intended for owner occupancy in effect at the time of conversion or in effect at the time of construction, whichever is greater. Covenants required by this subsection must be recorded with the Snohomish County auditor.

With:

**19.54.060 Alternative compliance – fee in lieu.**

The Planning Director may approve a request for satisfying all or part of the affordable housing requirements with a fee in lieu equal to fifteen dollars per square foot of gross floor area subject to this section. A fee in lieu under this subsection may be deferred under subsection EMC 19.54.070.

- A. For rental dwelling units, the fee in lieu under this section is equal to fifteen dollars per square foot of gross floor area subject to this section.
- B. For ownership dwelling units, the fee in lieu under this section is equal to nine dollars per square foot of gross floor area subject to this section, subject to the following conditions:
  1. No pre-existing habitable dwellings are demolished as part of the project subject to this subsection; and
  2. The applicant enters into an agreement with the city under which at least ten percent of the dwellings are sold to first-time homebuyers; and.
  3. The reduced fee in lieu granted under this subsection shall be conditioned to ensure compliance with the provisions of this section using any one of the following methods:
    - a. The applicant records a covenant approved by the planning director to assure owner occupancy. At a minimum, the covenant must require owner occupancy of each dwelling unit subject to this subsection for a period of twelve years and require that, if the property is converted to a rental, the property owner must pay the applicable difference between the fee in lieu for dwelling units intended for rent and the fee in lieu for dwelling units intended for owner occupancy in effect at the time of conversion or in effect at the time of construction, whichever is greater. Covenants required by this subsection must be recorded with the Snohomish County auditor.

- b. The applicant enters into an agreement with the city under which no individual or entity may purchase from the applicant more than one dwelling unit. An “entity” includes any firm, company, trust, estate, partnership, limited liability company, corporation, joint venture, association or society. Entities with a common owner may collectively purchase only one dwelling unit from the applicant.
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