

TEMPORARY CONSTRUCTION LICENSE AGREEMENT

THIS TEMPORARY CONSTRUCTION LICENSE AGREEMENT (this “*Agreement*”) is made and entered into as of May 12, 2026 (the “*Effective Date*”), by and between **Port of Everett**, a Washington port district (the “*Port*”), and City of Everett, a Washington municipal corporation (the “*City*”). The Port and the City are referred to herein individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

A. The Port owns certain real property, which is located in the City of Everett, Snohomish County, Washington, and legally described on Exhibit A attached hereto (the “*Port Property*”).

B. The City intends to undertake a project that will involve the construction of a utility pipeline on the Port Property (the “*Pipeline*”).

C. In order to construct the Pipeline, The City needs a temporary license to use those portions of the Port Property described and depicted as “TCE” and “Laydown” in Exhibit B attached hereto (the “*Construction and Laydown Area*”).

D. The Port and the City also desire to collaborate on the design, fabrication and installation of a standpipe visual screening element (the “*Standpipe Screening*”) on the City’s standpipe(s) to be constructed as an appurtenance to the Pipeline on terms set forth herein.

E. The Port desires that the Standpipe Screening incorporate design features intended to enhance its visual quality and compatibility with the surrounding area.

F. The City desires to limit utility funding for the fabrication and installation of the Standpipe Screening to that associated with a typical screening solution.

AGREEMENT

NOW, THEREFORE, for and in consideration of the terms and conditions of this Agreement and the Recitals described above, which are incorporated herein, as well as the mutual benefits to be derived therefrom, the Parties agree as follows:

1. Grant of Construction License. Subject to the terms and conditions of this Agreement, the Port hereby grants and conveys to the City a temporary license over, across and under the Construction and Laydown Area set forth in Exhibit B for the purpose of utility pipeline construction, laydown of construction materials and tools and other ancillary uses related to the City’s construction of the Pipeline (the “*License*”). The License shall be for the use and benefit of the City and its representatives, members, officers, employees, contractors, subcontractors, suppliers, and agents (individually, a “*City Party*”, and collectively, the “*City Parties*”). The City acknowledges that the Construction and Laydown Area consists of two separate, non-contiguous areas, and that the City will access both areas from the public sidewalk. For avoidance of doubt,

the License does not include any right to access any portions of the Port Property outside the Construction and Laydown Area.

2. Term of License. The term of the License (the “*Term*”) shall begin on the date that is thirty (30) days after the City delivers notice to the Port requesting commencement of the Term (the “*Commencement Date*”), provided that notwithstanding the timing of any such notice, the Commencement Date may only occur between October 1, 2026 and January 31, 2028. If the Commencement Date has not occurred by January 31, 2028, this Agreement shall automatically terminate. The Term of the License shall expire on the earlier of (i) the physical completion of the Pipeline; or (ii) three (3) months after the Commencement Date.

3. Use of License. In accordance with the terms and conditions of this Agreement, the Parties agree as follows:

(a) Except for provided for elsewhere herein, the Port shall not be responsible for any obligation, cost, expense, or other amount in connection with this Agreement.

(b) During the Term, the City shall install and maintain temporary construction fencing that is sufficient to secure the Construction and Laydown Area, screen the site from view, and reduce visual impacts. As soon as practicable following installation of the underground portion of the Pipeline, the City shall reduce the footprint of the fencing in order to permit two-way traffic through Port property.

(c) The City shall provide the Port with thirty (30) days’ written notice prior to any City Party first commencing activities within the Construction and Laydown Area. At the Port’s request, the City and the Port shall have weekly coordination meetings, to coordinate on the City’s activities within the Construction and Laydown Area.

(d) The Construction Area and Laydown Area may be used only during the period commencing September 1 and ending June 1 of each year, so as to avoid impacts to public access during the peak season. For the avoidance of doubt, the City shall direct its contractor to diligently minimize, and where reasonably practicable avoid, work within the Construction Area and Laydown Area during the month of May, in recognition of the commencement of boating season on May 1.

(e) The Port shall have the right, but not the obligation, to monitor the City Parties’ activities within the Construction and Laydown Area; provided that the Port does not interfere with the City’s rights herein, and that the Port’s right to so monitor shall be solely for the Port’s own benefit, at the Port’s sole cost, and the Port shall have no duty to ensure that the City Parties’ activities within the Construction and Laydown Area comply with any legal or insurance requirements. The City shall ensure that all contractors and subcontractors performing work within the Construction and Laydown Area are licensed and bonded as required by state law. Before any activity commences within the Construction and Laydown Area, the City shall cause any contractor or subcontractor to provide evidence of insurance in the form of an ACORD certificate of insurance and additional insured endorsement(s), which shall name the Port as an additional insured and shall also provide, at the Port’s written request, the underlying insurance policy to the Port.

(f) All work by the City Parties shall conform to, and shall be conducted in accordance with, any and all applicable ordinances, laws, rules, and regulations and other requirements of any governmental authorities having jurisdiction over the Port Property, including, without limitation, all permitting, consent and approval requirements of such authorities. Additionally, the Port Property is subject to covenants, agreements, and other encumbrances; and the City shall comply with such covenants, agreements, and encumbrances to the extent the City has notice of them. The City hereby acknowledges that the City has received copies of all documents recorded against the Port Property.

(g) The City shall not permit any lien or claim of preconstruction, construction, mechanics, laborers or materialmen to be filed against the Port Property, or any part thereof, for any work, labor or materials furnished, alleged to have been furnished or to be furnished pursuant to any agreement by the City. Notwithstanding the foregoing, if any lien is so filed against the Port Property, within thirty (30) days after the date of the filing or recording of any such lien, the City shall cause the same to be paid and discharged of record, or, if the City contests the amount allegedly due or the right of the lien or to make its lien claim, the City shall cause a bond for at least one-hundred-twenty-five percent (125%) of the amount of the disputed lien claim to be issued in favor of the Port to protect the Port from any damage resulting from the lien during the entire time of any proceeding in which the City contests the lien. If the City shall fail to obtain a bond or otherwise discharge such lien within such 30-day period then the Port may, after fourteen (14) days' written notice to the City and the City's failure to obtain a bond or other discharge of such lien during such fourteen-day period, do so and shall be entitled to collect from the City all fees, costs, and expenses, including attorneys' fees and costs, reasonably incurred by the Port to discharge such lien.

(h) If, in connection with the use, occupation and enjoyment of the License, the City, or any party acting by, through or under the City, damages or destroys any landscape, hardscape, street, road, sidewalk or other improvements of the Port, the City shall repair or replace such damaged or destroyed improvements at its sole cost and expense before the end of the Term damage occurred to a condition substantially identical to that existing before any such damage or destruction. This allowance of time does not extend the Term of this Agreement.

4. Breach of Repair Obligations. In the event the City fails to timely repair in accordance with Section 3(g) above, any damages caused by, or under, the City Parties to the Construction and Laydown Area, the Port Property, or any improvements or property located thereon, the Port shall have the right, upon thirty (30) days' prior written notice to the City (and except in the event the City shall repair any such damages within any such thirty (30) day period or, in the event more than thirty (30) days shall be required to complete any such repairs, the City shall have commenced such repair within such thirty (30) day period and, then, diligently prosecute the same to completion), to cause the maintenance or repair work specified in such notice to be commenced and completed and, in any such event, the City shall reimburse the Port for undertaking the repair work for the total documented cost thereof within thirty (30) days after receipt of written notice therefor, which notice shall include written evidence of such incurred costs.

5. General Limitations. This Agreement and the rights and privileges granted hereunder shall be subject to and/or limited as follows:

(a) The City's use of the License shall be limited to the uses set forth in this Agreement, and subject to the conditions set forth in this Agreement.

(b) The Port makes no warranties of any kind, express or implied, to the City concerning the condition of or title to the Construction and Laydown Area. The City hereby accepts the Construction and Laydown Area AS IS, WHERE IS, without any warranties, including but not limited to fitness for a particular purpose. Except to the extent of the Port's intentional misconduct, negligence or breach of this Agreement, the City hereby assumes all risk and liability of its use of the Construction and Laydown Area and the exercise of its rights under this Agreement. Except to the extent of the Port's intentional misconduct, negligence or breach of this Agreement, the City hereby unconditionally, irrevocably, and forever discharges, waives, and releases the Port from any and all damages, costs, expenses, liabilities, suits and claims, of any nature whatsoever arising from the grant, condition, or use of the Construction and Laydown Area by the City or its invitees, licensees, employees, contractors, or agents.

(c) Other than the construction of the Pipeline, the City shall not construct, install, or modify any improvements within the Construction and Laydown Area, including but not limited to temporary or permanent trafficking areas, without the prior written review and approval of the Port, which approval shall include, without limitation, the Port's review of design, location, and material types. The City shall be solely responsible for obtaining and complying with all required permits, approvals, and other regulatory requirements related to such improvements. Upon termination or expiration of the License, the City shall, at its sole cost, remove any such improvements and restore the Construction and Laydown Area to its original condition.

6. Indemnification. The City shall and hereby agrees to indemnify, reimburse, defend and hold harmless the Port and its commissioners, representatives, members, affiliates, officers, employees, and agents (collectively, the "**Port Parties**"), from and against all damages, claims, actions, causes of action, losses, demands, costs, fees (including reasonable attorneys' fees), liabilities or proceedings caused to the Port Property (collectively, "**Claims**"), arising from or due to the City Parties': (a) use of the Construction and Laydown Area; (b) any breach, violation or non-performance of any covenant or agreement in this Agreement; and/or (c) exercise of the rights and privileges herein granted. This duty to indemnify and defend the Port shall continue and survive after the expiration of the Term. If and to the extent (but only if and only to the extent) this Agreement is subject to Section 4.24.115 of the Revised Code of Washington, it is agreed that where such Claims arise from the concurrent negligence of the Port Parties and the City Parties, the City's obligations of indemnity under this Section 6 shall be effective only to the extent of the negligence of the City and in no event shall the Port Parties be indemnified against the sole negligence of the Port Parties or its agents. SOLELY FOR THE PURPOSE OF EFFECTUATING THE INDEMNIFICATION OBLIGATIONS HEREUNDER, AND NOT FOR THE BENEFIT OF THEIR EMPLOYEES OR ANY THIRD PARTIES, THE CITY SPECIFICALLY AND EXPRESSLY WAIVES ANY IMMUNITY THAT MAY BE GRANTED TO IT UNDER APPLICABLE FEDERAL, STATE OR LOCAL WORKERS COMPENSATION ACTS OR OTHER EMPLOYEE BENEFIT ACTS, INCLUDING WITHOUT LIMITATION THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW. The parties acknowledge that the foregoing waiver has been specifically and mutually negotiated between the parties.

7. Standpipe Screening. The Parties will cooperate to create the Screening Element on or around the Standpipe(s). The Standpipe Screening will be designed, fabricated and installed on a portion of the City's standpipe utility infrastructure in accordance with the terms set forth herein.

(a) City Responsibilities. The City shall be responsible, at its sole cost and expense, for the design of the Standpipe Screening and its integration with the standpipe(s). The City shall provide the following design submittals to the Port for review and comment: (i) Preliminary Design Submittal (approximately 60% design), which shall include sufficient detail to evaluate constructability, cost, and value engineering opportunities; (ii) 90% Design Submittal, which shall be a near-final design that reflects any comments previously delivered by the Port; and (iii) Issued for Bid (IFB) construction documents, which shall include final drawings, specifications for fabrication and installation, and a detailed cost estimate. The Port shall have a reasonable period of time to review each submittal provide written comments. The City shall consider all Port comments in good faith and incorporate them to the extent reasonably practicable, provided that the City retains final design authority. The final Issued for Bid (IFB) construction documents shall be referred to as the "**Final Plans**". Following preparation of the Final Plans, the City shall provide the Port with ongoing engineering and design support, as reasonably necessary and at the City's sole cost, to facilitate successful fabrication and installation of the Standpipe Screening.

(b) Port Responsibilities. The Port shall be responsible for procurement, fabrication, and installation of the Standpipe Screening in accordance with the Final Plans. The Port shall coordinate the installation of the Standpipe Screening with the City to ensure compatibility with the standpipe(s) and related Pipeline infrastructure.

(c) Cost Sharing. Upon completion of fabrication and installation of the Standpipe Screening, the Port shall submit an invoice to the City for the City's share in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00). The City shall pay the invoice within thirty (30) calendar days after receipt.

(d) Ownership and Maintenance. Upon completion of fabrication and installation of the Standpipe Screening, the Standpipe Screening will be owned and maintained by the Port.

8. Miscellaneous.

(a) Authority. The Port and the City each hereby represents to the other that (i) it has the legal right, power and authority to enter into this Agreement and to perform in accordance with its terms and provisions; (ii) the individual(s) signing this Agreement on its behalf have the authority to bind the party and to enter into this Agreement; and (iii) it has taken all required action(s) to legally authorize the execution, delivery, and performance of this Agreement.

(b) No Waiver; Severability. The failure of any Party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that such Party may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein. Invalidation of any one of the covenants or restrictions set forth in

this Agreement by judgment or court order shall in no way affect all other provisions, which shall remain in full force and effect.

(c) Counterparts; Successors and Assigns; Recitals and Exhibits; Notices. This Agreement may be executed in counterparts, all of which taken together shall constitute one agreement, binding upon and inuring to the benefit of the Parties hereof and their respective successors and assigns. All recitals and exhibits referred to herein and attached hereto are incorporated herein by this reference.

(d) Reservation; Amendments; Governing Law. This Agreement may not be modified except with the mutual consent of the Parties and then, only by written instrument duly executed by the Parties. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party, and shall be governed by and construed in accordance with the laws of the State of Washington. Notwithstanding anything contained herein to the contrary, this Agreement is without prejudice to the Port's rights and remedies, whether at law, in equity, or otherwise, all of which are expressly reserved without limitation. Further, venue for any issues relating to this Agreement shall be with the Superior Court of Snohomish County, State of Washington.

(e) Attorneys' Fees. If any legal action or other proceeding is brought to enforce this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party shall be entitled to recover their reasonable attorneys' fees, and any other fees and costs incurred in the action or proceeding, including appeals, in addition to any other relief to which such Party may be entitled.

(f) No Joint Venture; Construction; No Third Party Rights; Survival. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any similar relationship between the Parties. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party. Except as expressly set forth herein, this Agreement does not otherwise create any rights in any third party. The indemnifications and other provisions of Agreement, which expressly survive the termination of this Agreement, shall survive the termination of this Agreement.

(g) JURY TRIAL WAIVER. THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN TORT, CONTRACT OR IN ANY CAUSE OF ACTION OF ANY NATURE.

(h) Limitation of Damages. Neither party shall be liable hereunder for indirect, consequential, punitive, or special damages.

(i) Calculation of Time. All reference to number of days in this Agreement shall be calculated based on calendar days.

(j) Exhibits. This Agreement includes the following exhibits, which are attached hereto and made a part hereof as if set forth herein in full:

- A – Parcel Numbers of Port Property
- B – Description of Construction and Laydown Area

[Signatures on following pages.]

IN WITNESS WHEREOF, the Port and the City have executed this Agreement as of the date first written above.

PORT:

Port of Everett,
a Washington port district

Signed by:
By: Lisa Lefebver
Name: Lisa Lefebver
Title: CEO/Executive Director

CITY:

City of Everett,
a Washington municipal corporation

Signed by:
By: Cassie Franklin
Name: Cassie Franklin
Title: Mayor

ATTEST

Signed by:
Marista Jorve
Marista Jorve, City Clerk

APPROVED AS TO FORM

DocuSigned by:
 APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY
Tim Benedict, Deputy City Attorney

EXHIBIT A

**LEGAL DESCRIPTION OF
PORT PROPERTY**

LOT 4 AND 5, PORT GARDNER LANDING BINDING SITE PLAN, ACCORDING TO THE PLAT THEREOF RECORDED UNDER RECORDING NO. 9609275005, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, BEING A PORTION OF TIDELANDS IN FRONT OF SOUTH HALF OF SECTION 18, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M., IN SNOHOMISH COUNTY, WASHINGTON.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

EXHIBIT B

LOCATION OF CONSTRUCTION AND LAYDOWN AREA

See attached.

