

RIVERSIDE BUSINESS PARK
GENERAL TRANSFER AGREEMENT
PORT OF EVERETT

and

CITY OF EVERETT

0000001

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GENERAL TRANSFER AGREEMENT

THIS GENERAL TRANSFER AGREEMENT (this "Agreement") is made and entered into as of the 10th day of JUNE, 2014 (the "Effective Date") by and between the PORT OF EVERETT, a port district organized under the laws of the State of Washington ("Port") and the CITY OF EVERETT, a municipal corporation organized under the laws of the State of Washington ("City").

RECITALS

A. The Port is the owner of the majority of that certain commercial property located in the City of Everett, Snohomish County, and commonly known as the Riverside Business Park, the legal description of which is described on Exhibit "1" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Riverside Business Park").

B. The Port and the City have engaged in extensive negotiations with respect to the City's interest in obtaining a water easement from the Port to serve the Tulalip Tribes. The parties have reached multiple agreements regarding several discreet matters concerning the City's and the Port's future rights, interests, and responsibilities with respect to the Riverside Business Park.

C. The Port and the City have also engaged in extensive negotiations regarding public access at Riverside Business Park. The Port and City anticipate that these will culminate in execution of public access agreement(s) soon after the Effective Date of this Agreement.

D. The general purpose of this Agreement is to set forth and outline the multiple agreements entered into by and between the Port and the City with respect to the future rights, duties, and operations occurring on, adjacent, or with respect to the Riverside Business Park.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto agree as follows:

1. **BNSF Overpass Agreement and Easement Agreement for Broadway Bridge ("Riverside Overpass")**.

1.1 **BNSF Riverside Overpass**. BNSF Railway Company, a Delaware corporation ("BNSF"), owns and operates a line of railroad in and through the City of Everett. The Port owns what is commonly referred to as the Riverside Overpass, which is adjacent to the Riverside Business Park and connects Riverside Business Park to public right-of-way, across a private easement. The overpass is more technically described as Riverside Overpass, DOT No. 085002Y.

1.2 **Overpass Temporary Construction Agreement.** An Overpass Temporary Construction Agreement, in substantially the form attached hereto as **Exhibit "2,"** will be entered into by and between BNSF and the Port, which has the general purpose of permitting the Port to construct, at its cost and expense, a throw fence on one side of the Riverside Overpass.

1.3 **Riverside Overpass Easement Agreement.** Under the terms and provisions of the Overpass Temporary Construction Agreement, BNSF and the City will enter into that certain Easement Agreement, in substantially the form attached hereto as **Exhibit "3,"** the general purpose of which is to provide a non-exclusive ingress and egress, and utility easement, for the benefit of the public to access Riverside Business Park, adjacent properties, as well as the public access facilities within the Riverside Business Park. Upon recordation of this Easement Agreement (or a memorandum thereof), the Port shall cause to be paid or credited to the City, the sum of Forty Two Thousand and 00/100 Dollars (\$42,000.00), which the City shall, in turn, thereupon pay to BNSF.

1.4 **Transfer of Riverside Overpass.** Upon completion of the construction contemplated by the above Overpass Temporary Construction Agreement and the execution and recordation of the Easement Agreement referred to in Section 1.3 above and the Benson & Wolken easement described in Section 2.2 below, the Port shall transfer to the City, by Quit Claim Bill of Sale for Bridge, in the form and substance attached hereto as **Exhibit "4,"** all right, title and interest of the Port in the Riverside Overpass to the City, subject to such Easement Agreement. Such transfer of ownership shall be "AS IS WHERE IS" and without any warranties, express or implied, and without recourse. Effective upon such transfer, the City is responsible for the operation and maintenance and repair of the Riverside Overpass. Upon assuming ownership as provided herein of the Riverside Overpass, the City covenants and agrees that it shall not make any changes or improvements to the Riverside Overpass for bike lanes which would cause loss of one or more lanes of traffic without obtaining the advance written consent of the Port in its sole judgment and discretion.

2. **Benson & Wolken Public Easement Agreement.**

2.1 **Benson & Wolken Existing Private Easement.** The westerly access to the Riverside Overpass is from a public roadway off East Marine View Drive in the City of Everett. The access road off this public roadway to the beginning of the Riverside Overpass is located on a portion of real estate owned by Benson & Wolken Properties, LLC ("Benson & Wolken"), and this portion of the roadway is subject to a private industrial roadway vehicular ingress and egress easement granted to the Port under the terms and provisions of that certain Access Ramp Easement and Construction Agreement recorded March 20, 1998 under Snohomish County Auditor's File No. 9803200728.

2.2 **Benson & Wolken New Public Access Easement.** The Port shall pursue acquiring a new easement on the existing private access easement from Benson & Wolken Properties, LLC, in favor of the City to expand this existing private access easement, so that the new easement will grant non-exclusive public use and access easement rights over the existing access road, substantially in form attached hereto as **Exhibit "5."**

3. Tulalip Waterline Easement Extension.

3.1 Existing Tulalip Waterline Easements. At the present time, the City holds two (2) utility waterline easements for the Tulalip water pipeline project over portions of the Riverside Business Park. A City of Everett/Tulalip Water Pipe Easement granted by the Port of Everett was recorded on March 23, 2011 under Snohomish County Auditor's File No. 201103230200. A City of Everett/Tulalip Water Pipe Easement granted by Snohomish County was recorded on October 5, 2012 under Snohomish County Auditor's File No. 201210050753.

3.2 Expansion of Tulalip Waterline Easement. The existing underground waterline held by the City "daylights" at a spot on the access road to the east of the Cymbaluk property. The Port will grant the City a permanent waterline easement, similar in form and substance to the above recorded easement granted to Snohomish County and substantially in the form attached hereto as **Exhibit "6,"** so that the waterline utility may run from its present above "daylight" location, in a southerly direction on the access road to the above Snohomish County property, and connect there with the waterline easement already existing by virtue of the above easement recorded on the Snohomish County property.

3.3 Temporary Construction Easement. In connection with the necessary construction for the above permanent waterline easement, the Port shall also grant the City temporary construction easements: One (1) for "pipe laydown" on those portions of the Riverside Business Park adjacent to the area of the permanent waterline easement; two (2) on Lot 9 of the Riverside Business Park; one (1) for "excavation" and one (1) for "pipe laydown"; and one (1) for vehicular access across Lot 7 to Lot 9. This temporary construction easement containing all of these easements shall be substantially in the form attached hereto as **Exhibit "7."**

4. Stormwater System.

4.1 Stormwater Drainage Easement. Presently existing within the Riverside Business Park is a stormwater drainage system. The Port shall grant to the City, by recordable document, substantially in the form attached hereto as **Exhibit "8,"** a non-exclusive utility easement in certain areas of the Riverside Business Park for the general purpose of stormwater utility access, maintenance, and operation (the "Stormwater Infrastructure and Retention Pond Easement"). The Stormwater Infrastructure and Retention Pond Easement does not include Lot 8 as shown in the boundary line adjustment and survey recorded under Snohomish County recording number 2010101135001 ("Lot 8"). The Lot 8 stormwater drainage system is instead subject to Section 4.4 below.

4.2 Stormwater Detention Pond.

4.2.1 Location. Designated as Pond "D" of the Riverside Business Park, as indicated on that certain Boundary Line Adjustment recorded on October 13, 2010 under Snohomish County Auditor's File No. 201010135001, and revised by that certain Affidavit of Minor Correction of Survey recorded on January 31, 2012 under Snohomish County Auditor's

File No. 201201310149, is a stormwater detention pond owned by the Port on Port property (the "Stormwater Pond").

4.2.2 Easement Transfer of Stormwater Pond. By the above recordable utility easement, as specified in Section 4.1, the City shall be granted an easement for the operation and maintenance of the Stormwater Pond, "AS IS" without any warranties, express or implied, and without recourse, so that the City will take over, subject to Section 4.5 below, the responsibilities of maintenance and control of the Stormwater Pond; such responsibilities shall include, but not be limited to, the landscaping within the inside of the currently-existing fence surrounding the Stormwater Pond. Such responsibilities do not include any landscaping outside of the currently-existing fence.

4.2.3 Stormwater Pond Pre-Transfer Maintenance. Prior to the execution and recording of the utility easement referred to in Section 4.1 above, the Port shall complete maintenance of the Stormwater Pond pursuant to the terms and provisions of that certain agreed-upon plan attached hereto as Exhibit "9" and incorporated herein by this reference. The City has no obligations regarding the Stormwater Pond until completion of such maintenance by the Port and recording of the Stormwater Drainage Easement.

4.3 Infrastructure Transfer.

4.3.1 Definition of Transferred Stormwater Infrastructure. For the purposes of this Agreement, the term "Transferred Stormwater Infrastructure" refers to all stormwater-related infrastructure marked as Transferred Utilities on the attached Exhibit "10."

4.3.2 Date of Transfer. As of the date of the recording of the Stormwater Drainage Easement, all of the Port's right, title, and interest in the Transferred Stormwater Infrastructure are transferred and conveyed to the City.

4.3.3 Transferred Stormwater Infrastructure Free and Clear. The Port warrants that the Transferred Stormwater Infrastructure as of the recording date of the Stormwater Drainage Easement are free and clear of all liens and all other monetary encumbrances. The Port warrants the Transferred Stormwater Infrastructure will not become subject to any liens or other monetary encumbrance arising from the construction and installation of the Transferred Stormwater Infrastructure.

4.3.4 Transfer of Warranties. As of date of recording of the Stormwater Drainage Easement, the Port assigns to the City all warranties by contractors or suppliers or others related to the construction and installation of the Transferred Stormwater Infrastructure. If a warrantor later asserts that its warranty cannot be assigned to the City, then the Port will, at the request and cost of the City and in coordination with the City, take all reasonable steps to enforce the warranty on behalf of the City.

4.3.5 No Other Warranties. Except as otherwise specifically provided in this Section 4.3, the Port transfers and conveys the Transferred Stormwater Infrastructure to the City without warranty, express or implied, and without recourse.

4.3.6 Bill of Sale. If either party to this Agreement determines that a formal bill of sale is required for the transfer of the Transferred Stormwater Infrastructure, then both parties will cooperate to draft and execute such a bill of sale.

4.4 Lot 8. Prior to the recording of the Stormwater Drainage Easement, the Port shall either procure the Lot 8 Stormwater Drainage Easement or install an isolation valve, all as described below:

4.4.1. Lot 8 Stormwater Drainage Easement. Lot 8 is currently owned by Snohomish County under a Statutory Warranty Deed recorded September 21, 2012 under Snohomish County Auditor's File No. 201209210464. Lot 8 is currently used and occupied by Regional Disposal Company under a Lease dated January 29, 2008, as amended by First Amendment to Lease dated as of September 19, 2012. The Port shall use reasonable efforts to cause Snohomish County and its Lessee, Regional Disposal Company, to deliver to the City a fully executed and recordable utility easement, substantially in the form and substance attached hereto as **Exhibit "11"**, for stormwater drainage, together with its associated appurtenances and facility infrastructure (the "Stormwater Infrastructure Easement (Lot 8)").

4.4.2 Isolation Valve. If for any reason the Port is unable to cause execution and delivery to the City of Stormwater Infrastructure Easement (Lot 8), then the Port shall at its own cost cause installation of an isolation valve in the stormwater pipeline(s) leaving Lot 8, for the purpose of allowing the Lot 8 stormwater system to be isolated from the rest of the Riverside Business Park system. The install location(s) and valve specifications are subject to prior City approval, which will not be unreasonably withheld. The isolation valve will be part of the Transferred Stormwater Infrastructure.

4.5 Post-Recording of Stormwater Drainage Easement.

4.5.1 City Maintenance and Operation. Upon recording of the Stormwater Drainage Easement, the City will operate, maintain, and replace the Transferred Stormwater Infrastructure and the Stormwater Pond in accordance with its usual and customary municipal standards and practices.

4.5.2 Stormwater Utility Surcharge. The Port acknowledges that the stormwater system in the Riverside Business Park is of such a character that the costs to operate, maintain and replace the system will be in excess of the costs usually incurred by the City to operate, maintain and replace stormwater systems. Accordingly, the Port acknowledges and agrees that the City may impose a stormwater utility surcharge on the properties of the Riverside Business Park to pay for such excess costs, which the City will calculate and apportion between Riverside Business Park property owners/utility users in accordance with commonly accepted utility ratemaking methodologies. The stormwater utility surcharge will include without limitation recovery for the City of (1) all City stormwater project cost increases associated with

presence of hazardous substances in the Riverside Business Park not released by the City, such as for example all costs related to the handling and disposal of arsenic-contaminated excavation soils; (2) all costs related to the operation, maintenance and replacement of the Stormwater Pond; (3) all costs related to operation, maintenance and replacement of the outfall into the Snohomish River connected to the Stormwater Pond, including costs associated with any clean-up of the discharge area of the outfall; and (4) all costs related to the operation, maintenance and replacement of stormwater pump stations.

4.5.3 Stormwater System Capacity. The parties acknowledge that the Port of Everett Riverside Business Park Stormwater Site Plan (Comprehensive Hydraulics Report) revised April 2000 accurately states the capacities of the Stormwater Detention Pond and other associated stormwater infrastructure.

5. Sanitary Sewer System.

5.1 Sanitary Sewer Easement. Presently existing within the Riverside Business Park is a sanitary sewer system and associated equipment. The Port shall grant to the City, by recordable document, substantially in the form attached hereto as **Exhibit "12,"** a non-exclusive utility easement for the general purpose of sanitary sewer access, maintenance, and operation of (the "Sanitary Sewer Easement"). The Sanitary Sewer Easement does not include Lot 8. As described in Section 5.4 below, the City does not intend to operate or maintain the sanitary sewer system within Lot 8.

5.2 Infrastructure Transfer.

5.2.1 Definition of Transferred Sewer Infrastructure. For the purposes of this Agreement, the term "Transferred Sewer Infrastructure" refers to all sanitary-sewer related infrastructure marked as Transferred Utilities on the attached **Exhibit "13"**.

5.2.2 Date of Transfer. As of the date of the recording of the Sanitary Sewer Easement, all of the Port's right, title, and interest in the Transferred Sewer Infrastructure are transferred and conveyed to the City.

5.2.3 Transferred Sewer Infrastructure Free and Clear. The Port warrants that the Transferred Sewer Infrastructure as of the recording date of the Sanitary Sewer Easement are free and clear of all liens and all other monetary encumbrances. The Port warrants the Transferred Sewer Infrastructure will not become subject to any liens or other monetary encumbrance arising from the construction and installation of the Transferred Sewer Infrastructure.

5.2.4 Transfer of Warranties. As of date of recording of the Sanitary Sewer Easement, the Port assigns to the City all warranties by contractors or suppliers or others related to the construction and installation of the Transferred Sewer Infrastructure. If a warrantor later asserts that its warranty cannot be assigned to the City, then the Port will, at the request and cost of the City and in coordination with the City, take all reasonable steps to enforce the warranty on behalf of the City.

5.2.5 No Other Warranties. Except as otherwise specifically provided in this Section 5.2, the Port transfers and conveys the Transferred Sewer Infrastructure to the City without warranty, express or implied, and without recourse.

5.2.6 Bill of Sale. If either party to this Agreement determines that a formal bill of sale is required for the transfer of the Transferred Sewer Infrastructure, then both parties will cooperate to draft and execute such a bill of sale.

5.3. Easements for Connection to East Marine View Drive. Prior to the recording of the Sanitary Sewer Easement, the Port will procure utility easements for the City, in form(s) reasonably acceptable to the City, so that the City has easement or equivalent rights for the existing sewer pipeline that connects from the Riverside Business Park to East Marine View Drive. The parties acknowledge that this will require easements from BNSF, Benson & Wolken, Benson individually, and possibly WSDOT. These easement rights are required for the City to operate the Riverside Business Park sanitary sewer system.

5.4 Lot 8. The City does not intend to own, operate or maintain any sanitary sewer infrastructure within Lot 8. The City will complete the work necessary so that Lot 8 is isolated from the rest of the Riverside Business Park sanitary sewer system (the "Lot 8 Sanitary Isolation Work"). The Port will reimburse the City for 50% of the City's reasonable costs for Lot 8 Sanitary Isolation Work, which the Port will pay the City within sixty (60) days after receiving an invoice from the City.

5.5 Post-Recording of Sanitary Sewer Easement: City Maintenance and Operation. Upon recording of the Sanitary Sewer Easement, the City will operate, maintain, and replace the Transferred Sewer Infrastructure in accordance with its usual and customary municipal standards and practices.

6. Roadways Right of Way Easement. Presently existing within the Riverside Business Park is a system of access roads. The Port shall grant to the City, by recordable document, an easement right-of-way for public use on these access roads for the purposes of the City assuming operational control, maintenance, and repair of these roads effective upon recording of such easement. The foregoing grant of the easement right-of-way on the access roads within the Riverside Business Park shall be by recordable document, substantially in the form attached hereto as **Exhibit "14"** (the "Right-of-Way Easement on Access Roads").

7. Timing.

7.1 Overpass Temporary Construction Agreement. The Port shall make a good faith effort to ensure that the Overpass Temporary Construction Agreement, provided for by Section 1.2 above, is entered into within thirty (30) business days of the Effective Date of this General Transfer Agreement.

7.2 **Benson & Wolken New Public Access Easement.** Pursuit of the Benson & Wolken New Public Access Easement, provided for by Section 2.2, shall be undertaken by the Port either before or after the Effective Date of this General Transfer Agreement.

7.3 **Quit Claim Bill of Sale on Bridge.** The Quit Claim Bill of Sale on Bridge shall be entered into within ninety (90) days after the later of (a) substantial completion of the "throw fence" construction as provided by the above Overpass Temporary Construction Agreement, and final acceptance and construction closing of this project, (b) the acquisition by the Port of the Benson & Wolken New Public Access Easement, as provided for by Section 2.2, and (c) the execution and recordation of the Easement Agreement referred to in Section 1.3.

7.4 **Tulalip Waterline Easements.** The Tulalip waterline easements, both the permanent waterline easement and the temporary construction easements, as provided for by Section 3 above, shall be entered into, executed, and recorded no later than ten (10) business days of the Effective Date of this General Transfer Agreement.

7.5 **Stormwater Drainage Easement.** The Stormwater Infrastructure and Retention Pond Easement shall be executed and recorded within thirty (30) days after the latest of:

- (a) completion by the Port of the cleanout responsibilities of the subject Stormwater Pond as required by Section 4.2 above;
- (b) recording by the Port of the Declaration Amendments required under Sections 9 and 10 below;
- (c) delivery to the City of the Cymbaluk easement described in Section 10.3 below, in recordable form and fully executed by all parties thereto other than the City;
- (d) (i) delivery to the City of the Lot 8 easement described in Section 4.4.1 in recordable form and fully executed by all parties thereto other than the City or (ii) the complete installation of the valve(s) as described in Section 4.4.2; and
- (e) execution by the City and the Port of the comprehensive public access agreement referred to in Recital C of this Agreement.

7.6 **Sanitary Sewer Easement.** The Sanitary Sewer Easement shall be executed and recorded within thirty (30) days after the latest of:

- (a) recording by the Port of the Declaration Amendments required under Sections 9 and 10 below;
- (b) the Port obtaining utility easements as described in Section 5.3; and

- (c) the completion of the Lot 8 Sanitary Isolation Work as described in Section 4.4.2.

7.7 **Roadways Right of Way Easement.** The Roadways Right of Way Easement, as provided for by Section 6 above, shall be entered into, executed and recorded within thirty (30) days after the latest of:

- (a) execution by BNSF of the Easement Agreement;
- (b) full execution of the Quit Claim Bill of Sale on Bridge;
- (c) full execution and recording of the Benson & Wolken New Public Access Easement; and
- (d) recording by the Port of the Declaration Amendments required under Sections 9 and 10 below.

8. **Riverside Business Park Environmental Development Guidelines.** The City hereby acknowledges certain environmental development guidelines with respect to “dirt” and “groundwater” at the Riverside Business Park attached hereto as **Exhibit “15”** (the “Environmental Development Guidelines”). The City covenants and agrees that it shall comply with the Environmental Development Guidelines in connection with any of its future activities with respect to the Riverside Business Park property, except as follows:

8.1 **Public Access.** The City does not covenant or agree to comply with the Development Guidelines with respect to public access at Riverside Business Park in connection with the Shoreline Management Act and/or the City’s Shoreline Master Program. The connection, if any, between the Environmental Development Guidelines and such public access is part of the ongoing discussion regarding public access referred to in Recital C above.

8.2 **Modified Guidelines.** If for a particular City project the Washington Department of Ecology at the request of the City approves development guidelines or other requirements that modify or replace the Environmental Development Guidelines, then the City will comply with the Environmental Development Guidelines as modified or replaced. The Port will reasonably cooperate with the City’s efforts for such DOE approval.

8.3 **Future Amendment.** The City does not covenant or agree to comply with future amendments to the Environmental Development Guidelines unless the City provides the Port with prior written consent to such amendment(s), which the City will not unreasonably withhold.

9. **Amended Declaration of Covenants, Conditions, and Restrictions for the Riverside Business Park.** On September 4, 2012, there was recorded with the Snohomish County Auditor, under AFN 201209040444, Declaration of Covenants, Conditions, and Restrictions for the Riverside Business Park (“2012 Declaration”). As provided in Section 1.2 of

this recorded 2012 Declaration, upon the Riverside Overpass Bridge being transferred to the City, as provided herein, and upon the access streets and roads within the Riverside Business Park becoming subject to the Roadways Right-of-Way Easement granted to the City, as provided herein, the recorded 2012 Declaration shall be amended to remove the access bridge and the access roads as "Common Areas" from the operation and governing provisions of the recorded 2012 Declaration. The amendment will also state, in a form reasonably acceptable to the City, that (a) the City is not a party to the 2012 Declaration and that the City will not have obligations under the 2012 Declaration and (b) that the all Owners (as such term is defined in the 2012 Declaration) on behalf of themselves and their successors-in-interest irrevocably consent to the stormwater utility surcharge set forth in Section 4.5.2 above. It is understood and acknowledged, however, by the Port and the City, that all landscaping, signage, street lights, and irrigation facilities shall remain the responsibility of the Port and subject to the terms and provisions of the recorded 2012 Declaration. It further understood that the City does not believe that the consent described in (b) above is necessary for the future imposition of the surcharge as the surcharge is within the City's municipal utility authority; instead, the purpose of the consent in (b) is to provide notice of the City's future intentions and receive consent, for the purpose of avoiding later disputes.

10. Cymbaluk Property Declaration of Covenants and Easements.

10.1 Cymbaluk Declaration. On February 22, 2010, there was recorded with the Snohomish County Auditor under AFN 201002220179, Declaration of Covenants and Easements [With Common Area Charges], with respect to the uplands area of the Riverside Business Park ("Cymbaluk Declaration"). This recorded Declaration was consented to by the Marshall & Katherine Cymbaluk Family, LLC ("Cymbaluk"), the owner of record of Parcel B of the City of Everett Boundary Line Adjustment No. 08-002, recorded under Snohomish County AFN 200804035003.

10.2 Cymbaluk Declaration Common Areas & Drainage Line Easements.

The City acknowledges that some of the obligations of Cymbaluk under the Cymbaluk Declaration with respect to Common Areas (as defined in the Cymbaluk Declaration) will be duplicative of obligations that the City is assuming under this Agreement and the easements and documents required hereunder. Accordingly, the City acknowledges and accepts that the Port and Cymbaluk may amend the Cymbaluk Declaration to lessen or clarify Cymbaluk's Common Area obligations and thereby eliminate this duplication.

10.3 Stormwater & Sewer Infrastructure Easement (Cymbaluk). The Port shall cause to be delivered to the City, by Cymbaluk, a utility easement fully executed by Cymbaluk in the form and substance attached hereto as **Exhibit "16"**. Note: within Exhibit 16 at Section 6.C are two bracketed options, which concern the stormwater pump station and associated pipelines that convey drainage to the detention pond on the Property. Exhibit 16 may be executed with either of these two options.

10.4 Amendment to Cymbaluk Declaration. The Port will cause to be recorded a fully executed amendment to this recorded Cymbaluk Declaration, in a form reasonably acceptable to the City, which will amend the Cymbaluk Declaration to state that (a)

the City is not a party to the Cymbaluk Declaration and the City will not have obligations under the Cymbaluk Declaration and (b) the owner of Parcel B irrevocably consents to the stormwater utility surcharge set forth in Section 4.5.2 above. It is understood that the amendment may contain the amendments described in Section 10.2 above. It further understood that the City does not believe that the consent described in (b) above is necessary for the future imposition of the surcharge as the surcharge is within the City's municipal utility authority; instead, the purpose of the consent in (b) is to provide notice of the City's future intentions and receive consent, for the purpose of avoiding later disputes.

11. **Hazardous Substance Indemnification Agreement.** Within ten (10) business days of the Effective Date of this General Transfer Agreement, the Port and the City shall enter into that certain Hazardous Substance Indemnification Agreement, in the form and substance attached hereto as **Exhibit "17."** Notwithstanding any other provision in this Agreement, the City has no obligation to execute any document or accept any transfer until the Port delivers to the City the fully Port-executed Hazardous Substance Indemnification Agreement.

12. **Governing Law & Venue.** This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Washington. Jurisdiction and venue for any action arising out of, or relating to, this Agreement, shall be in Snohomish County, State of Washington.

13. **Dispute Resolution.** The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between representatives of the Parties who have authority to settle the controversy. If a controversy should arise, Terrie Battuello, Chief of Business Development of the Port, and the Public Works Director of the City of Everett, or their respective successors in the positions they now hold (the "Dispute Resolution Executives"), will meet at least once and will attempt to resolve the matter. Either Dispute Resolution Executive may request the other to meet within fourteen (14) days, at a mutually agreed time and place. If the matter has not been resolved within thirty (30) days of their first meeting, the Dispute Resolution Executives shall refer the matter to mediation.

13.1 **Mediation.** If the matter has not been resolved within thirty (30) days of the initial meeting of the Dispute Resolution Executives or if either Party will not meet within thirty (30) days of the end of the twenty (20) day period referred to above, the Parties will attempt, in good faith, to resolve the controversy or claim by mediation. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-

discoverable as a result of its use in the mediation. An initial mediation session shall be held within 30 days of written request for mediation, unless such date is extended by mutual agreement of the parties. In the event the parties are unable to resolve the matter pursuant to the foregoing mediation provisions, then each party is then free to pursue any and all available legal remedies, including, without limitation, commencement of judicial proceedings.

13.2 Injunctive Relief. In the event that a party is entitled to seek injunctive relief under exigent circumstances based upon a dispute between the parties, it may initiate legal proceedings in Snohomish County Superior Court without exhausting all prior dispute resolution steps set forth in the Dispute Resolution Process.

14. Authority & Validity. This Agreement and any document, instrument or agreement required hereunder, will be and are legal, valid and binding agreements and enforceable in accordance with their terms. Each party shall have any and all agreements duly authorized according to required procedure and properly executed.

15. Notices. Any notices or other communications allowed or required by the terms of this Agreement shall be in writing and signed by the party giving the notice or communication, or that party's attorney or authorized agent, and shall be deemed to have been given by the sending party and received by the receiving party (i) when delivered in person to the receiving party; or (ii) on the date it is delivered to the address of the receiving party as evidenced by a certified or registered mail return receipt from the United States Postal Service; or (iii) on the date of delivery to the address of the receiving party as shown in the records of a courier service to whom the notice is given for delivery.

Until notice of changes of addresses is given to the other party in accordance with the provisions of this paragraph, notices shall be delivered, addressed or directed as follows:

PORT OF EVERETT:

The Port of Everett
ATTN: Terrie Battuello
Chief of Business Development
PO Box 538
1205 Craftsman Way, Suite 200
Everett, WA 98206
Tel.: (425) 388-0614
Fax: (425) 252-7366
Email: terrieb@portofeverett.com

WITH A COPY TO:

Bradford N. Cattle
Anderson Hunter Law Firm, P.S.
2707 Colby Ave., Suite 1001
Everett, WA 98201

Tel.: (425) 252-5161
Fax: (425) 258-3345
Email: bcattle@andersonhunterlaw.com

CITY OF EVERETT:

City of Everett
ATTN: Public Works Director
3200 Cedar Street
Everett, WA 98201
Tel.: (425) 257-8800
Fax: (425) 257-8882
Email: everettpw@everettwa.gov

WITH A COPY TO:

Timothy D. Benedict
Assistant City Attorney
City of Everett
2930 Wetmore Avenue, Suite 10-C
Everett, WA 98201-4067
Tel.: (425) 257-8669
Fax: (425) 257-8693
Email: TBenedict@everettwa.gov

16. **Severability.** In the event that any part or all of any term, covenant, condition, agreement, provision or section of this Agreement shall be adjudged invalid or unenforceable by a court of competent and final jurisdiction, it shall be severable from the remainder of this Agreement, and this Agreement shall not terminate or be deemed void or voidable, but shall continue in full force and effect and there shall be substituted for such invalid provision a like, but legal and enforceable, provision which most nearly accomplishes the intention of the parties hereto, and if no such provision is available, the remainder of this Agreement shall be enforced. If such term, covenant, condition, agreement, provision or section of this Agreement is adjudged invalid due to its scope or breadth, such item shall be deemed valid to the extent of the scope or breadth permitted by law.

17. **Headings.** The title of this Agreement, and the subject headings or captions to any sections or provisions hereof, are for reference only and not part of this Agreement. Any references to the singular shall include the plural (and vice versa).

18. **Entire Agreement.** This Agreement supersedes all prior discussions and agreements by and between the parties with respect to the matters set forth herein, and contains the sole and entire agreement of such parties with respect to the matters set forth herein. This Agreement shall not be modified or amended in any respect except by a written instrument executed by each of the parties to this Agreement, or their assignees, as applicable.

19. **Default & Enforcement.** The parties shall have all remedies at law or in equity, including without limitation injunctive relief, to enforce the obligations of the other party hereto under this Agreement. Any waiver by a party of the other party's default, or any waiver by a party of a condition set forth herein, or any failure by a party to exercise any right granted to that party hereunder, shall not constitute a subsequent waiver or failure to exercise such right.

20. **Waivers.** No wavier of any provision of this Agreement or any of the documents under this Agreement is effective unless the waiver or consent is in writing and signed by the parties, and then only in a specific instance and for the specific purpose for which given.

21. **Drafting of Agreement.** The parties to this Agreement acknowledge that each of them has been represented by legal counsel, or has had the opportunity to be represented by legal counsel in connection with the negotiation of the terms and the preparation of this Agreement, that counsel for the Port has performed the initial and preliminary drafting of this Agreement, and that each party and/or its counsel has had a sufficient and reasonable opportunity to review the final draft prior to execution of this Agreement. Accordingly, each party agrees that in any proceeding in which the terms of this Agreement are questioned, construed or interpreted, there shall be no presumption against any party because of the initial and preliminary drafting services provided by counsel for the Port.

22. **Legal Litigation Costs.** In the event that any party commences any action or proceeding against any other party to enforce the provisions hereof or to seek any other legal remedy available to such party under the terms hereof, the prevailing party therein shall be entitled to recover, in addition to any amount of money or other relief awarded, all reasonable costs incurred in connection with such action, including court costs and reasonable attorney fees.

23. **Multiple Counterparts/pdf/Facsimile.** This Agreement may be executed in any number of counterparts, and by facsimile or by pdf email, each of which when so executed shall be deemed an original, but all of which when taken together shall constitute one in the same instrument. All facsimile or pdf signatures shall be backed up by original document signatures.

24. **Further Assurances.** The parties hereto agree to execute any document, agreement, instrument, or other statement, or take such further actions as may be reasonably required by any other party hereto in order to effectuate the terms of this Agreement. An example of such further actions would be the Port procuring additional easement rights for the City, if reasonably determined that such easement rights are necessary for the City operation of the Riverside Business Park Sanitary Sewer and Stormwater systems.

25. **Successors & Assigns.** All terms and provisions of this Agreement shall be binding upon, and inure to the benefit, the successors and assigns of the parties.

[SIGNATURE PAGES FOLLOW]

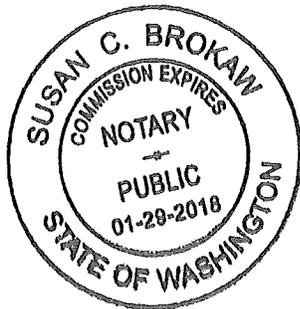
PORT OF EVERETT, a port district organized
under the laws of the State of Washington


By: John M. Mohr
Its: Executive Director

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I have evidence that John M. Mohr is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive Director of the PORT OF EVERETT, a port district organized under the laws of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: June 10, 2014




PRINTED NAME: Susan C. Brokaw
NOTARY PUBLIC
in and for the State of Washington.
My commission expires: 1-29-2018

CITY OF EVERETT, a municipal corporation
organized under the laws of the State of Washington

Ray Stephanson

By: Ray Stephanson
Its: Mayor

attest: Jam Moen
Deputy City Clerk

STATE OF WASHINGTON)

) ss.

COUNTY OF SNOHOMISH)

I certify that I have evidence that Ray Stephanson is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the CITY OF EVERETT, a municipal corporation organized under the laws of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: June 9, 2014

Christina M. Wiersma

PRINTED NAME: Christina M. Wiersma

NOTARY PUBLIC

in and for the State of Washington.

My commission expires: 10-15-2014

APPROVED AS TO FORM

James D. Iles
JAMES D. ILES, City Attorney