

EXHIBIT F



## AMENDMENT TO LICENSE FOR USE OF CITY PROPERTY

### I. Recitals

- A. *The City of Everett ("City") and KLB Construction, Inc. ("KLB") entered into a License for Use of City Property ("License") on or about October 7, 2005. A copy of the License is attached as Attachment 1*
- B. *Various aspects of the subject matter of the License have evolved over the years since the License was executed.*
- C. *For good and valuable consideration, the City and KLB wish to amend the License so that it correlates to existing circumstances on the City Property and the Receiving Sites.*
- D. *All definitions in the License are applicable to this Amendment except as modified herein.*
- E. *The License remains in full effect according to its terms except as specifically amended herein.*

### II. Additional Definitions

- A. "Kimberly Clark Site" shall mean the property described as such in Exhibit A.
- B. "Mill Site" shall mean the property described as such in Exhibit A.
- C "Site Grading Fill" shall mean material meeting the gradation and quality requirements for Common Borrow, specified in Section 9-03.14(3) of the 2008 WSDOT *Standard Specifications*, except that the silt content shall not exceed 50 percent passing the US No. 200 Sieve. Soils exceeding the maximum 3 percent organic content requirement shall be removed from the site.
- D. "Structural Fill" shall mean material meeting the gradation and quality requirements for Gravel Borrow, specified in Section 9-03.14(1) of the *Standard Specifications* or as approved by the City and any future owner of the City Property.
- E. "Cement Stabilized Soil" shall mean soil that is amended with approximately four percent (4%) cement (the cement content to be increased above 4% as needed for the amended soils in order to achieve the required compaction criteria) or as approved by the City and any future owner of the City Property, based on the dry unit weight of the soil when compacted to 95% of its maximum dry density as determined by test method ASTM D 1557 (Modified Proctor).
- F. "100-Year Flood Elevation" shall mean the flood profile as described in the most recent FEMA Floodway Data tables.

### III. License

*Replace Article III (License) of the License with the following:*

1. The City grants KLB a license and permission to use City Property for the purpose described in the License and subject to the terms and conditions of this Amendment. KLB's subcontractors may use the City Property with KLB's permission for trucking and for processing of materials. KLB does not and shall not have any right or interest in the City Property, or any portion thereof.
2. The License expires on the earlier of satisfactory completion of the performance of Paragraph C or August 31, 2010. Paragraphs D2, I, J, M, O and P of the License as amended shall retain their effect after expiration.
3. This License is personal to KLB, and KLB may not assign, pledge, hypothecate, encumber, or transfer it. The City shall have the right at any time without KLB's consent but with written notice to KLB to assign all of its rights and obligations under this Agreement to any purchaser or future owner of the City Property.

### IV. Conditions

1. *Replace Paragraph A of Article IV (Conditions) of the License with the following:*
  - A. KLB may import and export Site Grading Fill to and from City Property until expiration of the License.
2. *Replace Paragraph B of Article IV (Conditions) of the License with the following:*
  - B. KLB shall have exclusive use of City Property until such time as the City conveys the City Property to another person.
3. *Replace Paragraph C of Article IV (Conditions) of the License with the following:*
  - C. (1) Between execution of this Amendment and August 31, 2010, KLB shall place on the Mill Site, in conformance with all applicable permit requirements, a volume of Site Grading Fill (approximately 95,000 cu yds +/-) sufficient to bring the elevation of the Mill Site to the 100-Year Flood Elevation. The Site Grading Fill shall be uniformly spread and compacted across the Mill Site development area limits, with a slight slope downward to the east. The Site Grading Fill shall be within 3 percent (3%) of optimum moisture content at the time of placement. If the moisture content of the Site Grading Fill is more than 3 percent (3%) over optimum at the time of placement, it shall not be placed until it has either been amended with cement or it has been aerated and allowed to dry sufficiently. All Site Grading Fill shall be placed and spread in maximum 8-inch horizontal loose lifts and compacted to at least 92 percent (92%) of the maximum dry density as determined by, test method ASTM D 1557 (Modified Proctor). Prior to spreading Site Grading Fill, all areas to be filled shall be cleared and grubbed according to Standard Specification Sections 2-01.3(1) and (2), and any unstable or unsuitable material shall be removed according to Standard Specification Section 2-03. Prior to

placing Site Grading Fill on the Mill Site, all subgrade areas shall be proof rolled with a loaded dump truck. The City and KLB shall jointly examine the Mill Site and determine areas where unsuitable or otherwise soft subgrade soils exist, and these areas will be identified for removal by KLB at KLB's sole cost and expense.

(2) Prior to August 31, 2010, KLB shall place on the Mill Site a minimum 2-foot thick layer of Structural Fill (approximately 50,000 cu yds +/-) or 2-foot thick layer of Cement Stabilized Soil to an elevation not less than two feet above the 100-Year Flood Elevation. Structural Fill shall be placed in maximum 12-inch horizontal loose lifts and compacted to at least 95% of its maximum dry density as determined by test method ASTM D 1557 (Modified Proctor). The Cement-Stabilized Soil shall be evenly spread in 12-inch maximum lifts and thoroughly mixed using appropriate soil-cement mixing equipment, as approved by the City, such that the amended soil may be compacted to at least 95% of the maximum dry density (Modified Proctor).

(3) Prior to August 31, 2010, KLB shall place all surplus Site Grading Fill and Structural Fill remaining on the City Property after the placements described above, into a stockpile on the Kimberly Clark Site, in conformance with all applicable permit requirements, at a location directed by the City.

(4) Placement and compaction of Site Grading Fill, Structural Fill, and Cement Modified Soil on the Mill Site shall occur between June 1 and September 30 unless approved by the City.

(5) Prior to August 31, 2010, KLB shall remove from the City Property all material remaining on the City Property that is not Site Grading Fill or Structural Fill, except such material that the City claims prior to March 31, 2010.

4. *Replace the second Paragraph D ("On or before November 30, 2007, . . .") of Article IV (Conditions) of the License with the following:*

D2. Upon request, KLB shall agree to subordinate any and all rights granted herein to any lender or other third party who may be granted a security interest in the City Property and/or Mill Site and to attorn to any and all future owners of such property. Without limiting the foregoing, KLB agrees to execute and deliver any and all certificates and other agreements and instruments that may be requested by any and all lenders having or to be granted a security interest in the City Property and/or Mill Site. Under no circumstance shall KLB assert or file any lien or claim of lien on or against the Mill Site, the Kimberly Clark Site, the City Property or any portion thereof and waives any and all lien rights that KLB may have against the City Property, the Mill Site, the Kimberly Clark Site, the City and any future owner of the City Property and/or Mill Site.

5. *Replace Paragraph E of Article IV (Conditions) of the License with the following:*

E. KLB shall maintain entrance roads onto the Mill Site and sweep adjacent streets as needed or reasonably directed by the City.

6. *There are no changes to Paragraph F of Article IV (Conditions) of the License. This*

*Paragraph continues to state:*

F. KLB shall not allow rain water to pond on City Property or the Mill Site that is accessible to KLB.

7. *Replace Paragraph G of Article IV (Conditions) of the License with the following:*

G. Except as specified in this Amendment, KLB will not be obliged to place Fill Material from City Property onto Receiving Sites.

8. *Replace Paragraph H of Article IV (Conditions) of the License with the following:*

H. The City will obtain all necessary permits and easements, if any. The City will use its best efforts to acquire the necessary permits within 90 days after execution of the Amendment.

9. *Replace Paragraph I of Article IV (Conditions) of the License with the following:*

I. KLB shall defend, indemnify and hold the City and any future owner of the City Property harmless from any and all claims, legal actions, and damages of any land sought by third parties caused by, related to, or arise out of, KLB's use of City Property or KLB's performance of its obligations under the License as amended. During the term of this License, including any hold over period, KLB shall maintain a commercial general liability policy of at least \$1,000,000 per occurrence/\$2,000,000 aggregate coverage with an insurer qualified to do business in Washington with a Best rating of A VII or better. The City and any future owner of the City Property shall either be endorsed as additional insureds on such policy or shall be considered additional insureds under a blanket additional insured clause of the policy.

10. *Replace Paragraph J of Article IV (Conditions) of the License with the following:*

J. KLB shall be jointly and severally responsible to the City and any subsequent owner of the City Property for any damage to property owned by the City or any subsequent owner of the City Property caused by, or arising out of, KLB's use of City Property.

11. *There are no changes to Paragraph K of Article IV (Conditions) of the License. This Paragraph continues to state:*

K. KLB shall not use City Property for any purpose other than the purpose described in section II(A).

12. *Replace Paragraph L of Article IV (Conditions) of the License with the following:*

L. KLB shall not import any material onto City Property except Site Grading Fill and/or Structural Fill or Cement Stabilized Soil, and shall not place, or allow to be placed, any hazardous, contaminated, or dangerous waste or material on the City Property, the Mill Site, or the Kimberly Clark Site.

13. *Replace Paragraph M of Article IV (Conditions) of the License with the following:*

M. On behalf of itself and anyone claiming by or through KLB, KLB releases the City and any future owner of the City Property from all claims for personal injury or property damage arising out of its use of, or caused by, the City Property or KLB's performance of its obligations under the License as amended. KLB accepts all risks related to its use of City Property pursuant to this License, as amended. KLB acknowledges and agrees that City and any future owner of the City Property owe KLB no duty other than to allow KLB to use City Property and place material on the Mill Site and the Kimberly Clark Site as provided by this License as amended.

14. *There are no changes to Paragraph N of Article IV (Conditions) of the License. This Paragraph continues to state:*

N. City may terminate this License with reasonable cause. Cause for termination includes, but is not limited to, falsity of any representation or warranty or if KLB does not comply with the terms of this License. If the City terminates this License, the City will send a notice of termination to KLB by US Mail. Termination shall be effective five calendar days after City sends such notice. The license does not terminate merely by operation of sale to any future owner of the City Property.

15. *Replace Paragraph O of Article IV (Conditions) of the License with the following:*

O. KLB shall comply with all federal, state and local laws and regulations that apply to the City Property, the Mill Site and the Kimberly Clark Site.

16. *Replace Paragraph P of Article IV (Conditions) of the License with the following:*

P. This Amendment shall be construed under the laws of the State of Washington. Any lawsuit arising out of this Amendment, or KLB's use of City Property or KLB's performance of its obligations under the License as amended, shall be brought in Snohomish County Superior Court.

DATED this \_\_\_ day of April, 2008.

CITY OF EVERETT

By Ray Stephenson

Dated: 4-24-08

KLB CONSTRUCTION, INC

By [Signature]

Bill Grady  
Its mgr  
Dated: 4/18/08

ATTEST:

By Sharon Marks  
City Clerk

Dated: 4/24/08

APPROVED AS TO FORM:

[Signature]  
City Attorney

Dated: 4/22/08