

INTERLOCAL AGREEMENT
REGARDING THE EVERETT/TULALIP WATER PIPELINE CONSTRUCTION

This Interlocal Agreement (“Agreement”) is entered into this 6TH day of January, 2016 (the “Effective Date”) between the PORT OF EVERETT (the “Port”) and the TULALIP TRIBES OF WASHINGTON (the “Tribe”) regards a construction project (Tulalip/Everett water pipeline) being accomplished by the Tribe on Riverside Drive, City of Everett, WA and adjacent to the Port’s Riverside Business Park. The Port and Tribe are hereinafter collectively referred to as “Parties” or singularly referred to as “Party”.

STATEMENT OF BACKGROUND FACTS

A. The Port owns certain real property located in Everett, Snohomish County, Washington commonly known as the Riverside Business Park.

B. The Tribe, in conjunction with the City of Everett, is installing a waterline within an easement granted by the Port under and across the Riverside Business Park. A copy of the easement within which the waterline project (the “Project”) is being installed is attached hereto as **Exhibit A** (the “Easement”).

C. As part of the Project, the Tribe will likely impact the existing sidewalk (4 feet by 1,486 LF) within the Easement as necessitated by the waterline installation and restoration components of the Project.

D. The Parties are in agreement that the Tribes in conjunction with the Project and for the convenience of the Port, pursuant to the terms and conditions of this Agreement, will remove 1,486 feet of sidewalk, 4 feet wide within the Easement and leave the underlying soils prepared with an appropriate aggregate top course base compacted sufficiently for a concrete sidewalk to be constructed in the future by others.

E. The Parties agree that the Tribe will compensate the Port for all damages and impacts to the existing sidewalk by a one-time payment for sidewalk removed, caused by installation of the waterline.

F. The Parties agree that the Port will be responsible for all new construction activities related to the Riverside trail and sidewalk improvements.

TERMS AND CONDITIONS

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Location: The specific location of the impacted sidewalk within the Easement is attached hereto as Exhibits B & C and incorporated herein by this reference.

2. Tulalip Tribes' Responsibilities. The Tulalip Tribes shall perform the following:

2.1 construct its pipe in the Riverside roadway and remove the existing curb and sidewalk between stations 109+50 to 123+70.

2.2 construct a new curb along the entire length of the disturbed sidewalk stations 109 + 40 to 123 + 60.

2.3 prepare the impacted area (1,486 feet long by 5 feet wide) for a new sidewalk by installing 4 inches of crushed surfacing top course compacted to 90% proctor while leaving all utilities vaults/valves 4 inches above grade.

2.4 pay to the Port an amount of \$80.00 per square yard impacted sidewalk as measured and agreed to by the Parties.

2.5 cause the Port of Everett, its officials, agents, officers and employees, to be named by Tulalip's construction contractor as additional named insureds on a commercial general liability insurance policy reasonably acceptable to the Port's attorney.

4. Limited Waiver of Sovereign Immunity and Venue Stipulation. Both the Tulalip Tribes and the Port recognize and respect the sovereignty and legal status of the other Party. Each Party further recognizes that the other Party has and reserves all rights, powers and remedies now or hereafter existing at law, in equity or by statute, Treaty or otherwise. Except for the limited waiver set forth herein, this Agreement is not intended to nor shall it be construed to diminish, increase or otherwise alter the rights and entitlements of any Party. Nothing in this Agreement is or shall be deemed to be a waiver of any Party's sovereign immunity from suit except that each Party hereby expressly provides a limited waiver of sovereign immunity from suit and consents to be subject to the jurisdiction of a Court of competent jurisdiction and/or federal courts resulting from disputes arising between themselves, but not as to any other person or entity, arising from the terms and conditions of this Agreement. Neither Party shall revoke, by any means, that Party's limited waiver of sovereign immunity, during the term of this Agreement. The limited waivers of sovereign immunity provided by each Party shall be effective as of the date of this Agreement and shall continue for the applicable statute of limitations following termination or cancellation of this

Agreement except that such limited waivers of sovereign shall remain effective for any legal proceeding pending at the end of the applicable statute of limitations until the conclusion of any such legal proceeding and enforcement thereof.

5. Miscellaneous.

5.1 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same Agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

5.2 No Third Party Beneficiaries. Nothing in this Agreement or any ancillary documents, whether expressed or implied, is intended or shall be construed to confer upon or give any person, firm, corporation or legal entity, other than the Parties hereto, any rights, remedies or other benefits under or by reason of this Agreement.

5.3 Entire Agreement. This Agreement (including any agreements incorporated herein) or the exhibits hereto contain the agreement between the Parties with respect to the subject matter hereof and there are no agreements, understandings, representations and warranties regarding the subject matter hereof between the Parties other than those set forth or referred to herein.

5.4 Notices. All written notices required to be given pursuant to the terms of this Agreement shall be (a) delivered personally; (b) delivered in the United States Mail sent certified mail return receipt requested, postage prepaid; (c) facsimile transmission; or (d) overnight courier service to the Parties at the following addresses or facsimile numbers:

Port of Everett:

Terrie Battuello
Chief of Bus. Dev't., Properties & Marina
P.O. Box 538
Everett, WA 98206

Tulalip Tribes:

T. McKinsey
Engineering Services
8802 27th Ave NE
Tulalip, WA 98271

With copy to:

Bradford N. Cattle

Port of Everett Attorney
2707 Colby Ave. Ste. 1001
Everett, WA 98201
Telephone: (425) 252-5161
Facsimile: (425) 258-3345

With copy to:

Anthony Jones

Office of the Reservation Attorney
6406 Marine Drive
Tulalip, WA 98271
Telephone: (360) 716-____
Facsimile: (360) 716-0634

A Party may designate another contact person, address or number in a written notice to the other Party given in accordance with this Section 5.4.

5.5 Headings; Definitions. The section headings contained in this Agreement are inserted for convenience and reference only and will not affect the meaning or interpretation of this Agreement. All references to “sections” or “exhibits” contained herein means sections to this Agreement or exhibits attached to this Agreement, which are incorporated by reference unless otherwise stated. All capitalized terms defined herein are equally applicable to both the singular or plural forms of such terms.

5.6 Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the Party against whom enforcement of any such modification or amendment is sought. Any Party hereto may, only by such instrument in writing, waive compliance with the other Party hereto with any term or provision of this Agreement. The waiver by any party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.


5.7 Severability of Provisions. If any provision in this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the legal substance of the transaction contemplated hereby is not affected in any manner adverse to any Party. Upon such determination, the Parties hereto shall negotiate in good faith to modify the Agreement so as to affect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transaction contemplated hereby is fulfilled to the extent possible.

IN WITNESS WHEREOF, the Parties agree to the terms and conditions of this Agreement.

PORT OF EVERETT

TULALIP TRIBES


By: Les Reardanz, CEO/Executive Director


By: Mel Sheldon, Chairman

Date: 1/6/16

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

 12/28/15
Bradford N. Cattle, Port Attorney


Anthony Jones, Office of Reservation Attorney

Date: _____

Date: 12/17/2015

POE
COPY
(original)

Exhibit A

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AFTER RECORDING, PLEASE RETURN TO:

Public Utility District No. 1 of Snohomish County
Attn: Kelly McGill,
Manager, Real Estate Services
P.O. Box 1107
Everett, Washington 98206-1107

E- 53141
WO# 397142-06 ROW#17185 W#21051

DISTRIBUTION EASEMENT

Grantor ("Owner"): Port of Everett
Grantee: Public Utility District No. 1 of Snohomish County
Short Legal Description: A Portion of Tract 'A' BLA no. 12-003, SE ¼, Sec. 08, Twp. 29, R. 05
Tax Parcel No: 29050800402700

THIS DISTRIBUTION EASEMENT ("Easement") is made this 28th day of December, 2015 by and between Port of Everett ("Owner"), and Public Utility District No. 1 of Snohomish County, a Washington State municipal corporation ("Grantee"). The Owner and Grantee are sometimes referred to individually herein as "Party" or "Parties".

WHEREAS, Owner is the owner of certain lands and premises situated in the County of Snohomish, State of Washington, legally described as follows (hereinafter "Property"):

THAT PORTION OF ACCESS EASEMENT TRACT 'A' AS SHOWN ON BOUNDARY LINE ADJUSTMENT NUMBER 12-003, RECORDED UNDER RECORDING NUMBER 201207265001. RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

WHEREAS, the Grantee is desirous of acquiring certain rights and privileges across, over, under, upon and through the Property.

NOW, THEREFORE, the Parties agree as follows:

1. Distribution Easement. Owner, for good and valuable consideration, receipt of which is hereby acknowledged, hereby conveys and grants to Grantee, its agents, contractors, successors and assigns, a non-exclusive easement for the perpetual right, privilege, and authority to patrol, construct, erect, reconstruct, alter, improve, extend, repair, operate, and maintain overhead and/or underground

Exhibit A

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electric distribution lines and facilities, Grantee-owned communication wires and cables, and other necessary or convenient appurtenances, across, over, and upon the following portion of Owner's Property (hereinafter "Easement Area"):

That portion of the above-described property being a rectangular area of land twenty feet (20') in width by twenty-three (23) feet in length as shown on the attached drawing marked Exhibit "A", attached hereto and legally described on Exhibit A-1 attached hereto, both Exhibits by these references are made parts hereof.

2. Access To and Across Property. Grantee has the right of ingress to and egress from the Easement Area across the adjacent Property of Owner where same is reasonably necessary for the purpose of exercising its easement rights described in Section 1; provided, however, Grantee shall exercise its reasonable best efforts to not interfere with any activities of Owner, Owner's successor's, assigns and/or invitees. All activities performed by Grantee pursuant to this Easement shall be consistent with applicable Development Guidelines, Riverside Business Park, Everett, Washington, prepared by Landau Associates for the Port of Everett dated February 13, 2014.

3. Owner's Reservation of Rights and Use of Easement Area. Owner reserves the right to use the Easement Area in a manner that does not interfere with the Grantee's use of the Easement Area, and/or present a hazard to Grantee's electric distribution lines and facilities, communication wires and cables, and other appurtenances. The Owner shall not construct or permit to be constructed any structures of any kind in the Easement Area without prior approval of the Grantee.

4. Clearing of Power Line Right of Way. Grantee has the right at all times to clear said Easement Area and keep the same clear of all brush, debris and trees.

5. Trimming or Removal of Hazardous/Danger Trees. Grantee has the right at all times to cut, slash, or trim and remove brush, timber or trees from the Property which in the opinion of Grantee constitute a hazard to said lines and facilities, communication wires and cables, and other appurtenances or the Grantee's access thereto. Trees, brush or other growth shall be deemed hazardous to the lines or facilities or access of the Grantee when they are of such a height that they could, upon falling, strike the nearest edge of the Easement Area at a height of more than fifteen feet (15'). Except in emergencies, Grantee shall, prior to the exercise of such right, identify such trees and make a reasonable effort to give Owner prior notice that such trees will be trimmed or removed.

6. Title to Removed Trees, Vegetation and Structures. The title to all brush, debris, trees and structures removed from the Easement Area and the Property pursuant to Sections 4 and 5 shall be vested in the Grantee, and the consideration paid for this Easement and rights herein described is accepted by Owner as full compensation for said removed brush, debris, trees and structures. Owner shall be entitled to request fallen timber be set aside for Owner's personal use. Grantee shall make reasonable effort to set aside said fallen timber provided doing the same is safe in Grantee's sole opinion. Title to any fallen timber set aside in this manner shall revert to the Owner.

7. Restoration Provision. To the extent that Owner's Property is disturbed and/or damaged by Grantee's exercise of its rights hereunder, Grantee shall restore the condition of the Property as nearly as reasonably possible to its existing condition prior to said exercise of its rights. Without limiting the foregoing, in the event that Grantee removes or disrupts any landscaping on Owner's property, Grantee shall replace the landscaping, in a timely manner, with equal or better landscaping acceptable to Owner.

8. Indemnity. To the fullest extent permitted by law, Grantee hereby releases, indemnifies, defends and holds Owner harmless for, from and against any and all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses, (including,

Exhibit A

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without limitation, court costs and reasonable attorney fees) of any nature, kind or description of any person (including, without limitation, the employees of the Parties hereto) or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) (i) the use, occupancy, conduct of activities or presence of Grantee, its contractors, subcontractors, employees or agents in, on or about the Property; or (ii) the performance or failure to perform by Grantee, its contractors, subcontractors, employees or agents of any obligation under this Easement. "Owner", as used in this Indemnity provision included Owner's employees, officials, agents and invitees.

9. Title to Property. The Owner represents and warrants having the lawful right and power to sell and convey this Easement to Grantee.

10. Binding Effect. This Easement and the rights and obligations under this Easement are intended to and shall run with the Property and shall benefit and bind the Parties and their respective heirs, successors and assigns.

11. Governing Law and Venue. This Easement shall be governed by and construed in accordance with the laws of the State of Washington. The venue for any action to enforce or interpret this Easement shall lie in the Superior Court of Washington for Snohomish County, Washington.

12. Authority. Each party signing this Easement, if on behalf of an entity, represents that they have full authority to sign this Easement on behalf of such entity.

13. Grantee Acceptance. By recording this Easement, Grantee hereby accepts all provisions set forth under this agreement.

IN WITNESS WHEREOF, this instrument has been executed the day and year first above written

[Signatures follow on next page]

Exhibit A

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OWNER(S):

By: Les Reardanz
PORT OF EVERETT

(REPRESENTATIVE ACKNOWLEDGMENT)

State of Washington
County of Snohomish

I certify that I know or have satisfactory evidence that Les Reardanz signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the CEO/Executive Director of Port of Everett to be the free and voluntary act for the uses and purposes mentioned in the instrument.

Given under my hand and official seal this 18th day of December, 2015.



Signature of Susan C. Brokaw
Notary Public
Print Name: Susan C. Brokaw
Residing at: Everett WA

My appointment expires 1-29-2018

Grantee:

By: [Signature]
SNOHOMISH COUNTY P.U.D.

(REPRESENTATIVE ACKNOWLEDGMENT)

State of Washington
County of Snohomish

I certify that I know or have satisfactory evidence that Kelly McFill signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Manager, Real Estate of the Snohomish County P.U.D. to be the free and voluntary act for the uses and purposes mentioned in the instrument. SVC

Given under my hand and official seal this 28th day of December, 2015.



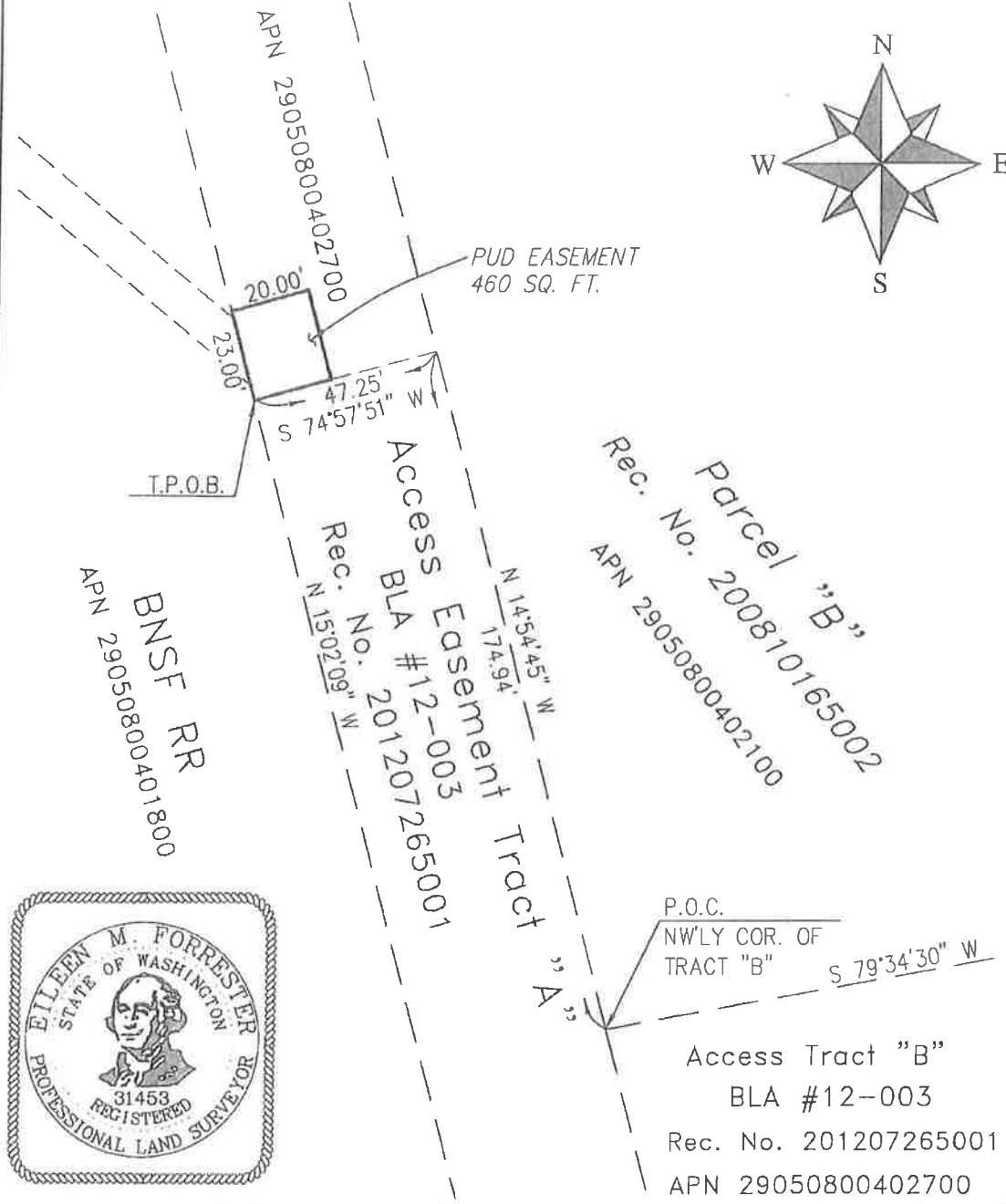
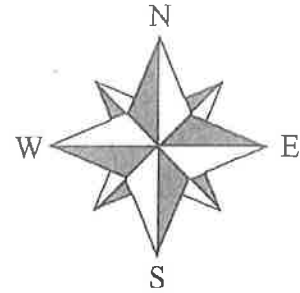
Signature of Jennifer L. Southard
Notary Public
Print Name: Jennifer L. Southard
Residing at: Snohomish WA 98290

My appointment expires 6/4/2019

Exhibit A

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PORTION OF SW 1/4, SE 1/4, SEC. 8, T 29 N, R 05 E, W.M.
CITY OF EVERETT, COUNTY OF SNOHOMISH, STATE OF WASHINGTON



	10-16-2015	Exhibit "A" PUD EASEMENT Within PORT OF EVERETT PROPERTY
	1' = 40'	
	J15-132.00	

Exhibit A

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LEGAL DESCRIPTION

PUD EASEMENT WITHIN PORT OF EVERETT PROPERTY

THAT PORTION OF ACCESS EASEMENT TRACT "A" AS SHOWN ON BOUNDARY LINE ADJUSTMENT NO. 12-003, RECORDED UNDER RECORDING NUMBER 201207265001, RECORDS OF SNOHOMISH COUNTY, WASHINGTON; INCLUDED WITHIN A STRIP OF LAND 20.00 FEET WIDE THE WESTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF TRACT "B" OF SAID BOUNDARY LINE ADJUSTMENT NO. 12-003, SAID CORNER BEING ON THE EASTERLY LINE OF SAID TRACT "A";
THENCE ALONG SAID EASTERLY LINE, NORTH 14°54'45" WEST 174.94 FEET;
THENCE SOUTH 74°57'51" WEST 47.25 FEET TO THE WESTERLY LINE OF SAID TRACT "A" AND THE **TRUE POINT OF BEGINNING** OF SAID STRIP;
THENCE ALONG SAID WESTERLY LINE, NORTH 15°02'09" WEST 23.00 FEET TO THE TERMINUS OF SAID STRIP.

EXHIBIT "A-1"