

After recording return to:
Office of the City Clerk
City of Anacortes
City Hall
904 6th Street
Anacortes, WA 98221-0547

RIGHT OF WAY USE AGREEMENT
2ND STREET – FROM “O” AVENUE TO SHORELINE

Reference Number(S) ff Documents Amended, Assigned And/Or Released: N/A

Grantor: **The City of Anacortes**

Grantee: **The Port of Anacortes**

Abbreviated Legal Description: THAT PORTION OF PLATTED 2ND STREET LYING WESTERLY OF THE WEST LINE OF “O” AVENUE AND BETWEEN BLOCKS 66 AND 67 AS DEDICATED ON THE PLAT OF “MAP OF CITY OF ANACORTES” ACCORDING TO THE MAP THEREOF, RECORDED IN VOLUME 2 OF PLATS, PAGES 4-7, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATE IN THE CITY OF ANACORTES, SKAGIT COUNTY, WASHINGTON.

Assessor Property Tax Parcel: XXX

1. AGREEMENT. This Right of Way Use Agreement (“Agreement”) is between the City of Anacortes (“City”) and the Port of Anacortes (“Port”) for the conveyance of a property interest from the City to the Port. The City and the Port are each a “Party” and collectively “Parties” to this Agreement. The Parties agree as follows.

2. STRUCTURE AND AUTHORITY. This Agreement is authorized under Chapter 39.33 RCW, the Intergovernmental Disposition of Property Act.

3. RECITALS/BACKGROUND

3.1 The Port developed a Marine Terminal Modernization Study 2020 (“Terminal Modernization Study”). The Study identified that an increase in activity at Curtis Wharf will likely

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require that a small portion of the Second Street right-of-way from the westerly edge of “O” Ave. to its terminus near the water’s edge would require vacation or closure. See Exhibit B for depiction of area (the “2nd St. ROW”).

3.2 The subject portion of 2nd St. ROW provides legal access, in part, to adjacent properties owned by the Port. The property north of the 2nd St. ROW is the Port's Curtis Wharf Terminal. Port marine terminal operations at Curtis Wharf presently cross the 2nd St. ROW.

3.3 The City’s Shoreline Management Plan (“SMP”) encourages the development of alternative public access plans where public safety is compromised by water dependent transportation shipping and manufacturing uses in proximity to deep shipper berths (see SMP Policies 5.11.1, 5.11.6, 4.5.3).

3.6 Port is engaged in an environmental clean-up of the Quiet Cove environmental site (Washington State Department of Ecology (“Ecology”) Facility Site ID: # 20859; Cleanup Site ID: 12482) to an unrestricted land use standard, post clean up. The Port and Ecology have entered an Agreed Order providing for site clean-up, including a portion of the 2nd St. ROW that is included within the Quiet Cove Site boundary. The Port will pay for all costs of the environmental cleanup selected by Ecology for the 2nd St. ROW that is included within the Quiet Cove Site boundary, without contribution from the City. The Agreement will enable the Port to examine and undertake more efficiently the potential environmental cleanup of the 2nd St. ROW.

3.7 The 2nd St. ROW is used extensively by Port and the Port’s tenant trucks and vehicles. Closure of the 2nd St. ROW and redirecting the limited public vehicular and pedestrian use of the 2nd St. ROW to the primary access to the public shoreline on “N” Avenue, via 3rd St., will enhance public safety.

3.8 The Agreement allows for product storage south of the 2nd St. ROW on Port property and construction of conveyance equipment on the 2nd St. ROW to the Curtis Wharf Terminal to reduce risk to the public or the marine terminal operations as a result of public access within a marine terminal area.

3.9 Closure of this portion of the 2nd St. ROW will not affect the primary public access to “N” Avenue Park and waterfront.

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4. TERM. This Agreement takes effect and is in force from and after the Effective Date, for a period of thirty (30) years (the “Initial Term”). The Initial Term may be extended with two (2), ten (10) - year renewal terms on mutual agreement of the Parties.

5. EFFECTIVE DATE. The Agreement Effective Date is the date of the last signature of the Parties, below.

6. 2nd St. ROW CLOSED - CITY GRANT TO PORT.

6.1 Under this Agreement the City closes the 2nd St. ROW, subject to the Port’s construction and management of signage and other traffic management regarding access to and use of the 2nd St. ROW.

6.2 Except as set forth in Agreement Section 7, the City hereby grants to the Port, and the Port shall have exclusive use of, the 2nd St. ROW for the Term of the Agreement for the uses described in Agreement Section 8.

7. CITY RESERVED RIGHTS. The City reserves the right, privilege, and authority to use the subsurface portion of the 2nd St. ROW for the siting and construction of utility improvements, including a segment of an outfall connection from the City’s wastewater treatment plant to Guemes Channel. Notwithstanding City’s reservation described herein, the Port may develop and/or construct improvements on the portion of the 2nd St. ROW subject to City’s reservation described herein. In the event that the City constructs or causes to be constructed utility improvements beneath the ROW during the term of this Agreement, the Port shall remove from the ROW any improvements that it has installed, when such removal is necessary to accommodate the City’s utility construction.

8. PORT USE OF 2nd St. ROW.

8.1 Under this Agreement, the Port is granted the right of use over, under, upon and across the 2nd St. ROW for the support of industrial and/or commercial uses associated with Port’s marine terminal facilities, including, without limitation, Pier 1, Pier 2, Curtis Wharf, and the Port’s properties known as “Quiet Cove.” These uses include, without limitation, (i) vehicle access; (ii) product storage operations; (iii) restricting public traffic and access to the 2nd St. ROW; and, (iv) constructing any improvements the Port deems necessary to support these uses.

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8.2 The Port and its contractors use of the 2nd St. ROW shall comply with all applicable federal, state, and local laws, ordinances, orders, rules, and regulations. The Port is responsible for all necessary permits, licenses, certificates, or approvals required by applicable laws, ordinances, and regulations necessary to use of the 2nd St. ROW.

8.3 Upon the termination of this Agreement, the Port shall restore 2nd St. ROW within ninety (90) days to its pre-closure state, including but not limited to removing any closure improvements such as gates, barriers, and signage. These obligations shall survive termination of the Agreement.

9. INDEMNIFICATION.

9.1 City's Indemnification of Port. To the extent permitted by law, City shall indemnify, save, defend, and hold harmless Port, its officers, agents, and employees from and against any and all claims, demands, judgments, losses, or liability for personal injury (including without limitation death) or property damage (collectively, "Claims") arising out of any willful misconduct or negligent act, error, or omission of City, its officers, agents, or employees in connection with the 2nd St. ROW accruing (i) prior to City's closure of the 2nd St. ROW; or (ii) after termination of this Agreement, except as Agreement Section 8.3 may apply. City's obligations under this section shall apply only to the extent of the negligence or willful misconduct of City and shall not extend to Claims caused by, resulting from, or arising from the sole misconduct or sole negligence of Port, its officers, agents, or employees.

9.2 Port's Indemnification of City. To the extent permitted by law, Port shall indemnify, save, defend, and hold harmless City, its officers, agents, and employees from and against any and all Claims arising out of any willful misconduct or negligent act, error, or omission of Port, its officers, agents, or employees in connection with the 2nd St. ROW accruing (i) after City's closure of the Second Street ROW during the effective period of the Agreement; or (ii) as a result of the improvements on the 2nd St. ROW installed at Port's direction. Port's obligations under this section shall apply only to the extent of the negligence or willful misconduct of Port and shall not extend to Claims caused by, resulting from, or arising from the sole misconduct or sole negligence of City, its officers, agents, or employees.

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10. GENERAL.

10.1 Binding Effect. This Agreement, and all rights associated therewith, shall be considered, and construed as covenants running with the land, and shall be binding upon and inure and extend to the benefit of the successors and assigns of the Parties.

10.2 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

10.3 Jurisdiction and Venue. Jurisdiction for any action to enforce the terms of this Agreement shall be in the Superior Court for the State of Washington. Venue for any such action shall be in Skagit County.

10.4 Captions. The captions and paragraph headings contained in this Agreement are for the convenience of the Parties and for reference only, and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provision hereof.

10.5 Waiver. No failure by either Party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term or condition.

10.6 Neutral Authorship. Each of the provisions of this Agreement has been reviewed and negotiated and represents the combined work product of both Parties. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the Party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

10.7 Amendments. Except as otherwise set forth herein, this Agreement may not be modified, amended, or terminated except by the written agreement of the Parties or their successors and assigns.

10.8 Notices. All notices, demands, requests, consents and approvals which may, or are required to be given by any Party to any other Party hereunder, shall be in writing and shall be

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deemed to have been duly given if delivered personally, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail, postage prepaid to:

City: City of Anacortes
Attn: Mayor
904 6th Street
P.O. Box 547
Anacortes, WA 98221

Port: Port of Anacortes
Attn: Executive Director
100 Commercial Avenue
Anacortes, WA 98221

10.9 Counterparts – Authority. This Agreement may be executed in counterparts and each executed counterpart shall have the same force and effect as the original instrument and as if all Parties to the counterparts had signed the same instrument. Electronic facsimile signatures and/or electronically scanned signatures shall be sufficient to demonstrate a Party’s assent to this Agreement. Each individual signing this Agreement on behalf of either the City or the Port represents that (i) they have the authority to bind the Party on whose behalf they are signing; and, (ii) that all steps necessary for their respective entity to execute this Agreement have been taken, including the conduct of a public hearing under RCW 39.33.020.

10.10 Entire Agreement. This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof and supersedes and replaces all written and oral agreements previously made or existing with respect to the subject matter hereof.

10.11 Recording. This Agreement may be record for record by a Party with Skagit County, Washington at the sole cost and expense of the Port.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the last date set forth below.

CITY:

PORT:

CITY OF ANACORTES

PORT OF ANACORTES

Laurie Gere

Daniel Worra

Mayor

Executive Director

Date: _____

Date: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF SKAGIT)

On this _____ day of _____, 2021, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Laurie Gere** to me known to be the **Mayor** of the **City of Anacortes**, the municipal corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said district, for the uses and purposes therein mentioned, and on oath stated that he/she is duly authorized to execute the same.

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GIVEN under my hand and official seal this _____ day of _____, 2021.

Print Name: _____

NOTARY PUBLIC in and for the

State of Washington, residing at _____

My commission expires: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF SKAGIT)

On this _____ day of _____, 2021, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Daniel Worra**, to me known to be the **Executive Director** of the **Port of Anacortes**, the municipal corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is duly authorized to execute the same.

GIVEN under my hand and official seal this _____ day of _____, 2021.

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Print Name: _____
NOTARY PUBLIC in and for the
State of Washington, residing at _____
My commission expires: _____

EXHIBIT "A"
LEGAL DESCRIPTION

THAT PORTION OF PLATTED 2ND STREET LYING WESTERLY OF THE WEST LINE OF
"O" AVENUE AND BETWEEN BLOCKS 66 AND 67 AS DEDICATED ON THE PLAT OF
"MAP OF CITY OF ANACORTES" ACCORDING TO THE MAP THEREOF, RECORDED
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EXHIBIT "B"

EASEMENT AREA

DEPICTION