



201101030205

Skagit County Auditor

1/3/2011 Page 1 of 7 12:08PM

SECOND SUPPLEMENT TO CONVEYANCE/EASEMENT AGREEMENT

Grantor: Port of Skagit County

Grantee: CITY OF BURLINGTON, a Washington municipal corporation.

Additional Grantor(s) on page(s)

Additional Grantee(s) on page(s)

Abbreviated Legal:

Additional Legal on page(s)

Assessor's Tax Parcel No's:

200209300008

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

JAN - 3 2011

Amount Paid \$
By Skagit Co. Treasurer Deputy

CM

I. RECITALS

WHEREAS, Grantor, the Port of Skagit County, a Washington municipal corporation, and Grantee, the City of Burlington, a Washington municipal corporation, entered into a Conveyance/Easement Agreement dated September 24, 2002, and recorded under Skagit County Auditor's File No. 200209300008 (the "Agreement"); and

WHEREAS, in the Agreement the Grantor conveyed to the Grantee certain described sanitary "Sewage Facilities" described therein, as well as a perpetual, non-exclusive easement right, privilege and authority enabling Grantee to do all things necessary or proper in the construction, repair and maintenance of underground sanitary sewer lines or related under ground facilities described in the Agreement; and

WHEREAS, in the Agreement Grantor and Grantee agreed that Grantor could grant, by recording an instrument executed with acknowledgement by both parties, to Grantee additional Sewer Facilities and could further subject property to an easement, each to be subject to the terms of the Agreement; and

WHEREAS, in accordance with and subject to the Agreement, Grantor conveyed additional Sewer Facilities to Grantee and further subjected property to the easement by way of the First Supplement to Conveyance/Easement Agreement dated February 23, 2005, and recorded under Skagit County Auditor's File No. 200502230063; and

WHEREAS, the Grantor has caused to be constructed "Additional Sewer Facilities" as described in Exhibit 1 hereto, which Grantor wishes to convey to Grantee by virtue of this Second Supplement to the Agreement; and

WHEREAS, the Grantor has granted Grantee "Easement Rights" to the Additional Sewage Facilities as set forth in: (1) Skagit Regional Airport Binding Site Plan, Phase 2, Div. 5, Note 27, dated 3/20/2007, and recorded under Skagit County Auditor's File No. 200705300029; and (2) Skagit Regional Airport Binding Site Plan, Phase 2, Div. 7, Note 28, dated 3/06/2007, and recorded under Skagit County Auditor's File No. 200705300031 (the "Binding Site Plans"); now

THEREFORE, THE PARTIES HEREBY AGREE to this Second Supplement to Conveyance/Easement Agreement as follows:

II. CONVEYANCE

A. The Grantor, in consideration of the mutual promises contained herein, does hereby grant, convey and quitclaim to Grantee, all right, title and interest to Grantor's "Additional Sewer Facilities" as described in Exhibit 1 hereto. This conveyance is made where is as is, with no warranty whatsoever, *provided*, that this provision shall not be construed so as to limit Grantor's obligations arising under Section II(G) of the Agreement, and provided further that, in the event any defect is subsequently identified in the Additional Sewage Facilities resulting from improper construction, then Grantor



shall cooperate fully with the Grantee in seeking adjustment from the contractor(s) responsible for such construction defect.

B. Grantor hereby confirms the grants of Easement Rights, in: (1) Skagit Regional Airport Binding Site Plan, Phase 2, Div. 5, Note 27, dated 3/20/2007, and recorded under Skagit County Auditor's File No. 200705300029; and (2) Skagit Regional Airport Binding Site Plan, Phase 2, Div. 7, Note 28, dated 3/06/2007, and recorded under Skagit County Auditor's File No. 200705300031.

III. TERMS AND CONDITIONS OF CONVEYANCES

The foregoing grants are subject to and conditioned upon the following terms and conditions:

A. **Additional Sewage Facilities.** Grantee, in addition to the obligations imposed in the Easement Rights, hereby covenants and agrees to own, and take full responsibility (including Operation, maintenance and or repairs) for, the Additional Sewage Facilities subject to the Easement Rights and of any and all sanitary sewer connections made to the Additional Sewage Facilities outside the grantors Binding Site Plans that are for the benefit of or serve any third party, wherever such Grantee-owned connections result in Sewage Facilities being constructed or located upon any portion of Grantor's property subject to the Easement Rights. Grantee shall have no authority to, nor shall it, allow any third person or entity to construct (except as Grantee's agent) or own any Sewage Facilities within Grantor's property, whether within or outside of the areas subject to the Easement Rights. Grantor shall have no authority to allow, and shall not allow, any third party to connect any sewer line to Grantee's wastewater collection system without Grantee's explicit written authorization, which shall not be unreasonably withheld. Grantee shall be authorized to remove any such unauthorized connection without notice.

B. **Maintenance.** Grantee shall have the right to install, lay, construct, renew, operate, maintain, and remove wastewater systems, lines, fixtures, and appurtenances attached thereto for the purpose of providing utility services, together with the right to enter upon the easement area for the purposes stated. Grantee shall provide Grantor written notice prior to commencement of construction of any direct connection to the Additional Sewage Facilities or any maintenance thereof requiring excavation. Such written notice shall include the nature of the construction to be made and/or work to be performed, scheduled start and end dates of the activity and the location of the connection to be constructed and/or work to be performed. Grantee shall restore Grantor's property to its pre-existing condition prior to such work. In the event of an emergency involving the Additional Sewage Facilities, Grantee may undertake excavation work without prior notice to Grantor, and shall at the reasonably earliest time thereafter, notify Grantor of the excavation work as set forth above.



C. **Reservation of Capacity.** Grantee shall reserve sufficient sewer capacity of the additional Sewage Facilities described in Exhibit 1 hereto to accommodate the Grantor's design flow of 50,000 GPD for the combined 97 acre site. Should Grantee construct or allow connections to the Additional Sewage Facilities that utilize any of Grantor's reserved capacity, then Grantee shall bear any costs associated with creation and/or reservation of sufficient sewer capacity for Grantor in perpetuity.

D. **Relocation.** In the event Grantor desires any of the facilities described in Exhibit 1 hereto to be relocated for any reason, Grantor shall bear all costs associated with such relocation.

E. **Indemnification.** The Grantor will defend, indemnify, and save harmless, the Grantee, its elected and appointed officers, deputies and employees from and against any damage, cost, claim, or liability arising out of this Agreement, attributable to the negligent acts or omissions of the Grantor its officers, employees, or agents.

The Grantee will defend, indemnify and save harmless, the Grantor, its elected and appointed officials and officers, employees and insurers from and against any damage, cost, claim, or liability arising out of this Agreement attributable to the acts or omissions of the Grantee, its employees or agents.

IV. ACKNOWLEDGEMENT AND AGREEMENT TO TERMS AND CONDITIONS OF CONVEYANCES

Grantor and Grantee, by their signatures below, hereby acknowledge and agree that the foregoing grants are subject to and conditioned upon the terms of the Agreement as set forth in Article II. (A) – (J) and in Article III thereof and that all terms of this Second Supplement to Conveyance/Easement Agreement shall extend to and be binding upon the successors, and assigns of the parties hereto.

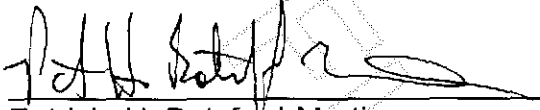
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By their signatures below, the parties acknowledge that they have read and fully understand the terms of this Second Supplement to Conveyance/Easement Agreement.


GRANTOR:

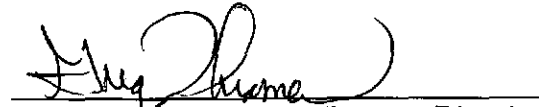
PORT OF SKAGIT COUNTY


Patricia H. Botsford-Martin
Executive Director


GRANTEE:


CITY OF BURLINGTON


Edward Brunz, Mayor


Gregory J. Thramer, Finance Director

Approved as to form:


Bradford E. Furlong
Port Attorney

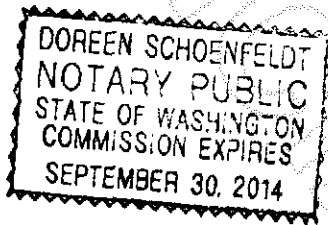

Scott G. Thomas
City Attorney



STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this 3rd day of January, 2011, before me personally appeared Patricia H. Botsford-Martin, to me known to be the Executive Director, Port of Skagit County, a Washington municipal corporation that executed the within and 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 they were duly authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.



Doreen Schoenfeldt
Notary Public in and for the state of
Washington, residing at: Stanwood
My commission expires: 09/30/2014
Printed Name: Doreen Schoenfeldt

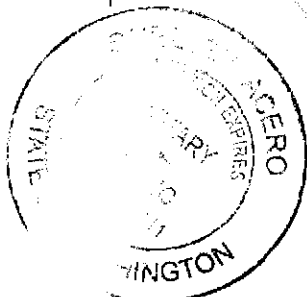
STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this 17th day of December, 2010 before me personally appeared Edward Brunz and Gregory J. Thrumer, to me known to be the mayor and finance director, respectively, City of Burlington, a Washington municipal corporation that executed the within and 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 they were duly authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.



Shelley Acero
Notary Public in and for the state of
Washington, residing at: Mt. Vernon
My commission expires: 10-22-2011
Printed Name: Shelley Acero



Second Suppl
Port of Skagit
City of Burling



Exhibit 1

SEWER FACILITIES

1. 400 lineal feet of 6" sewer line.
2. 2,660 lineal feet of 8" sewer line.
3. (1) 60-inch sewer manhole.
4. (13) 48-inch sewer manholes.
5. 2,530 lineal feet of 6" sewer force main.
6. Sewer lift station and associated wet well located north of Ovenell Road, approximately 225 feet from the intersection of Farm to Market Road.

