

REVIEWED BY  
SKAGIT COUNTY TREASURER  
DEPUTY Lena Thompson  
DATE 06/24/2022

**Document Title:**

RIGHT OF WAY USE AGREEMENT 2N<sup>o</sup> STREET- FROM "O" AVENUE TO SHORELINE

**Reference Number :** N/A

**Grantor(s):**

additional grantor names on page \_\_\_.

1. THE CITY OF ANACORTES
- 2.

**Grantee(s):**

additional grantee names on page\_\_\_.

1. THE PORT OF ANACORTES
- 2.

**Abbreviated legal description:**

full legal on page(s) \_\_\_.

THAT PORTION OF PLATTED 2N° 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 Parcel / Tax ID Number:**

additional tax parcel number(s) on page \_\_\_.

P55355 / 3772-066-010-0009

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

DOCUMENT TITLE(S):

**RIGHT OF WAY USE AGREEMENT 2<sup>ND</sup> 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 2<sup>ND</sup> 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:

**N/A**

**RIGHT OF WAY USE AGREEMENT  
2<sup>ND</sup> STREET – FROM “O” AVENUE TO SHORELINE**

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 In 2018, the Parties and the Economic Development Alliance of Skagit County (“EDASC”) jointly developed and adopted the Anacortes Maritime Strategic Plan (the “Maritime Plan”). The Maritime Plan included goals and objectives to promote and develop a thriving and sustainable marine sector in the City’s jurisdiction. Among many goals and objectives, the Parties agreed to identify and implement policies that would ensure optimal use of industrial and commercial lands for maritime-related business.
  - 3.2 The Port developed a Marine Terminal Modernization Study in 2020 (“Terminal Modernization Study”). The Study identified that an increase in activity at Curtis Wharf will likely 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 “2<sup>nd</sup> St. ROW”).
  - 3.3 The subject portion of 2<sup>nd</sup> St. ROW provides legal access, in part, to adjacent properties owned by the Port. The property north of the 2<sup>nd</sup> St. ROW is the Port’s Curtis Wharf Terminal. Port marine terminal operations at Curtis Wharf presently cross the 2<sup>nd</sup> St. ROW.
  - 3.4 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).
  - 3.5 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) (the “Site”). The cleanup levels selected for the Site are based on an unrestricted future land use standard. The Port and Ecology have entered into an Agreed Order providing for site remediation activities, including a portion of the 2<sup>nd</sup> St. ROW that is included within the Quiet Cove Site boundary. The Port will be responsible for conducting the environmental cleanup selected by Ecology for the 2<sup>nd</sup> St. ROW that is included within the Quiet Cove Site boundary and releases the City from the costs for the same. The Agreement will enable the Port to examine and consider more permanent remedial action alternatives for the potential environmental cleanup of the 2<sup>nd</sup> St. ROW.

- 3.6 The 2<sup>nd</sup> St. ROW is used extensively by the Port and the Port's tenant trucks and vehicles. Closure of the 2<sup>nd</sup> St. ROW and redirecting the limited public vehicular and pedestrian use of the 2<sup>nd</sup> St. ROW to the primary access to the public shoreline on "N" Avenue, via 3rd St., will enhance public safety.
- 3.7 The Agreement allows for product storage south of the 2<sup>nd</sup> St. ROW on Port property and construction of conveyance equipment on the 2<sup>nd</sup> 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.
- 3.8 Closure of this portion of the 2<sup>nd</sup> St. ROW will not affect the primary public access to "N" Avenue Park and waterfront.
- 3.9 The Parties acknowledge that the City has received full value for the property rights granted to the Port herein, which is found, in part, in the Port's release of the City from costs of and liability from environmental remediation incurred for the portion of the 2<sup>nd</sup> St. ROW located within the Quiet Cove environmental site.
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. **2<sup>nd</sup> St. ROW CLOSED - CITY GRANT TO PORT.**
- 6.1 Under this Agreement, the City closes the 2<sup>nd</sup> St. ROW, subject to the Port's construction and management of signage and other traffic management regarding access to and use of the 2<sup>nd</sup> 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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 the City's reservation described herein, the Port may develop and/or construct improvements on the portion of the 2<sup>nd</sup> 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 2<sup>nd</sup> St. ROW.

- 8.1 Under this Agreement, the Port is granted the right of use over, under, upon and across the 2<sup>nd</sup> 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 2<sup>nd</sup> St. ROW; and (iv) constructing any improvements the Port deems necessary to support these uses.
- 8.2 The Port and its contractors use of the 2<sup>nd</sup> 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 2<sup>nd</sup> St. ROW.
- 8.3 Upon the termination of this Agreement, unless otherwise agreed to by the Parties, the Port shall restore 2<sup>nd</sup> 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. Any development of the 2<sup>nd</sup> St. ROW by the City after the termination of this Agreement shall be conducted by the City at no cost to the Port. These obligations shall survive termination of the Agreement.
- 8.4 The Port and its contractors bear all of the costs of their activities under this Agreement relating to the 2<sup>nd</sup> St. ROW. This obligation 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 2<sup>nd</sup> St. ROW accruing (i) prior to City's closure of the 2<sup>nd</sup> St. ROW; or (ii) after termination of this Agreement, except as the Port's restoration obligation in 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 or its agents 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 2<sup>nd</sup> St. ROW accruing (i) after City's closure of the 2<sup>nd</sup> St. ROW during the effective period of the Agreement; or (ii) as a result of the improvements on the 2<sup>nd</sup> St. ROW installed at Port's direction. Excepted from this section are any and all Claims

arising out of the City's exercise of its reserved rights described herein. Port's obligations under this section shall apply only to the extent of the negligence of willful misconduct of Port or its agents 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.

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 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 6<sup>th</sup> 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 recorded for record by a Party with Skagit County, Washington at the sole cost and expense of the Port.

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



Matt Miller

Daniel Worra

Mayor

Executive Director

Date: 16 FEB 2022

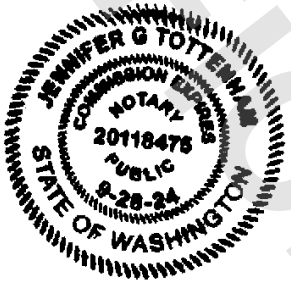
Date: 2-16-22

STATE OF WASHINGTON )  
 ) ss.

COUNTY OF SKAGIT )

On this 16 day of February, 2022, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Matt Miller** 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.

GIVEN under my hand and official seal this 16 day of February, 2022.



Jennifer G. Tottenham  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing at Skagit County WA  
My commission expires: 9.28.24

STATE OF WASHINGTON )  
 ) ss.

COUNTY OF SKAGIT )

On this 16 day of February, 2022, 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 16 day of February, 2022.



Jennifer G. Tottenham  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing at Skagit County WA  
My commission expires: 9.28.24



**EXHIBIT "A"  
LEGAL DESCRIPTION**

THAT PORTION OF PLATTED 2<sup>ND</sup> 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 THEROF, RECORDED IN VOLUME 2 OF PLATS, PAGES 4-7, RECORDS OF SKAGIT COUNTY, WASHINGTON.

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



**Pacific Surveying & Engineering, Inc**  
land surveying • civil engineering • consulting • environmental  
909 Squalicum Way #111, Bellingham, WA 98225  
Phone 360.671.7387 Facsimile 360.671.4685 Email info@pacificsurvey.com

**EXHIBIT ' \_ '**

**2<sup>ND</sup> STREET RIGHT OF WAY WEST OF "O" AVENUE  
LEGAL DESCRIPTION**

THAT PORTION OF PLATTED 2<sup>ND</sup> 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.



### EXHIBIT "B" EASEMENT AREA DEPICTION

