

Pierce County Planning and Public Works
2702 South 42nd Street, Suite 109
Tacoma, WA 98409
Attention: Erica Grimm, Right-of-Way Agent

**TEMPORARY EASEMENT
(Clear Creek Habitat Restoration Project No. D228)**

Grantor: Port of Tacoma
Grantee: Pierce County
Abbr. Legal: Portion of Lot 67, Port of Tacoma Assessor's Tracts
Addl. Legal: Exhibit A and Exhibit B of this document
Tax Parcel No.: Portion of 5000350671, and Portion of 5000350672

1. Grant of Easement. The Port of Tacoma, a Washington State port district ("Port" or Grantor"), the owner of Pierce County Tax Parcel Nos. 5000350671 and 5000350672 (the "Property"), pursuant to the Clear Creek Improvement Inter-Local Agreement between the Port of Tacoma and Pierce County dated _____, and for and in consideration of mutual benefits and in further consideration of the general public welfare, hereby grants and conveys to Pierce County, a municipal corporation and a political subdivision of the State of Washington ("Grantee"), a temporary non-exclusive easement on that portion of Grantor's Property described and shown in Exhibits A and B hereto (the "Easement Area"), for the purpose of construction of the Clear Creek Habitat Restoration Access Road Removal For Improved Wetland/Floodplain Interaction Project No. D228 as described in more detail below and as generally shown in Exhibit C hereto (the "Project"), and for the purpose of monitoring for 5 years after construction is completed and the completion of any necessary corrective action identified during such monitoring period, as also described in more detail below, upon and subject to the terms and conditions of this Easement. For purposes of this Easement, Grantor and Grantee are each a "Party" and collectively the "Parties".

2. Use and Purpose. Grantee may use the Easement Area solely for the purpose of construction of the Clear Creek Habitat Restoration Access Road Removal For Improved Wetland/Floodplain Interaction Project No. D228 as described and shown in the final design plans for such project approved by the Parties, the 90% version of which are attached as Exhibit B to the Clear Creek Improvement Inter-Local Agreement between the Port of Tacoma and Pierce County dated _____ (the "Project"), and thereafter for the purpose of monitoring for 5 years after the completion of construction and the completion of any necessary corrective action identified during such monitoring period, as described in the final Clear Creek Habitat Restoration – Lower Access Road Removal Monitoring Plan approved by the Parties, a draft version of which is attached as Exhibit F to the Inter-Local Agreement between the Port of Tacoma and Pierce County dated _____. Grantee may enter upon the Easement Area with all necessary persons, material, vehicles, and equipment reasonably necessary to complete the Project and subsequent monitoring and any necessary corrective action. All ingress, egress, and access to and from the Easement Area shall be solely from River Road / SR167 through the existing driveway and gate at the north end of the Easement Area. Grantor and Grantee agree that this is the only necessary access to complete the Project and subsequent monitoring and any necessary corrective action. No ingress, egress, or access to or from the Easement Area shall be from any other portion of Grantor's Property. Grantee shall not interfere with any existing or future access by Grantor or any other person authorized by Grantor to Grantor's Property. No material, vehicles, equipment, or activities are permitted beyond the limits of the work area shown in the above-referenced final plans. Foot traffic is permitted beyond the limits of the work area shown in the above-referenced final plans only as necessary to completion of the Project. Grantee shall give Grantor no less

than 7 days advance written notice of Grantee's intent to access the Easement Area for any construction, monitoring, or corrective action activity, except that in emergencies Grantee shall give Grantor as much advance notice as is reasonably practicable under the circumstances. Plans and specifications for any corrective action shall be provided to Grantor and shall be subject to Grantor's written approval prior to implementation, which approval shall not be unreasonably withheld, conditioned, or delayed. Within 60 days after completion of the Project, and within 60 days after completion of any correction action, Grantee shall provide Grantor with As-Built drawings of all work completed on Grantor's Property. Within 30 days of any formal monitoring, Grantee shall provide Grantor with a copy of all data collected and the report for such monitoring event. Grantee shall not use the Easement Area for any purpose other than as expressly set forth herein except upon the prior written consent of Grantor, in its sole and absolute discretion.

3. Term. The term of this Easement is from April 1, 2022 through the completion of construction of the Project as described above, and thereafter for 5 years for monitoring and corrective action as described above (this period shall be automatically extended to include any time reasonably required to complete any corrective action identified or commenced in the above 5-year period). This Easement shall automatically terminate upon expiration of the above periods, without notice or other action by either party. This Easement is contingent upon Grantee obtaining all necessary authorizations, permits, and funding for the Project.

4. Compliance with Applicable Law. Grantee shall obtain and maintain all applicable permits and licenses required for the Project, and at Grantor's request shall provide a copy of all such permits and licenses and all renewals thereof to Grantor. Grantee shall at all times exercise its rights under this Easement in accordance with and shall promptly and diligently observe and comply with all applicable laws, rules, regulations, standards, ordinances, permits and permit requirements, licenses and license requirements, orders, decrees, policies, and other legally applicable requirements of all federal, state, county, city, or other local jurisdiction governmental or public or quasi-public bodies, departments, agencies, bureaus, offices or subdivisions thereof, or other authority, which may be applicable to or have authority over the Property, the Easement Area, or the Project, or over Grantee as they pertain to Grantee's activities on or about the Property or Easement Area, or any activity conducted on or about the Property or Easement Area, including, but not limited to, those pertaining to police, fire, safety, sanitation, environment, stormwater, odor, dust and other emissions, noise, and track-out, all as currently in effect or as hereafter adopted, enacted, passed, directed, issued, or amended, and all obligations and conditions of all instruments of record at any time during the term of this Easement, including, but not limited to, the Consent Decree filed under Western District of Washington Case No. C93-5462 RJB, Environmental Covenant filed under Pierce County AFN 201005060603, Consent Decree filed under Western District of Washington Case No. 05-CV-05103, and Environmental Covenant filed under Pierce County AFN 2022_____ (collectively "Applicable Law"). In addition to any other indemnity under this Easement, Grantee shall defend, indemnify, and hold Grantor harmless against all civil or criminal claims, costs (including but not limited to reasonable attorney fees), expenses, fees, fines, penalties, liabilities, losses, and damages that Grantor incurs by reason of any third party (including but not limited to any governmental agency) charge, claim, litigation, or enforcement action related to any actual or claimed violation by Grantee or its employees, agents, representatives, consultants, subconsultants, contractors, subcontractors, licensees, invitees, volunteers, visitors, or guests, or any officer, agent, employee, licensee, invitee, visitor, or guest of any such person (collectively "Grantee Parties"). Grantee's obligations under this section shall survive the expiration or other termination of this Easement.

5. Exercise of Rights by Grantee. Grantee's use of the Easement Area shall be conducted in such a manner that Grantor's Property shall not be unreasonably disturbed or damaged (other than the alteration of Grantor's Property in accordance with the plans and specifications for the Project approved by Grantor), and any impact to habitat area, fish, and other natural resources outside the Easement Area shall be minimized, and if Grantor's Property is so disturbed, damaged, or impacted by Grantee or Grantee Parties, then Grantee shall bear the cost of any necessary restoration and any and all damages to Grantor. All work to be performed by Grantee or upon Grantee's direction or on Grantee's behalf (collectively "by Grantee") shall be completed in accordance with the plans and specifications for the Project approved by Grantor, and in a careful, competent, and workmanlike manner, free from all material defects and claims of liens. Following any construction or other activity by Grantee in the Easement Area, Grantee shall without delay, as soon as is commercially reasonable, and in all events within 14 days after any access to or work in the

Easement Area, remove all debris and restore the Easement Area and any and all portions of Grantor's Property affected by such access or work to a clean and safe condition. Grantee shall replace any property corner monuments, survey references, or hubs that were disturbed or destroyed by activities conducted by Grantee. Grantee's obligations under this section shall survive expiration or termination of this Easement.

6. Insurance. During the term of this Easement Grantee shall maintain, and shall require its consultants and contractors to maintain, the following insurance, except that insurance requirements for Grantee may be satisfied by a letter of self-insurance from Grantee approved by Grantor in its sole discretion. Commercial general liability insurance with minimum limits of \$2,000,000 per occurrence for bodily injury, death, broad form property damage, broad form contractual liability, and defense costs, and endorsed to remove any exclusion regarding any work (including demolition) performed within fifty (50) feet of any rail track, and a deductible or self-insured retention not greater than 10% of the required minimum limits. Pollution legal liability insurance, with minimum limits of \$2,000,000 per occurrence covering incidents in connection with the Project occurring onsite, offsite, and during transportation, and including but not limited to bodily injury, death, broad form property damage and natural resource damage, broad form contractual liability, environmental damage, remediation and cleanup costs, and defense costs, and a deductible or self-insured retention not greater than 10% of the required minimum limits. Sudden and accidental pollution coverage alone will not be accepted. Workers compensation insurance as required by law. Employer's liability insurance with minimum limits of \$1,000,000 per accident. Business auto liability insurance with minimum limits of \$1,000,000 per occurrence. Each such insurance shall be in a form reasonably acceptable to Grantor with an insurance carrier with a rating of A-VII or better in A.M. Best's Key Rating Guide. All such policies shall be primary, without right of contribution from insurance of Grantor. Grantee hereby waives subrogation against the Port of Tacoma for all losses sustained by Grantee or Grantee Parties, and all such policies shall include a waiver of subrogation against the Port of Tacoma. All such policies shall name the Port of Tacoma as additional insured, and shall not exclude or restrict coverage based upon alleged or actual negligence of an additional insured, and shall, to the extent obtainable, provide that no act or omission of Grantee (or its contractor, as applicable) that would otherwise result in forfeiture or reduction of the insurance will affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Grantee (or its contractor, as applicable) shall pay the amount of any deductible or self-insured retention. If any pollution legal liability insurance is provided on a claims-made basis, then such insurance shall have an extended claims reporting period of three (3) years after the expiration or other termination of this Easement. Grantee shall provide certificates of all required insurance and copies of additional insured endorsements to Grantor upon execution of this Easement and upon all renewals of such insurance during the term of this Easement, and shall provide a copy of policy declarations pages and policy sections requested by Grantor sufficient for Grantor to confirm to its satisfaction that required coverage is in place, and shall provide a copy of all policies of such insurance upon request by Grantor. Grantor shall be given at least thirty (30) days prior written notice of any cancellation (ten (10) days for cancellation for non-payment of premiums) or non-renewal of any required insurance.

7. Mutual Indemnification.

7.1 To the extent of its comparative liability, each Party agrees to indemnify, defend and hold the other Party, its elected and appointed officials, employees, agents, and volunteers, harmless from and against any and all claims, damages, losses, and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any injury or damage of any kind which are alleged or proven to be caused by an act or omission related to the actions under this Easement, negligent or otherwise, of the Party, its elected and appointed officials, employees, agents, volunteers, representatives, consultants, subconsultants, contractors, subcontractors, licensees, invitees, visitors, or guests, or any officer, agent, employee, licensee, invitee, visitor, or guest of any such person.

7.2 A Party shall not be required to indemnify, defend, or hold the other Party harmless if the claim, damage, loss, or expense for any injury or damage of any kind is caused by the sole act or omission of the other Party or its elected and appointed officials, employees, agents, volunteers, representatives, consultants, subconsultants, contractors, subcontractors, licensees, invitees, visitors, or guests, or any officer, agent, employee, licensee, invitee, visitor, or guest of any such person.

7.3 The Parties agree to maintain a consolidated defense to claims made against them by claimants not included in this Easement and to reserve all indemnity claims against each other until after liability to the claimant and damages, if any, are adjudicated.

7.4 To the extent of each Party's obligations under this provision, each Party agrees to specifically defend, indemnify, and hold harmless the indemnified Party for claims against the indemnified Party by the indemnifying Party's own employees, and, solely for the purpose of this provision, each Party specifically waives any immunity under the state industrial insurance law, Title 51 RCW. Both Parties agree that the Parties mutually negotiated this waiver.

7.5 Obligations under this section shall survive the expiration or termination of this Easement.

8. Escort. Grantor or its designees shall have the right to accompany Grantee and its employees, agents, representatives, consultants, subconsultants, contractors, subcontractors, licensees, invitees, volunteers, and guests during any access or work by Grantee under this Easement; however, an escort by Grantor is not required or any such access or work.

9. Notices. Any notice to be given to either Party shall be in writing and may be given by personal service, reputable courier service with all fees prepaid, or certified United States mail with all postage and fees prepaid, addressed as follows:

To Port of Tacoma: Director, Environmental and Planning Programs
 Port of Tacoma
 PO Box 1837
 Tacoma WA 98401-1837

To Pierce County: Manager, Surface Water Management Division
 Pierce County Planning and Public Works
 2702 S 42nd Street, Suite 201
 Tacoma WA 98409

Any notice sent in compliance with the requirements in this section shall be effective (i) if delivered by personal service, then upon such personal service; or (ii) if sent by courier or United States mail, then upon receipt or refusal of delivery by the addressee. Any Party may designate an address different from that set forth above by notice given in accordance with this section. Any notice sent by a Party's attorney on behalf of such Party shall be deemed delivered by such Party.

10. General.

10.1 Entire Agreement and Modification. This Easement embodies the entire agreement and understanding between the Parties hereto with respect to its subject matter and supersedes all prior agreements and understandings, whether written or oral, relating to its subject matter. No amendment or modification of this Easement shall be valid unless made in writing and signed by each of the Parties.

10.2 Authority. Each Party to this Easement, and each individual signing on behalf of each Party, hereby represents and warrants to the other that it has full power and authority to enter into this Easement and that its execution, delivery, and performance of this Easement has been fully authorized and approved, and that no further approvals or consents are required to bind such Party.

10.3 Affiliates, Successors, and Assigns. This Easement will be binding upon and will inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party will assign its rights under this Easement without prior written consent of the other Party. Any such prohibited assignment will be void.

10.4 Assurances. Each Party agrees to carry out its activities under this Easement in accordance with all applicable federal, state, and local laws, rules, and regulations.

10.5 Interpretation. Each Party acknowledges that it and its legal counsel have reviewed this Easement. The Parties agree that the terms and conditions of this Easement will not be construed against any Party on the basis of such Party's drafting, in whole or in part, of such terms and conditions.

10.6 Choice of Law, Venue, and Responsibility for Attorney Fees and Costs. This Easement and all issues relating to its validity, interpretation, and performance shall be governed by and interpreted under the laws of the State of Washington without regard to conflict of law provisions, and any applicable federal law. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Easement, the Parties specifically understand and agree that venue will be in the Washington State Superior Court in and for Pierce County, Washington. If a Court determines that RCW 36.01.050(3) applies to this Easement, then venue shall be in any of the three superior courts authorized by RCW 36.01.050(1) for actions against Pierce County. In the event of any dispute related to this Easement, whether pursued in court or otherwise, each Party shall be responsible for its own actual attorney fees and costs.

10.7 Severability. If any provision of this Easement is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and the remainder of this Easement shall remain in full force and effect.

10.8 Counterparts. This Easement may be executed in as many counterparts as may be deemed necessary or convenient, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument. Signatures transmitted by e-mail (PDF attachment) or facsimile transmission shall be acceptable.

10.9 Exhibits. All exhibits referenced herein and attached hereto, are hereby incorporated into and made part of this Easement.

10.10 Effective Date. This Easement shall become effective upon the date this Easement document is fully signed and dated by all Parties.

10.11 Disclaimer. Grantee acknowledges that Grantee has had an opportunity to examine the Easement Area and Grantor's surrounding Property to the extent desired by Grantee, and Grantee accepts this Easement, the Easement Area, and any privileges hereunder "AS IS", "WHERE IS", and "WITH ALL FAULTS". Grantee agrees that Grantor has not made any express or implied representations, warranties, or guarantees regarding the condition or suitability of the Property or Easement Area for the Project or otherwise, and all representations, warranties, and guarantees, express and implied are hereby expressly disclaimed. Grantee is and shall remain solely and separately liable for the design, permitting, and construction of the Project, and for the function of the Project through the initial 5-year monitoring period.

10.12 Waiver. No delay in exercising any right or remedy hereunder shall constitute a waiver thereof, and no waiver of the breach of any provision of this Easement shall be constructed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Easement.

GRANTOR:

PORT OF TACOMA

By: _____

Eric D. Johnson, Executive Director

Date: _____

State of Washington)
) ss
County of Pierce)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the PORT OF TACOMA to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Printed Name of Notary: _____
Notary Public in and for the State of Washington
My commission expires on _____

GRANTEE:

PIERCE COUNTY

By: _____

Title: _____

Date: _____

State of Washington)
) ss
County of Pierce)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the PIERCE COUNTY to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Printed Name of Notary: _____
Notary Public in and for the State of Washington
My commission expires on _____

EXHIBIT A
Legal Description of Easement Area

EXHIBIT B
Diagram of Easement Area

EXHIBIT C
Diagram of Project