LICENSE TO USE CITY PROPERTY FOR TEMPORARY BIOSOLIDS STORAGE

("LICENSE AGREEMENT")

Grantor: **City of Everett**

Grantee: **King County Wastewater Treatment Division**

Property: See attached Exhibit A

WHEREAS, King County Wastewater Treatment Division, hereinafter referred to as "KING COUNTY," and whose address is 201 S. Jackson Street, MS: KSC-NR_0512, Seattle, WA 98104-3855, desires to utilize **City of Everett** (the "City") owned property for the purposes hereinafter set forth; and

WHEREAS, the City is willing to grant KING COUNTY authority to use the City's property in exchange for the sum of $1157.63 per month;

NOW, THEREFORE, in consideration of the premises, the promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the City licenses KING COUNTY to use certain City property, and KING COUNTY agrees to pay the City, in advance, $1157.63 per month for each month this License Agreement is in effect, upon the following terms and conditions:

1. **LICENSED PROPERTY**. The property subject to this License Agreement is described on Exhibit A. The property described on Exhibit A is referred to in this License Agreement as the "Biosolids Pad."

2. **TERM**. This License Agreement shall take effect upon signing by both parties and shall expire on June 30, 2018, unless terminated earlier upon 30-days notice under Section 7, below. This License Agreement may be renewed annually with the written consent of both parties for additional one year terms, up to a maximum period of five additional years. The annual term will be from July 1 through June 30, inclusive.

3. **AUTHORIZED USE**. KING COUNTY may only use the Biosolids Pad for temporary storage of KING COUNTY's biosolids. All use of the Biosolids Pad must be in accordance with Exhibit B.

4. **BIOSOLIDS STORAGE**. At its sole cost, KING COUNTY shall transport and manage all biosolids in accordance with all applicable laws and Exhibit B. KING

COUNTY has sole responsibility for KING COUNTY's biosolids, including without limitation all responsibility for biosolid transportation, storage, and reuse.

5. **INDEMNIFICATION**. To the maximum extent permitted by law and except to the extent caused by the sole negligence of the City, KING COUNTY shall defend, indemnify, and hold the City harmless from any and all Claims, including without limitation Claims for injury to people or damage to property, arising out of or related to (A) KING COUNTY's use of the Biosolids Pad, (B) any biosolids or any other material delivered to the Biosolids Pad by KING COUNTY, (C) any failure by KING COUNTY to transport, store, treat, or dispose of biosolids or any other material in accordance with Exhibit B and all applicable laws, or (D) any release by KING COUNTY of biosolids or any other material. This defense and indemnification obligation shall survive any termination, revocation, or expiration of this Agreement.

For the purposes of this Section 5:

A. "City" means the City, its officers, employees, and agents.
B. "KING COUNTY" means, its officers, employees, agents, contractors, and subcontractors.
C. "Claims" means any loss, injury, demand, settlement or lawsuit (including without limitation those based on environmental laws and regulations), and further includes any and all reasonable litigation costs such as attorney's fees, expert fees and costs, and court costs.
D. "Injury to people" includes, but is not limited to, bodily injury and death.
E. "Damage to property" includes, but is not limited to damage or injury to any City property, including the Biosolids Pad, any City facilities, and any property owned by third parties.
F. "Release" shall have the meaning that it has under RCW 70.105D.020 (25).

6. **HAZARDOUS MATERIALS**. KING COUNTY shall not place any materials on the Biosolids Pad or cause any materials to be transported onto any other property owned by the City that are classified as hazardous or dangerous under the Washington Model Toxic Control Act. Breach of this provision shall be considered "damage to property" for the purposes of Section 5, above.

7. **TERMINATION**. The City may unilaterally terminate this License Agreement upon thirty (30) days written notice to KING COUNTY. If KING COUNTY breaches any of its obligations under this License Agreement, then the City may deliver written notice of the breach to KING COUNTY. If KING COUNTY does not cure the breach within thirty (30) days after delivery of such notice, then the City may terminate this License Agreement effective on delivery to KING COUNTY of a written notice of termination.

8. **NOTICE**. For the purposes of this License Agreement, the Agreement Administrators are: Chris Chesson, for the City, and Jake Finlinson, for KING COUNTY. Notices sent pursuant to this License Agreement shall be sent to the Agreement Administrators at the following addresses:

CITY OF EVERETT
Attn.: Chris Chesson
3200 Cedar St.
Everett, Washington 98201

KING COUNTY
Attn: Jake Finlinson
201 S. Jackson St.
MS: KSC-NR_0512
Seattle, Washington 98104-3855

9. **NO ASSIGNMENT**. This License Agreement is personal to KING COUNTY and may not be transferred, assigned, conveyed, pledged, encumbered, or hypothecated.

10. **COMPLIANCE WITH LAW**. KING COUNTY shall comply with all applicable local, State, and Federal regulations and laws.

11. **INSURANCE**. KING COUNTY maintains a fully funded Self-Insurance program as defined in King County Code 4.12 for KING COUNTY's liabilities, including injuries to persons and damage to property. The City acknowledges, agrees, and understands that the KING COUNTY is self-funded for all of its liabilities, including Workers' Compensation. KING COUNTY agrees, at its own expense, to maintain, through its self-funded program, coverage for all of its liabilities under this License Agreement. KING COUNTY agrees to provide the City with at least 30 days prior written notice of any material change in KING COUNTY's self-funded program and will provide the City with a certificate of self-insurance as adequate proof of coverage. The City further acknowledges, agrees and understands that KING COUNTY does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore KING COUNTY does not have the ability to add the City as an additional insured.

12. **NON-INTERFERENCE WITH CITY USE**. KING COUNTY's use of the Biosolids Pad shall not interfere in any way with any City, or authorized third party, use of the property, including utilities and travel.

13. **RELOCATION**. KING COUNTY shall relocate or remove, whichever the City requires, all or any part of its property (including biosolids) located on the Biosolids Pad due to maintenance, repair, or construction of City's property or a City improvement. KING COUNTY shall commence the relocation or removal within thirty (30) days of notice by the City that KING COUNTY must relocate or remove property and materials. If KING COUNTY fails to commence the relocation or removal as required or, having commenced it, fails to proceed with reasonable dispatch, the City shall, in addition to its remedy for damages, be entitled to specific enforcement of KING COUNTY's obligation hereunder and shall also have the right and authority to remove, at KING COUNTY's expense, such portion of the materials as KING COUNTY has failed to relocate or remove without incurring any liability whatsoever. This right is in addition to any other rights at law or in equity.

14. **REPAIR OF PROPERTY**. KING COUNTY shall use care to avoid damaging or destroying property by reason of its operations pursuant to this License Agreement. Any damage caused by KING COUNTY to City or other property shall be promptly repaired or replaced by KING COUNTY to the satisfaction of the City, or in lieu of such repair or replacement, KING COUNTY shall pay, to the City or owner of other property, money in an amount sufficient to compensate for the loss sustained by reason of damage to or destruction of the City's or another party's property or improvements.

15. **RISK OF LOSS TO KING COUNTY'S PROPERTY**. KING COUNTY bears all risk of any and all damage and loss to its property being stored on the site. All biosolids delivered to the Biosolids Pad under this License Agreement are the property of KING COUNTY.

16. **PRIOR NOTICE OF INSTALLATION**. Prior to any installation of materials other than biosolids within the Biosolids Pad, KING COUNTY will supply the City with a drawing and any necessary specifications relating to KING COUNTY's use of the City's property. KING COUNTY must obtain City approval of the proposed area and installation of materials and their location prior to installation. The City's review, comments, and approval shall not create any City liability for any action or inaction relating to such review, and KING COUNTY shall remain wholly responsible for the safety, adequacy, suitability, utility, and constructability of its materials.

17. **NO WARRANTY**. The City does not warrant its title and ownership of the Biosolids Pad.

18. **NON-EXCLUSIVE**. This License Agreement is not exclusive. The City is not prohibited from granting permission to others to occupy or use portions of the Biosolids Pad where such uses are not inconsistent with this License Agreement.

19. **RESERVATION OF RIGHTS**. The City reserves all rights not expressly restricted by this License Agreement.

20. **NO THIRD PARTY RIGHTS**. This License Agreement does not create any rights in any third party.

21. **APPLICABLE LAW AND VENUE**. The laws of the State of Washington shall apply to this License Agreement. Venue for any lawsuit arising out of or related to this License Agreement shall be in Snohomish County Superior Court, Washington.

Grantor:
CITY OF EVERETT

By Ray Stephanson
Ray Stephanson, Mayor

Dated: 9-2-2017

ATTEST:

By Sharon Fuller
Sharon Fuller, City Clerk

Dated: 9/2/2017

APPROVED AS TO FORM:

By James D. Iles
Jim Iles, City Attorney

Dated: 8/30/17

LICENSE AGREEMENT, TERMS AND CONDITIONS ACCEPTED BY:

Grantee:

KING COUNTY

_____

By: Mark Isaacson, Director, Wastewater Treatment Division

Dated: 8-4-17

APPROVED AS TO FORM:

_____

By: Verna Bromley, Deputy Prosecuting Attorney

Dated: 8/2/17

EXHIBIT A

LICENSE AGREEMENT AREA (Biosolids Pad)

Section 16 Township 29 Range 05 Quarter NE – NE ¼ TGW NW ¼ SE ¼ & SW ¼ SE ¼ & TGW THAT PTN GOVT LOTS 1 & 4 IN NW ¼ LY E OF SR 1 & TGW TH PTN GOVT LOTS 8 & 11 IN SW ¼ LY E OF SR 1 & TGW GOVT LOTS 6 & 12 IN SE 1/4

EXHIBIT B

Biosolids Temporary Staging Plan

A. The City has designated an area on its Biosolids Pad approximately 60 feet by 200 feet as the area for use by KING COUNTY. This area is outlined on three sides with ecology blocks, two blocks high interlocked, plus additional rows in the middle to divide the area into four sections and to temporarily contain the KING COUNTY biosolids. This area is large enough to temporarily stage 70 truckloads (approximately 2,000 cubic yards). Without the written consent of the City's Biosolids Program Manager, KING COUNTY may not use any other part of the Biosolids Pad.

B. The source of the biosolids is KING COUNTY's wastewater treatment plants. KING COUNTY will cause all biosolids subject to this License Agreement to meet all Federal and State regulations for a Class B biosolids as defined in 40 CFR part 503 and WAC 173-308. KING COUNTY will cause all such biosolids to be at least 20% total solids. KING COUNTY may not under this License Agreement unload, temporarily stage, reload, or haul biosolids that do not comply with this Section B of Exhibit B.

C. KING COUNTY will not allow any biosolids to remain on the Biosolids Pad for more than 30 days, unless otherwise approved by the City.

D. KING COUNTY will utilize a dump truck and trailer combination to deliver the biosolids to the Biosolids Pad for temporary storage. KING COUNTY will then load truck and trailer units to transport the biosolids to KING COUNTY's existing end-use sites for beneficial reuse.

E. Before leaving the Biosolids Pad, KING COUNTY will clean all trucks and trailers of all biosolids that may adhere to such vehicles during loading and unloading operations. It is KING COUNTY's sole responsibility to promptly clean up any biosolids that are deposited on any roadways entering or leaving the Biosolids Pad as a result of KING COUNTY's activities.

F. KING COUNTY is solely responsible for contacting the Snohomish County Public Works Department, or other applicable agency, regarding any haul routes to verify constraints or restrictions that might apply and complying with all applicable regulations.

G. KING COUNTY will provide all equipment and personnel necessary to perform this task in a safe, reliable, and legally compliant manner.

H. KING COUNTY will coordinate all its activities with the City's Biosolids Program Manager or other City Staff as designated by the City's Biosolids Program Manager for use of the Biosolids Pad. The City will make all reasonable efforts to minimize interference from other construction activities.

I. KING COUNTY must obtain formal written approval of License Agreement from the Department of Ecology Biosolids Coordinator for the Northwest Region prior to any delivery of biosolids to the Biosolids Pad. KING COUNTY will deliver a copy of such written approval to the City's Biosolids Program Manager prior to any delivery of biosolids to the Biosolids Pad.

J. In the event nuisance odors are generated, which determination will be made at the City's Biosolids Program Manager's sole discretion, KING COUNTY shall cap the stockpiled biosolids with a 2–3 inch layer of material (sand or ash) capable of minimizing nuisance odors. The cap material so used will then be deemed part of the biosolids that must be hauled off-site by KING COUNTY. If the City's Biosolids Program Manager determines in his sole discretion that the cap is insufficient to minimize odors, KING COUNTY shall haul offsite the biosolids causing the odors within 10 days after receiving notice from the City's Biosolids Program Manager.

K. Within 30 days of the expiration or termination of this License Agreement, the City's Biosolids Program Manager or designee will confirm by a visual inspection that KING COUNTY has substantially removed all materials (including biosolids) KING COUNTY deposited on City Property under this License Agreement and that cleanup is satisfactory, *i.e.,* the pad surface has been restored to its original condition. The City's Biosolids Program Manager will notify KING COUNTY in writing of the results of this inspection. If further action is necessary, the City's Biosolids Program Manager will notify KING COUNTY of the time frame for further removal and clean up. If KING COUNTY fails to take further action within the timeframe specified, or provide adequate cause as to why such further action cannot be accomplished within the timeframe specified, the City will take the necessary action to restore the site to its original condition through any means the City deems necessary. All costs associated with these activities will be paid by KING COUNTY.

L. KING COUNTY is responsible for any damage to any City equipment, appurtenance, or property caused by its activities at the site and shall schedule and complete repairs as soon as possible, at its expense. KING COUNTY will submit a repair schedule to the City's Biosolids Program Manager within 72 hours from the time damage occurred or is initially noted by KING COUNTY or City personnel. Any repair work must be pursuant to plans acceptable to the City and must be accomplished with parts, materials, and labor approved by City personnel. Upon completion of any necessary repairs, KING COUNTY will submit a written statement verifying that the repair work has been completed according to the approved repair schedule. If the repair work is not acceptable, the City's Biosolids Program Manager may have the repair work performed by City personnel or another private entity. All costs for this repair work will be paid by KING COUNTY.