

LICENSE AGREEMENT FOR PRIVATE STORMWATER FACILITIES

This LICENSE AGREEMENT FOR PRIVATE STORMWATER FACILITIES (“License Agreement”) is made this ___ day of _____, 20___, by and between the CITY OF LYNDEN, a Washington municipal corporation (“City”) and AMERICOLD LOGISTICS, LLC, a foreign limited liability company (“Americold”). City and Americold may be referred to herein individually as “Party” or collectively as “Parties”.

RECITALS

WHEREAS, City holds an exclusive perpetual public right of way easement over the 2nd Street public right-of-way (“2nd Street ROW”) adjacent to Americold’s facility located at 406 2nd Street, Lynden, Washington 98264 (“Americold Property”); and

WHEREAS, Americold, as a requirement of a United States Environmental Protection Agency (“EPA”) Administrative Order on Consent to treat stormwater runoff to meet Industrial Stormwater General Permit benchmarks, intends to construct and operate private stormwater treatment facilities (“Stormwater Facilities” or “Improvements”) adjacent to the Americold Property, on and within the 2nd Street ROW; and

WHEREAS, it is the purpose of this License Agreement to allow Americold to construct, operate and maintain said Stormwater Facilities on and within the 2nd Street ROW; and

WHEREAS, the foregoing recitals are a material part of this License Agreement.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. Grant of License. City hereby grants to Americold a nonexclusive license (“License”) for the construction, installation, operation, periodic maintenance, repair, and replacement of Stormwater Facilities, generally including catch basins, stormwater pipes, connections to existing cleanouts, perkfilter vaults, and biochar totes with protective bollards.
2. License Area. The location of the license area (“License Area”) and the precise Improvements to be installed by Americold are depicted on **Exhibit A**. The License Area is legally described on **Exhibit B**. Both of the aforementioned exhibits are attached hereto and hereby incorporated herein by reference.

3. Americold's Rights (Scope of License). Americold shall, by its employees, contractors, and other agents and assigns, have the right to enter the License Area perform all necessary tasks related to the purpose of this License Agreement, including the construction, installation, operation, periodic maintenance and repair of the Stormwater Facilities. However, prior to any such entry into the License Area, Americold shall provide the City with not less than seven (7) days prior written notice outlining the purpose of its entry and estimated time for completion of work therein, except in the event of a *bona fide* emergency, in which case Americold shall provide the City with such notice as soon as feasible.

4. Order and Permit Compliance. Americold shall at all times fully comply with the EPA Administrative Order on Consent and any related permits or orders from the EPA or Washington State Department of Ecology. Failure to comply shall be a material breach of this License Agreement and shall constitute cause for termination under Section 7(b) below.

5. Restoration. Americold shall take care not to damage the License Area and, in the event Americold damages the License Area, it shall restore, at its sole expense, the License Area to its original condition.

6. Notice. All notices required under this License Agreement shall be delivered to:

- a. Designated Notice Agents:

| | |
|----------------------------|-------------------|
| City: | Americold: |
| Public Works Director | _____ |
| Public Works Department | _____ |
| 300 4 th Street | _____ |
| Lynden, WA 98264 | _____ |

- b. Notice may be made by United States First Class Mail, postage prepaid, addressed to the Party at issue and shall be considered given and delivered on the business day following the date the notice was properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

7. Termination.

- a. Without Cause. City shall have the right to terminate this License Agreement and revoke this License at any time in its sole discretion by providing not less than one hundred eighty (180) days' prior written notice to Americold.

- b. With Cause. In the event of a material breach of any provision herein, including but not limited to those described in Sections 4 and 11, the City may

summarily terminate this License Agreement by providing thirty (30) days' prior written notice thereof, provided that, in the event Americold cures the breach to the City's satisfaction within twenty-one (21) days of said notice, such termination shall not become effective.

8. Removal of Improvements. Americold shall, at Americold's sole expense, remove all Improvements located within the License Area as City demands within thirty (30) days' following termination; provided that, in the event of an emergency, City may immediately remove and possibly damage or destroy any Improvements located within the License Area without prior notice to Americold. Outside of emergency events and not in connection with termination, Americold shall complete the aforementioned removal of all Improvements within one hundred eighty (180) days after receiving written notice from City requesting same. Americold shall have no right to compensation arising from any such removal, damage or destruction of Improvements by City.
9. City's Right to Remove Improvements Without Liability. In non-emergency situations, if Americold fails to remove any Improvements within the License Area as City demands pursuant to Section 7 above, or in any emergency situation, City may remove and possibly damage or destroy any Improvements in order to exercise its rights to and use of the License Area and Americold shall have no right to compensation arising from any such removal, damage or destruction of Americold's Improvements by City.
10. Repair or Replacement of Improvements. It shall be the sole responsibility of Americold to repair or replace any Improvements following removal, damage or destruction resulting from City's exercise of its rights under this License Agreement, or from any other cause including flood, fire, earthquake, natural disaster, civil unrest, or vandalism. Under no circumstances shall City be responsible for replacement or repair costs associated with the removal, damage or destruction of any Improvements located within the License Area resulting from any cause, even if such replacement or repair costs are attributable to the negligence of City, its officers, principals, agents or employees.
11. Discharge of Pollutants or Prohibited or Illegal Discharges. Americold shall be liable to the City for any and all fines or penalties assessed by DOE or any other state or federal agency to the City under its municipal stormwater NPDES discharge permit as a result of Americold's discharge of any pollutant or prohibited or illicit discharge. Americold shall also be liable to the City for the necessary expenses incurred by the City in carrying out any pollutant abatement procedures, including the collection, removal, containment, treatment or disposal of such materials in the event Americold fails to immediately collect, remove, contain, or treat such materials as directed by the City. Any discharge of pollutants or prohibited or illegal discharges or

failure to abate such discharges shall be a material breach of this license agreement and shall be cause for termination under Section 7(b) above.

12. Obligations Run with the Land. This License Agreement shall constitute a covenant running with the land, and shall be binding on the undersigned and all successors, assignees, devisees, or transferees of the Parties and shall in all respects attach to the License Area legally described in this License Agreement.
13. Indemnification. To the extent permissible by law, Americold shall indemnify, defend and hold City, its officers, principals, agents and employees harmless from any liability whatsoever for any damages or injuries to persons or property arising in relation to Americold's acts or omissions—including the acts or omissions of its officers, principals, agents, employees, guests, invitees, licensees, contractors or subcontractors—in the exercise of its rights under this License, whether or not such damages or injuries be caused by the negligence of Americold; provided, however, that Americold's indemnification and hold harmless obligation shall be proportionally reduced by any negligent act, omission, or default on the part of City and its officers, principals, agents and employees; provided also that if any damages or injuries to persons or property shall arise in relation to this License Agreement and are caused by or result from the concurrent negligence of Americold—including its officers, principals, agents, employees, guests, invitees, licensees, contractors or subcontractors—and of City—including its officers, principals, agents and employees—then Americold's indemnification and hold harmless obligation shall apply only to the extent of the negligence of Americold, its officers, principals, agents, employees, guests, invitees, licensees, contractors or subcontractors. Americold specifically assumes potential liability for actions brought by Americold's own employees against City and for that purpose Americold specifically waives any immunity under the workers compensation act, RCW Title 51. By executing this License Agreement, Americold recognizes and confirms that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.
14. Insurance. Americold shall maintain, at its own expense and for the benefit of itself and City, comprehensive general liability insurance protecting against liability for property damage or loss and against liability for personal injury or death arising from acts or omissions of Americold, its officers, principals, agents, employees, guests, invitees, licensees, contractors or subcontractors, and said coverage shall be placed with a financially strong insurance carrier. Such policy or policies shall name City as an additional insured and shall contain a provision whereby City must receive at least thirty (30) days' prior written notice of any cancellation or reduction in Americold's insurance coverage. In addition, should Americold be notified or have reason to expect a reduction or cancellation action by its insurance company, Americold will provide City with at least thirty (30) days' prior written notice. Upon ten (10) days' mutual execution of this License Agreement, Americold shall deliver to City

certificates evidencing the existence of the insurance coverage required herein. Any reduction or cancellation in the insurance coverage required herein, or any failure to provide proof of the required insurance or to timely provide the notice required herein shall constitute a material breach of this License Agreement and shall be cause for termination of this License Agreement.

The minimum limits of insurance shall be:

- a. General Liability - \$2,000,000.00 combined single limit per occurrence and for those policies with aggregate limits, a \$2,000,000.00 aggregate limit;
- b. Automobile Liability - \$2,000,000.00 combined single limit per accident for bodily injury and property damage; and
- c. Workers' Compensation – statutory requirements of Washington State and Employer's Liability or Stop Gap Coverage in the amount of \$2,000,000.00 per accident, employee or in the aggregate.

15. Recording. Americold may record this License Agreement and any subsequent document amending or terminating this License Agreement at its option. Americold shall pay all costs of recording.
16. Severability. Should any provision of this License Agreement be found to be void or otherwise unenforceable, all other provisions shall remain enforceable and binding.
17. Governing Law and Venue. This License Agreement shall be construed under the laws of the State of Washington. The venue of any legal action brought under the terms of this License Agreement shall be in the Superior Court for Whatcom County, State of Washington.
18. Expenses and Attorneys' Fees. The prevailing Party in any action brought to enforce any terms and conditions of this License Agreement shall be entitled to the recovery of their reasonable attorney's fees, costs and expenses.
19. No Third-Party Beneficiary. No right, privilege, or immunity of any Party under this License Agreement shall inure to the benefit of any third party, nor shall any third party be a beneficiary of any of the provisions of this License Agreement, except as may be specifically provided herein.
20. Nonwaiver of Breach. Failure of either Party at any time to require performance of any provision of this License Agreement shall not limit such Party's right to enforce such provision. Waiver of any breach of any provision of this License Agreement does not constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

- 21. Entire Agreement. This License Agreement constitutes the entire agreement between the Parties as to the matters contained herein. No oral or written statements made by either Party prior to or following entry of this License Agreement shall be considered a part of this License Agreement unless expressly incorporated herein in writing.
- 22. Modification. This License Agreement may not be modified or amended except by the written agreement of the Parties.
- 23. Counterparts. This License Agreement may be executed in counterparts and each shall be deemed an original, but all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties have executed this License Agreement on the day and year first above written.

AMERICOLD:

CITY:

 By: _____
 Its: _____
 STATE OF _____)
) ss.
 COUNTY OF _____)

 By: Scott Korthuis
 Its: Mayor, City of Lynden

On this ____ day of _____, 20__, before me a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____, the _____ of **AMERICOLD LOGISTICS, LLC**, a foreign limited liability company, who acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said company.

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

 Notary Public in and for the State of _____
 Residing at: _____
 My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

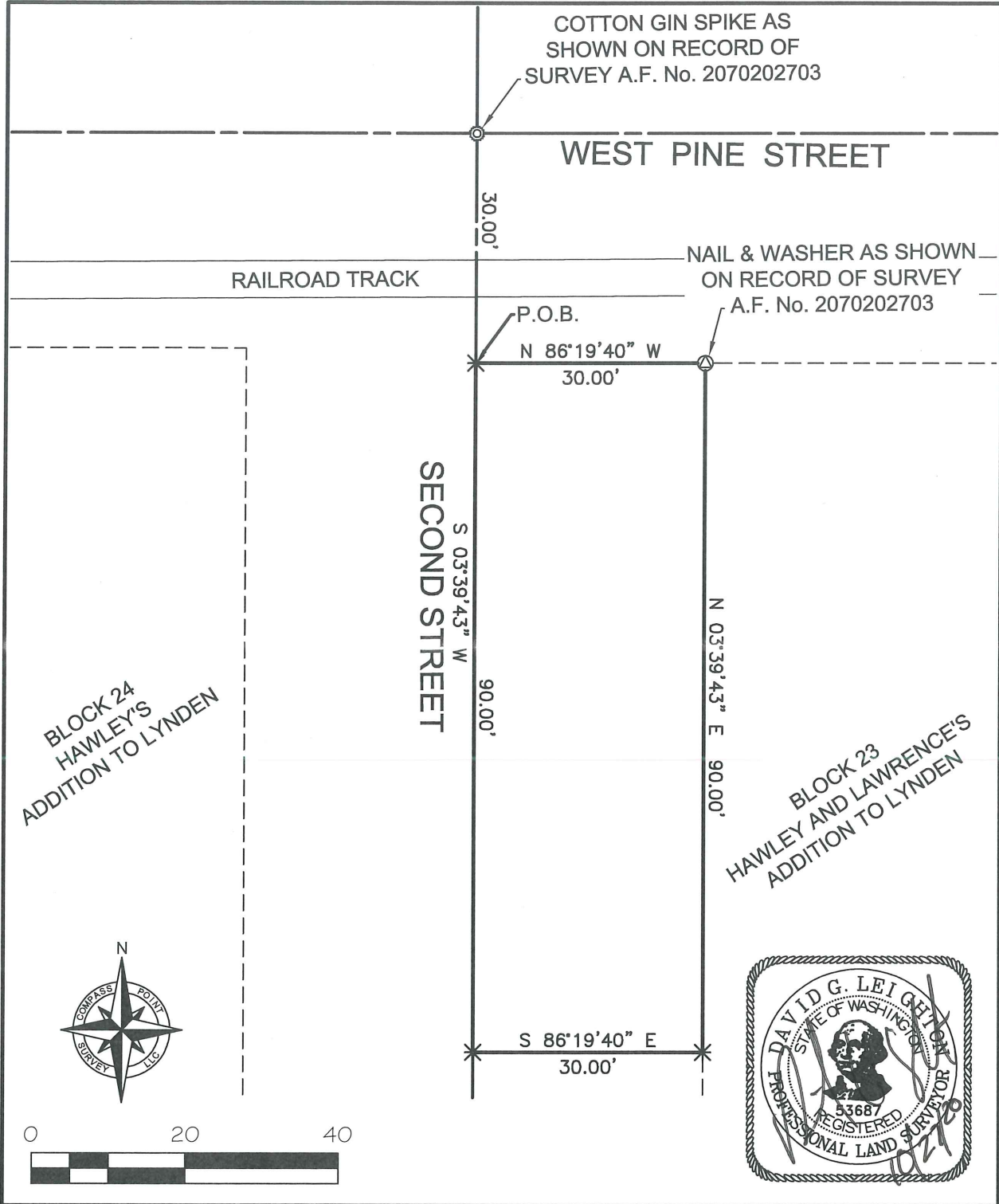
On this ____ day of _____, 20__, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, the ____ of the **CITY OF LYNDEN**, a Washington municipal corporation, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

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

Notary Public in and for the State of Washington
Residing at: _____
My commission expires: _____

EXHIBIT A

Depiction of License Area



| |
|----------------|
| DRAWN BY: RL |
| CHECKED BY: DL |
| DATE: 10/16/20 |
| REV: 10/22/20 |

EXHIBIT _____ MAP
 WITHIN THE NW 1/4, NE 1/4, SECTION 20,
 TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.
 WHATCOM COUNTY, WASHINGTON

COMPASS POINT SURVEY, LLC

523 FRONT STREET, LYNDEN, WA 98264
 PH. 360-354-8320 FAX. 360-354-8321

EXHIBIT B

STORM DRAIN LONG-TERM LICENSE DESCRIPTION WITHIN THE RIGHT-OF-WAY OF 2nd STREET

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A COTTONGIN SPIKE AND WASHER MARKED "COMPASS POINT LS32430" WHICH MARKS THE CENTERLINE INTERSECTION OF WEST PINE STREET AND SECOND STREET AS SHOWN ON RECORD OF SURVEY FILED UNDER WHATCOM COUNTY AIDITOR'S FILE NUMBER 2070202703; THENCE ALONG SAID CENTERLINE OF SECOND STREET SOUTH 03°39'43" WEST, 30.00 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE CONTUNING ALONG SAID CENTERLINE SOUTH 03°39'43" WEST, 90.00 FEET; THENCE LEAVING SAID CENTERLINE, SOUTH 86°19'40" EAST, 30.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF SECOND STREET; THENCE COINCIDENT WITH SAID RIGHT-OF-LINE, NORTH 03°39'43" EAST, 90.00 FEET TO A NAIL AND WASHER MARKED "LS 32430", SAID NAIL AND WASHER MARKS THE NORTHWEST BLOCK CORNER OF BLOCK 23, HAWLEY AND LAWRENCE'S ADDITION TO LYNDEN AS SHOWN ON SAID RECORD OF SURVEY; THENCE NORTH 86°19'40" WEST, 30.00 FEET TO THE **TRUE POINT OF BEGINNING**.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

Prepared on 10/14/20.

Revised on 10/22/20

Revised on 10/27/20

