

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTURCTION EASEMENT AGREEMENT ("**Agreement**") between the CITY OF OREGON CITY, an Oregon municipal corporation ("**Grantor**") and KIEWIT INFRASTRUCTURE WEST CO., a Delaware corporation ("**Grantee**") as of June ___, 2022 (the "**Effective Date**"). Grantor and Grantee are each referred to herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Grantor is the owner of the real property located at 1701 Clackamette Drive, Oregon City, Oregon 97045 and commonly referred to as Sportcraft Landing ("**Grantor's Property**").

B. Grantee is a contractor working on the 1-205 Bridge expansion project (the "**Project**"). In connection with the Project, Grantee has requested a temporary and exclusive construction easement over that portion of Grantor's Property depicted in Exhibit A attached hereto and by this reference incorporated herein (the "**Easement Area**"). The Easement Area is the area within the blue dashed area depicted in Exhibit A.

C Grantor is willing to grant the easement for the Easement Area on the terms set forth herein.

NOW, THEREFORE, based upon the foregoing Recitals and the mutual covenants hereinafter set forth, Grantor and Grantee agree as follows:

GRANT AND AGREEMENT

1. **Grant of Easement.** Grantor hereby grants an exclusive easement over the Easement Area during the term set forth in Section 3 below for the construction of a crane trestle (the "**Permitted Use**") and for no other purposes. Grantor additionally grants to Grantee a nonexclusive right of ingress and egress on Grantor's access way on Clackamette Drive (the "**Drive Access**") for vehicular access to the Easement Area in connection with the Permitted Use. At no time shall Grantee block or otherwise interrupt the Drive Access to and from Sportcraft Landing.

2. **Use of the Easement Area; Restoration.** Grantee shall use the Easement Area in a safe manner, complying with all applicable laws, keeping it in neat and good condition and minimizing dust, noise and other disruptive conditions in connection with Grantee's use of the Easement Area. Following completion of crane trestle, but in all events prior to the expiration of the term sent forth in Section 3, Grantee shall restore the Easement Area to substantially the same condition as existed prior to Grantee's entry under this Agreement. Grantee acknowledges that the Easement Area is a part Sportcraft Landing and that Sportcraft Landing provides access to: (i) the general public to the Willamette River via boat ramp, (ii) the privately operated Sportcraft marina, (iii) the Clackamas County Sheriff's boat patrol facility, and (iv) eNRG Kayaking (the

"Existing Uses"). Grantee and its agents shall not park any vehicles outside of the Easement Area. Grantee shall: (i) provide flaggers in connection with its deliveries of materials and equipment to the Easement Area so as to avoid conflicts with the Existing Uses and to facilitate safe operations and (ii) abide by such other safety and operational requirements that Grantor may reasonably require from time to time. All deliveries of materials and equipment to and from the Easement Area shall occur only between the hours of 9:00 pm and 6:00 am.

3. **Term.** Grantee's right to use the Easement Area shall commence July 11, 2022 and terminate on August 19, 2022. Grantee's obligations hereunder, including but not limited to those under Section 7, shall survive the termination of Grantee's rights to use of the Easement Area, and shall terminate upon Grantee's satisfaction of all of its obligations imposed by this Agreement and the expiration of all applicable statutory time periods during which a cause of action could be filed against Grantee related in any way to Grantee's use of the Easement Area.

4. **Compensation.** In consideration of the rights granted to Grantee herein, Grantee shall: (i) pay Grantor \$15,000.00 contemporaneously with the execution of this Agreement and (ii) at its sole cost and expense (including the payment of all applicable permit fees) repave the area designated as the "Repavement Area" on Exhibit B hereto in accordance with the standards set forth in Exhibit C including striping such area with the existing parking spaces (the "**Repavement Obligation**"). Grantee shall perform the Repavement Obligation in the month of October and prior to October 31, 2023 (such that Grantee shall perform the Repavement Obligation between October 1 – 31, 2022 or October 1 – 31, 2023, and for avoidance of doubt, shall complete the Repavement Obligation on or before October 31, 2023. Notwithstanding the above, should Grantor determine in its sole and absolute discretion that there is damage or wear to the Repavement Area resulting from Grantee's use that needs to be immediately repaired, Grantee shall promptly repair such damage or wear. Grantee shall have a license to access Grantor's Property, subject to all the terms and condition of this Agreement, to perform the Repavement Obligation. Prior to commencing the Repavement Obligation, Grantee shall consult with Grantor such that Grantor can ensure Grantee's compliance with the terms of this Agreement.

5. **Compliance with Laws.** Grantee shall comply with all federal, state, county, city and other applicable governmental laws, statutes, codes, ordinances and regulations in connection with its use of the Easement Area and its Repavement Obligation. Grantee shall not use, generate, manufacture, store, treat, release or dispose of any hazardous material on the Easement Area and shall indemnify, defend and hold harmless Grantor from and against any and all of Grantor's losses, liabilities, damages, injuries, costs, expenses and claims arising out of Grantee's failure to comply with its obligations under this Section 5. Provided, however, Grantee shall have no liability to Grantor for any hazardous materials present on the Easement Area prior to Grantee's use of the Easement Area nor any hazardous materials used, generated, manufactured, stored, treated, released or disposed of on the Easement Area by Grantor.

6. **Insurance.** Prior to the commencement of the any work by Grantee and through the completion of the work by Grantee, Grantee shall maintain or cause its general contractor to maintain the following insurance coverages, issued by insurance companies with an A. M. Best

Company rating of at least A-/VII and naming Grantor as an additional insured: (a) commercial general liability insurance, on an occurrence and "per-project" basis, with limits of at least \$3,000,000 per occurrence and \$5,000,000 in the aggregate; (b) business automobile liability coverage, on an occurrence basis, covering liability arising out of the operation of all owned, rented, hired and non-owned vehicles, with limits of at least \$1,000,000 per occurrence and \$1,000,000 in the aggregate; and (c) umbrella liability coverage (on an occurrence basis), with a limit of at least \$10,000,000, and written on an umbrella basis in excess over and no less broad than the other liability coverages referenced above. Grantee shall provide Grantor a certificate of insurance evidencing the coverages required above before any work begins.

7. **Indemnity.** Grantee shall indemnify and hold Grantor harmless from and against any and all damages and claims arising from the use of the Easement Area and the Drive Access by Grantee, together with all costs, expenses and liabilities incurred in connection with such damage or claim (including any action or proceeding brought thereon), including, without limitation, all attorney fees and expenses at trial and upon appeal except to the extent the same are solely caused by Grantor's gross negligence or willful misconduct.

8. **General and Miscellaneous Provisions.**

(a) **Attorney Fees.** If legal action is commenced in connection with this Agreement, the prevailing Party in such action shall be entitled to recover its reasonable attorney fees and costs incurred in the trial court and any appeal therefrom. The term "**action**" shall be deemed to include action commenced in the Bankruptcy Court of the United States and any other court of general or limited jurisdiction. The reference to "**costs**" includes, but is not limited to, deposition costs (discovery and otherwise), witness fees (expert and otherwise), out-of-pocket costs, title search and report expenses, survey costs, surety bonds and any other reasonable expenses.

(b) **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail addressed as follows:

TO GRANTOR: **City of Oregon City**
625 Center St.
Oregon City, Oregon 97045
Attention: Kendall Reid

TO GRANTEE: **Kiewit Infrastructure Co.**
2200 Columbia House Blvd,
Vancouver, WA 98661
Attention: John Lozner

(c) **Nonwaiver.** Failure by either Party at any time to require performance by the other Party of any of the provisions hereof shall in no way affect the Party's rights hereunder

to enforce the same, nor shall any waiver by a Party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

(d) **Amendments.** This Agreement may be amended, modified or extended without new consideration but only by written instrument executed by both Parties.

(e) **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the state of Oregon.

(f) **Severability.** If any portion of this Agreement shall be invalid or unenforceable to any extent, the validity of the remaining provisions shall not be affected thereby.

(g) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Execution of this Agreement by electronic means intended to preserve the original pictorial appearance of this Agreement or by industry standard electronic signature software shall have the same legal force and effect as execution by original signatures.

(Signatures on following page.)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

GRANTOR:

CITY OF OREGON CITY

By: _____

Print Name: _____

Print Title: _____

GRANTEE:

KIEWIT INFRASTRUCTURE WEST CO.

By: _____

Print Name: _____

Print Title: _____