

**DEPARTMENT OF THE ARMY LICENSE
LOCATED AT
U.S. GOVERNMENT MOORINGS FACILITY
MULTNOMAH COUNTY, OREGON**

THE SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, under authority of the general administrative authority of the Secretary, hereby grants to **Northwest Natural Gas Company** hereinafter referred to as the grantee, a license for access, soil sampling, and topographic survey, and other related purposes. This access is in order to conduct the investigative response actions required by the Administrative Settlement Agreement and Order on Consent for Removal Action, Amendment No. 2 for Remedial Design at B1 Navigation Channel Project Area and U.S. Moorings Project Area (ASAOC) dated March 4, 2020 between the grantee and the U.S. Environmental Protection Agency (EPA). Access is granted over, across, in and upon lands of the United States (including submerged and submersible lands in which the United States may have or assert an interest), as identified on **EXHIBIT “A,”** according to the sample locations shown in **EXHIBIT “A-1,”** and the EPA approved Pre-Design Investigation (PDI) Work Plan enclosed as **EXHIBIT “B,”** as may hereafter be modified as directed by EPA, attached hereto and made a part hereof, hereinafter referred to as the premises. To the extent that NW Natural’s investigative response actions under this license require oversight by EPA, the Oregon Department of Environmental Quality (DEQ), or their agents, then this license also authorizes EPA, DEQ, or their agents, in their regulatory capacities, to accompany NW Natural over these premises.

THIS LICENSE is granted subject to the following conditions.

1. TERM

This license is granted for a term of 12 months, beginning November 2, 2020 and ending November 1, 2021, but revocable at will by the Secretary.

2. CONSIDERATION

The consideration for this license shall be grantee’s temporary use of the premises for the benefit of the general public, as described in the letter from EPA dated September 22, 2020, in accordance with the terms and conditions hereinafter set forth and the ASAOC.

3. NOTICES

Except as provided in paragraph 21.a., all correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to Robert Wyatt, NW Natural, Director, Legacy Environmental Program, 250 SW Taylor, Portland, Oregon 97204 and, if to the United States, to the District Engineer, Attention: Chief, Real Estate

Division, Portland District, Attn: Real Estate Division, P.O. Box 2946, Portland, Oregon 97208-2946, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include any duly authorized representatives.

5. SUPERVISION BY THE DISTRICT ENGINEER

The use and occupancy of the premises shall be subject to the general supervision and approval of the District Engineer, Portland District, hereinafter referred to as said officer, and subject to such rules and regulations as may be prescribed from time to time by said officer. Additional supervision for activities under this license and under EPA-approved workplans is addressed further in clause 21, Special Condition (a).

6. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITIONAL USE BY GRANTEE

The exercise of the privileges herein granted shall be:

- a. without cost or expense to the United States;
- b. subject to the right of the United States to improve, use or maintain the premises.
- c. subject to other outgrants of the United States on the premises.
- d. personal to the grantee, and this license, or any interest therein, may not be transferred or assigned.

8. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the United States.

9. COST OF UTILITIES

The grantee shall pay the cost, as determined by the officer having immediate supervision over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the grantee, including the grantee's proportionate share of the cost of operation

and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

10. PROTECTION OF PROPERTY

The grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the grantee. The grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the grantee under this license, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

11. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons or property which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the grantee, or for damages to the property or injuries to the person of the grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them. The grantee shall hold the United States, its employees, officers, and agents, free from liability and save them harmless from any and all liability claims, demands, causes of action, or suits, arising out of, or resulting from, the grantee's access to, use of, and activities on the premises, not including damages due to the fault or negligence of the United States or its contractors.

12. RESTORATION

a. On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove the property of the grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate. In either event, if the grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

b. Changes or damage to existing paved surfaces or armored shorelines will require restoration to existing paved or armored condition as directed by the said officer.

13. NON-DISCRIMINATION

a. The grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin or religion.

b. The grantee, by acceptance of this license, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 C.F.R. Part 195) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the grantee, its agents, successors, transferees, and assignees.

14. TERMINATION

This license may be terminated by the grantee at any time by giving the District Engineer at least ten (10) days notice in writing provided that no refund by the United States of any consideration previously paid shall be made and provided further, that in the event that said notice is not given at least ten (10) days prior to the rental due date, the grantee shall be required to pay the consideration for the period shown in the Condition on **CONSIDERATION**.

15. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground, and water. The grantee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the EPA, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The storage, treatment, or disposal of any toxic or hazardous materials within the premises is specifically prohibited in accordance with 10 U.S.C. § 2692. Such regulations, conditions, or instructions in effect or prescribed by said EPA, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance, or violate any law, regulation, ordinance, permit, or requirement.

b. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the grantee's activities, the grantee shall be liable to restore the damaged resources and take any other actions required as a result of such damage, including assessment or investigation to determine if damage has occurred.

c. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

16. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

17. DISCLAIMER

This license is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S.C. § 403), and Section 404 of the Clean Water Act (33 U.S.C. § 1344).

18. EXECUTIVE ORDER 13658

It has been determined this license is not subject to Executive Order 13658 or the regulations issued by the Secretary of Labor in 29 C.F.R. Part 10 pursuant to the Executive Order.

19. EXECUTIVE ORDER 13658 HOLD HARMLESS AND INDEMNIFICATION

If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this license, that an erroneous determination regarding the applicability of Executive Order 13658 was made, grantee, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes grantee releasing any claim or entitlement it would otherwise have to an equitable adjustment to the license, and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

20. EXECUTIVE ORDER 13706

It has been determined this license is not subject to Executive Order 13706 or the regulations issued by the Secretary of Labor in 29 C.F.R. Part 13 pursuant to the Executive Order.

21. SPECIAL CONDITIONS

a. In addition to the requirement of section 5 (Supervision by the District Engineer), the grantee shall adhere to the following notification procedure prior to entry on the premises. Grantee shall provide notice by electronic mail or telephone no less than fourteen (14) calendar days before entry into the premises to commence any phase of the work, including after a period of one month or more without entry onto the premises. Access pursuant to this License will be limited to reasonable times only, and shall not unreasonably interfere with or otherwise limit any Department of the Army activity. All access to the site will be coordinated with the U.S. Government Moorings Environmental Compliance Coordinator, Art Leskovich at (503) 808-5407 or Arthur.F.Leskovich@usace.army.mil.

b. On-Site Escort: There shall be a U.S. Army Corps of Engineers, Environmental Compliance Coordinator (ECC) escort accompanying the grantee on-site. The ECC may at any time observe and document any and all work by the grantee on the premises and may collect, subject to available sample volume after completing the EPA-approved sample collection, split samples of any environmental media recovered on the premises.

c. Workplan Coordination, Modified Work, and Additional Work:

- i. Grantee provided the Revised Final Pre-Remedial Design Investigation Work Plan which, excepting the proposed data replacement approach contained in Appendix E, EPA approved on September 8, 2020, to the Department of Army by email on September 8, 2020.
- ii. Within 7 days of the effective date of this license, said officer shall meet with Grantee at the premises and identify any concerns with the work. As necessary, said officer, EPA, and the Grantee shall meet to resolve any such concerns. Within 30 days of the effective date, EPA will make a final determination under the ASAOC as to the manner in which the work will be performed. However, should said officer's concerns remain unresolved, he reserves his right under paragraph 21.h. to temporarily withdraw access until such concerns are resolved.
- iii. Grantee shall advise said officer of any proposed field modifications, as may be necessary due to conditions encountered in the field, contemporaneously with its notification to EPA of such proposed modifications. Said officer shall communicate any concerns with the modifications to EPA and Grantee within 24 hours of notification. EPA will

make a final determination under the ASAOC on necessary field modifications. However, should said officer's concerns remain unresolved, he reserves his right under paragraph 21.h. to temporarily withdraw access until such concerns are resolved.

- iv. To the extent that EPA requires, or Grantee proposes, additional work on the premises, Grantee shall provide proposed work plans to said officer at the time Grantee submits such proposed work plans to EPA. EPA will advise said officer of a timeframe for providing comments to EPA and Grantee on the additional work. EPA will make a final determination under the ASAOC on the additional work. However, should said officer's concerns remain unresolved, he reserves his right under paragraph 21.h. to temporarily withdraw access until such concerns are resolved.

d. Without limiting sections 11 (Indemnity), 15 (Environmental Protection), or 16 (Historic Preservation), if grantee exacerbates the condition or circumstances of any pre-existing hazardous substances or pollutants or contaminants present on the premises during the license term, grantee shall perform all necessary environmental response actions as to such exacerbation. Grantee shall be responsible for all fines and penalties assessed as a result of actions by grantee or to the extent exacerbated by grantee (including grantee's response actions) at any time during and after the license term.

e. Without limiting sections 11 (Indemnity), 15 (Environmental Protection), or 16 (Historic Preservation), grantee shall at all times carry out its activities in such a manner as to prevent the possibility of polluting the environment. In the event that any of grantee's activities result in the release of any hazardous substance or pollutant or contaminant or other damage to any portion of the environment, grantee shall be held liable. In the event of any pollution or other damage arising as a result of grantee's action under this license to the environment, lands, or waters covered by this agreement, or any pollution or other damage arising as a result of grantee's action under this license to the environment and occurring on Federal, state, county, or private lands adjacent to the lands covered by this agreement, the burden shall be on grantee to prove that grantee's conduct under this license was not the direct or indirect source.

f. The grantee will establish a spill control plan that is subject to the review and approval of said officer and includes the procedures, instructions, and reports to be used in the event of an unforeseen spill of a substance regulated by 40 C.F.R. Parts 68, 112, 302, and 355, and/or regulated under State or Local laws and regulations as appropriate for the equipment and work that will be completed on site. Grantee will present spill control plan to the Environmental Compliance Contractor referenced in paragraph g., below, prior to engaging in work.

g. The grantee will contact the U.S. Government Moorings Environmental Compliance Coordinator, currently Art Leskowich at (503) 808-5407, immediately if a

spill of hazardous substance, pollutant or contaminant, or any other regulated substance or chemical of concern, occurs.

h. The Secretary may temporarily withdraw access to the lands described herein at any time and without notice if required for security reasons, or due to any reasonable concerns that arise from the conduct of the Grantee's activities related to safety or compliance with laws, regulations, or the Secretary's directions. Prior notice of withdrawal of access will be given to Grantee, if practicable, except in the case of actions that pose an imminent threat to safety, the environment, or national security or defense concerns.

i. The Secretary shall have the right, which endures beyond the term of this license, to review all non-privileged draft and final data and deliverables generated from sampling on the premises, as well as progress reports, supporting deliverables, field sampling plans, construction quality assurance (CQA)/quality control plan (QCP), analyses, technical memoranda, reports, and the remedial design, as well as any other similar documents related to the performance of the activities to be taken by the grantee pursuant to this license. This review shall include but is not limited to draft and final:

- (1) Sufficiency Assessment,
- (2) Pre-Design Investigation (PDI) Work Plan,
- (3) Basis of Design Report,
- (4) Remedial Design (RD) Work Plan,
- (5) Supplemental PDI,
- (6) Treatability Study (as necessary),
- (7) Preliminary, Intermediate, Pre-Final, and Final RD,
- (8) Off-site Shipments (as necessary)

The Secretary shall have access to any and all raw or non-privileged validated laboratory data, field notes, analyses, recommendations, or conclusions, related to any activities of the grantee on the premises upon request and in a reasonable period. Data will be made available in an electronic format that is commonly readable without the need for any specialized license software or hardware.

{Signature Pages Follow}

THIS LICENSE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of Army, this 5th day of November, 2020.

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DETHMAN.AMANDA.JEAN.12493
66567
Date: 2020.11.05 14:53:23 -08'00'

AMANDA J. DETHMAN
District Chief of Real Estate
Real Estate Contracting Officer

THIS LICENSE is also executed by the grantee this 3rd day of November, 2020.



Digitally signed by rjw@nwnatural.com
DN: CN=rjw@nwnatural.com
Reason: Access Agreement
Location: your signing location here
Date: 2020-11-03 09:00:13
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ROBERT J. WYATT
Director, Legacy Environmental Program
Northwest Natural Gas Company

CORPORATE CERTIFICATE

I MardiLyn Saathoff certify that I am the Sr. VP Regulatory & General Counsel of
(name) (title)

Northwest Natural Gas Company, that **ROBERT J. WYATT** who signed the foregoing instrument on behalf of the corporation was then Director, Legacy Environmental Program of Northwest Natural Gas Company. I further certify that the said officer was acting within the scope of powers delegated to this officer by the governing body of the corporation in executing said instrument.

NORTHWEST NATURAL GAS COMPANY

Date: 11/03/2020

MardiLyn Saathoff
Corporate Secretary or Appropriate Officer

Digitally signed by MardiLyn Saathoff
DN: C=US, O=NW Natural, CN=MardiLyn Saathoff,
E=rcn@nwnatural.com
Reason: I am the author of this document
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