



**202001020020**

01/02/2020 10:20 AM Pages: 1 of 12 Fees: \$114.50  
Skagit County Auditor

Recording Requested by, and  
When Recorded Return To:

Skagit County Parks & Recreation  
Attn: Mr. Brian Adams, Director  
1730 Continental Place  
Mount Vernon, WA 98273

DOCUMENT TITLE: **TEMPORARY UTILITY & ACCESS LICENSE AGREEMENT**

GRANTOR(S): **Skagit County**, a political subdivision of the State of Washington.

GRANTEE(S): **Birdsview, LLC**, a Washington limited liability company.

ASSESSOR'S TAX / PARCEL NUMBER(S): P111550 (XrefID: 350710-4-010-0100); and  
P42413 (XrefID: 350710-4-010-0000).

ABBREVIATED LEGAL DESCRIPTION: (5.6200 ac) THAT CERTAIN TRACT OF LAND IN THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 CONVEYED TO THE SEATTLE AND NORTHERN RAILWAY COMPANY BY DEED FILED IN VOLUME 40 OF DEEDS PAGE 277 UNDER AUDITORS FILE #32495 EXCEPT THE SOUTHERLY 115 FEET THEREOF; and ABANDON RW THRU SEC EXCEPT THAT CERTAIN TRACT OF LAND IN THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 CONVEYED TO THE SEATTLE AND NORTHERN RAILWAY COMPANY BY DEED FILED IN VOLUME 40 OF DEEDS AT PAGE 277 UNDER AUDITORS FILE #32495 EXCEPT THE SOUTHERLY 115 FEET THEREOF. Situate in Skagit County, State of Washington.

**TEMPORARY UTILITY & ACCESS LICENSE AGREEMENT**

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The undersigned, **Skagit County**, a political subdivision of the State of Washington ("Grantor"), for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, hereby grants to **Birdsview, LLC**, a Washington limited liability company ("Grantee"), a temporary, revocable, non-exclusive limited access and utility license (herein "Temporary License"), as provided herein. Grantor and Grantee may be individually referred to herein as a "Party", and may be collectively referred to herein as the "Parties." The terms of this Temporary License are further provided as follows:

**1. Nature and Location of License.** The Temporary License hereby granted by Grantor herein shall be a temporary, revocable, non-exclusive, limited access and utility placement agreement for the benefit of Grantee, and Grantee's tenant(s), agents, and successors, over, upon, across, through, a portion of real property located within and upon Grantor's Property, such Temporary License area as legally described on *Exhibit "A"* and as further described and depicted on *Exhibit "B"*, attached hereto and incorporated herein by this reference. The purpose of the Temporary License is to provide a partial access route for the placement of utilities (as approved in writing by the Grantor, as provided herein) and for reasonable vehicular and pedestrian ingress and egress to Grantee's Property (commonly identified as P42397), as legally described at *Exhibit "C"*, attached hereto and incorporated by reference. A legal description for the Grantor's Property (commonly described as P111550 and

P42413) is attached hereto as *Exhibit "D"*, and is hereby incorporated by reference. Except as expressly provided herein to the contrary, the Temporary License and the covenants, terms, and conditions contained herein are not perpetual in duration, and shall not run with the Grantor's Property, but shall otherwise be binding upon Grantee and Grantor and each Party's respective successor(s) for the ten (10) year term of this Temporary License, unless sooner terminated by Grantor as provided herein (and subject to Section 9.1, below). No property interest is conveyed by Grantor to Grantee pursuant to this Temporary License. This Temporary License does not provide for and does not allow Grantee to have access to or use of any other portions of Grantor's Property located outside of the Temporary License area. Grantee acknowledges and agrees that Grantee does not own, lease, or occupy any buildings and/or structures located on Grantor's Property, and further agrees that Grantee shall not access, use, or occupy any buildings and/or structures located on Grantor's Property pursuant to this Temporary License agreement.

**2. Use of Temporary License.** The Grantee (including Grantee's tenant[s], employees, agents, and contractors) shall have the right all at reasonable times to reasonably enter upon the Grantor's Property (as determined by Grantor) within the Temporary License area (as described and depicted in *Exhibit "A" and "B"*) for purposes of using the Temporary License area for the placement of utilities and for a partial access route for reasonable vehicular and pedestrian ingress and egress to Grantee's Property, subject to the terms of this Temporary License agreement. Grantee shall not have the right to exclude Grantor or third parties the Temporary License area or from the Grantor's Property (without the revocable written permission of Grantor). Grantee shall not interfere with the Grantor's use of the Grantor's Property whatsoever (including, but not limited to, Grantor's use of the property located within the Temporary License area, and the use of the property located within the Temporary License area by the general public as a non-motorized trail). Grantee accepts use of the Temporary License area on Grantor's Property "as is", without any representations or warranties from Grantor whatsoever (express or implied). The Grantee specifically recognizes and agrees that Grantor is not obligated to make, construct, operate, maintain, or repair any particular improvements or facilities at (or within the vicinity of) Grantor's Property or the Temporary License area pursuant to the terms of this Temporary License. The Grantee agrees that use of this Temporary License by Grantee shall be at the sole risk of the Grantee.

**2.1** Grantee agrees to be responsible and liable for any damages or impact to Grantor's Property arising from Grantee's use of the Temporary License (including use by Grantee's tenant[s], employees, agents, and/or contractors), and upon the request of Grantor, the Grantee shall repair and restore the Grantor's Property to a substantially similar condition as existed before Grantee entered onto the Grantor's Property for the purposes described in this Temporary License. Prior to the commencement of any work within the Temporary License area, the Grantee shall coordinate with Grantor to avoid any disturbance, impact, or damage to any facilities owned by Grantor at or within the Temporary License area (including, but not limited to, public non-motorized trail infrastructure owned and/or used by Grantor). Any work performed within the Temporary License area by Grantee shall be performed so as not to not unreasonably interfere with the free passage of pedestrian and/or non-motorized vehicle traffic therein, or with the reasonable ingress or egress to Grantor's Property. The Grantee shall be responsible and liable for ensuring that Grantee's tenant(s), agents, employees, and/or contractors fully comply with the terms of this Temporary License. The placement of any utilities by Grantee within the Temporary License area shall be done in accordance with all applicable laws, rules, regulations, and industry standards, and shall be subject to review and written approval by the Grantor (prior to the placement of any utilities).

**2.2** In the event that the Grantor performs (or contracts to have performed) work that the Grantor considers necessary (at the sole judgment and discretion of the Grantor) to repair and/or restore to a safe and/or usable condition any area, equipment, or facilities at or within Grantor's Property which are damaged or disturbed by Grantee, the Grantor shall be reimbursed by the Grantee for the actual costs and expenses incurred by the Grantor for any such repair and/or restoration work (including, but not limited to, labor, materials, supplies, use of Grantor's equipment, and Grantor's staff time); and, in addition thereto, nine percent (9%) of the total actual costs and expenses incurred by the Grantor shall be added for overhead costs for accounting, billing, and administrative services, provided that the Grantor shall submit to the Grantee a certified statement of the costs, and within thirty (30) days thereafter, Grantee shall pay to the Grantor the amount of said statement. Prior to performing such repair and/or restoration work that Grantor considers necessary, Grantor shall first provide Grantee with notice and an opportunity for Grantee to complete such repair and/or restoration work within a reasonable amount of time.

**3. Hold Harmless, Defense, & Indemnification.** The Grantee hereby unconditionally releases and forever discharges and holds harmless the Grantor (including the Grantor's elected officials, employees, volunteers, officers, and/or agents in both their official and individual capacities) from any and all past, present, and/or future claims, counterclaims, demands, judgments, debts, costs, liabilities, expenses, suits, and proceedings of any kind and nature, as arising from and/or related to the Grantee's use of the Temporary License area on Grantor's Property. The Grantee agrees to be responsible for and to assume liability for Grantee's own wrongful and/or negligent acts or omissions or those of Grantee's tenant(s), officials, officers, agents, contractors, or employees to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the Grantor harmless from any such liability. It is further provided that no liability shall attach to the Grantor by reason of entering into this Temporary License except as expressly provided herein. The terms of this section shall survive any termination of this Temporary License, and shall continue in full force and effect.

**4. Limitation of Liability.** Any party having a claim against the Grantee (arising from and/or related to Grantee's use of the Temporary License area on Grantor's Property), shall have recourse only to the extent of assets and property of the Grantee, and shall have no recourse against the Grantor, its appointed or elected officers, employees, volunteers or its/their assets or credits. The terms of this section shall survive any termination of this Temporary License, and shall continue in full force and effect.

**5. Governing Law; Venue.** This Temporary License shall be construed under the laws of the State of Washington. It is agreed by the Parties that the venue for any legal action brought under or relating to the term of this Temporary License shall be in Skagit County, State of Washington.

**6. Compliance with Laws and Permits.** Grantee shall, at Grantee's own cost, expense, and liability, obtain and comply with all applicable federal, state, and local laws, rules, and regulations, and any applicable permits and/or approvals, in using the Temporary License, and Grantee shall be solely and separately liable and responsible for any non-compliance with any applicable federal, state, and local laws, rules, regulations, permits and/or approvals.

**7. No Third Party Beneficiaries.** This Temporary License is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not

limited to, the general public, third party property owner(s) and/or tenant(s) at or in the vicinity of the Temporary License area, any other organization or entity, or any agent, contractor, subcontractor, consultant, employee, volunteer, or other representative of any Party.

**8. No Assignment.** Except for successor(s) of Grantee during the ten (10) year term of this Temporary License, this Temporary License may not be assigned, contracted, and/or transferred to any other individual, firm, company, party, and/or other entity by Grantee without the express and duly authorized prior written approval of the Grantor. Grantor may assign or transfer this Temporary License without the consent of Grantee.

**9. Other Terms.** (Modifications; Neutral Authorship; Captions & Counterparts; Entire Agreement). This Temporary License may be changed, modified, amended or waived only by subsequent written agreement, duly executed by the Parties hereto. Waiver or breach of any term or condition of this Temporary License shall not be considered a waiver of any prior or subsequent breach. In the event any term or condition of this Temporary License or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Temporary License which can be given effect without the invalid term, condition, or application. To this extent and end the terms and conditions of this Temporary License are declared severable. Each of the terms and provisions of this Temporary License have been reviewed and negotiated and represents the combined work product of the Parties hereto. No presumption or other rules of construction which would interpret the provisions of this Temporary License in favor of or against the Party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Temporary License. Grantor (Skagit County) does not represent Grantee. The Parties represent and warrant that they have fully read this Temporary License, that they understand its meaning and effect, and that they enter into this Temporary License with full knowledge of its terms. The Parties have entered into this Temporary License without duress or undue influence. The captions in this Temporary License are for convenience and reference only and do not define, limit, or describe the scope or intent of this Temporary License. This Temporary License is subject to public disclosure pursuant to applicable law (including RCW 42.56.). This Temporary License may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Temporary License agreement. This Temporary License contains all the terms and conditions mutually agreed upon by the Parties. This Temporary License supersedes any prior oral statements, discussions, and/or understandings between the Parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Temporary License shall be deemed to exist or to bind any of the Parties hereto.

**9.1** The parties recognize and agree that the Grantee's use of this Temporary License is conditioned upon and subject to Grantee's full compliance with the requirements of all applicable rail-banking law(s) and agreement(s), including, but not limited to, the National Trails Systems Act, 16 U.S.C., Section 1247(d), and Skagit County Contract Number 01775 (dated August 20, 1993). In the event that the terms of this Temporary License and the terms of the aforementioned rail-banking law(s) and agreement(s) are not consistent, the terms of the aforementioned rail-banking law(s) and agreement(s) shall prevail. Grantee recognizes and agrees that Grantee shall assume all risk associated with the possibility that the Grantor's Property (including the Temporary License area) could be converted back to railroad uses (and/or for other purposes), and Grantee agrees that the Grantor has no duty or obligation whatsoever to attempt to prevent or oppose such other potential future uses of the Temporary License area. The Grantor may immediately terminate this Temporary License upon providing

thirty (30) days written notice to Grantee (without penalty, liability, or recourse from Grantee), if the Grantor is required by court order, legislative action, and/or by other action of another governmental agency having jurisdiction over the Temporary License area, which would effectively limit, prohibit, eliminate, condition, and/or change either Party's use of the Temporary License area.

**10. Term.** This Temporary License shall become effective upon recording (as provided per Section 12., below), and shall continue for an initial term of ten (10) years, unless sooner terminated by the Grantor, as provided herein. This Temporary License agreement may be renewed by mutual agreement of the parties, by duly executed subsequent written amendment to this Temporary License agreement, to be effective upon recording with the Skagit County Auditor. The terms of Section 3., Section 4., and Section 9.1 of this Temporary License agreement shall survive any expiration or termination of this Temporary License agreement.

**11. Termination.** In the event that Grantor determines that Grantee is violating any term(s) of this Temporary License agreement (at the sole judgment and discretion of Grantor), and/or in the event that Grantor determines that the Grantee's use of the Temporary License area is unreasonably interfering with Grantor's use and enjoyment of Grantor's Property and/or Grantor's use of the Temporary License area (at the sole judgment and discretion of Grantor), the Grantor may terminate this Temporary License agreement (without penalty, liability, or recourse from Grantee), upon providing thirty (30) days' notice in writing to Grantee, either personally delivered, or mailed postage-prepaid by certified mail, return receipt requested, to the Grantee's last known address for the purposes of giving notice under this paragraph.

**12. Recording.** Upon mutual execution, this Temporary License shall be recorded with the Skagit County Auditor, and shall become effective immediately upon recording.

GRANTEE:

Birdsview, LLC, a Washington limited liability company.

By: [Signature]  
Robert Janicki, Member  
Date: 12/4/19, 2019

STATE OF WASHINGTON }  
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that Robert Janicki, as the sole member of **Birdsview, LLC**, a Washington limited liability company, is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was duly authorized execute the instrument and acknowledged it as the sole member of **Birdsview, LLC**, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes herein mentioned.

DATED this 4 day of December, 2019.

(SEAL)

[Signature]  
Notary Public  
Print name: CHELSEA JEPSON  
Residing at: Bellingham, WA  
My appointment expires: 3/20/19



DATED this 30 day of December, ~~2020~~ 2019.

BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON

~~RECUSED~~ / ABSENT

\_\_\_\_\_  
Lisa Janicki, Chair

Ron Wesen

\_\_\_\_\_  
Ron Wesen, Commissioner

Kenneth A. Dahlstedt  
\_\_\_\_\_  
Kenneth A. Dahlstedt, Commissioner

Attest:

Amber Evans  
\_\_\_\_\_  
Clerk of the Board

For contracts under \$5,000:  
Authorization per Resolution R20030146

Recommended:

B. Lu  
\_\_\_\_\_  
Department Head

\_\_\_\_\_  
County Administrator

Approved as to form:

[Signature] 12/13/19  
\_\_\_\_\_  
Civil Deputy Prosecuting Attorney

Approved as to indemnification:

[Signature] (12-17-19)  
\_\_\_\_\_  
Risk Manager

Approved as to budget:

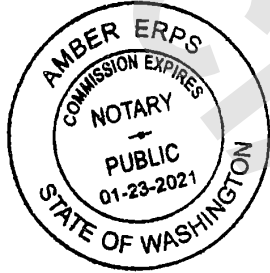
Linda Payne  
\_\_\_\_\_  
Budget & Finance Director

STATE OF WASHINGTON }  
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that ~~Lisa Janicki~~, Ron Wesen and/or Kenneth A. Dahlstedt is/are the person(s) who appeared before me, and said person(s) acknowledged that she/he/they signed this instrument, on oath stated that she/he/they was/were authorized execute the instrument and acknowledged it as Commissioner(s) of Skagit County, to be the free and voluntary act of such party for the uses and purposes herein mentioned.

DATED this 30 day of December, 2019.

(SEAL)



Amber Erps  
Notary Public  
Print name: Amber Erps  
Residing at: Mount Vernon  
My appointment expires: 01-23-2021



**EXHIBIT "A"****TEMPORARY LICENSE AREA LEGAL DESCRIPTION****LEGAL DESCRIPTION OF UTILITY EASEMENT OVER SKAGIT COUNTY PARCEL P111550  
FOR THE BENEFIT OF PARCEL P42397, BIRDSVIEW LLC.**

The following description being the centerline of a 10 foot wide utility easement for overhead and underground utilities being 5 feet either side of the following described line.

A 10 foot wide utility easement on and across that certain Tract of land in the Northeast Quarter of the Southeast Quarter of Section 10, Township 35 North, Range 7 East of the W.M., conveyed to the Seattle and Northern Railway Company by Deed filed in volume 40 of Deeds page 277 under Auditor's File #32495 EXCEPT the Southerly 115 feet thereof with the centerline described as follows:

COMMENCING in the Northeast said Tract of land conveyed to the Seattle and Northern Railway Company and also the Southeast corner of Parcel P42397, also described in the Record of Survey of Skagit County in Volume 18, of Surveys page 168, Auditor's File No. 9609110085, thence along the West Right-of-Way line of Russell Road, being South 6°18'58" East, 89.6 feet to the POINT OF BEGINNING and the centerline of said easement;  
Thence South 75°59'33" West, 278.7 feet to and existing power pole;  
Thence North 33°49'31" West, 74.2 feet to the South property line of said Parcel P42397 and the terminus of said easement centerline.

**LEGAL DESCRIPTION OF ACCESS EASEMENT OVER SKAGIT COUNTY PARCEL P111550  
FOR THE BENEFIT OF PARCEL P42397, BIRDSVIEW LLC.**

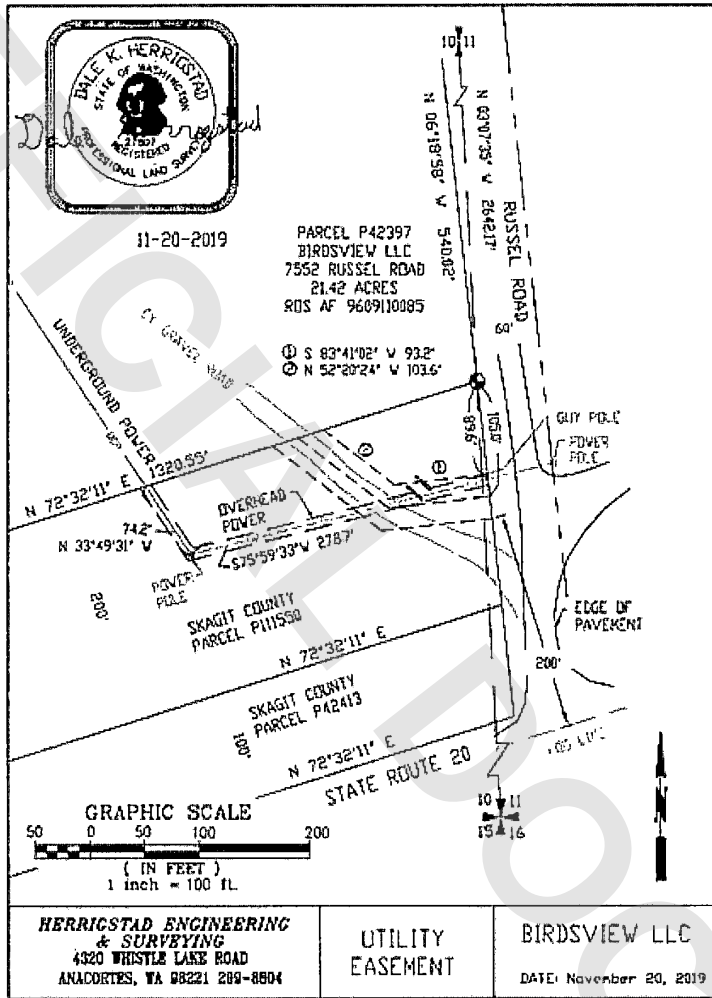
The following description being the centerline of a 40 foot wide access easement being 20 feet either side of the following described line.

A 40 foot wide utility easement on and across that certain Tract of land in the Northeast Quarter of the Southeast Quarter of Section 10, Township 35 North, Range 7 East of the W.M., conveyed to the Seattle and Northern Railway Company by Deed filed in volume 40 of Deeds page 277 under Auditor's File #32495 EXCEPT the Southerly 115 feet thereof with the centerline described as follows:

COMMENCING in the Northeast said Tract of land conveyed to the Seattle and Northern Railway Company and also the Southeast corner of Parcel P42397, also described in the Record of Survey of Skagit County in Volume 18, of Surveys page 168, Auditor's File No. 9609110085, thence along the West Right-of-Way line of Russell Road, being South 6°18'58" East, 105.0 feet to the POINT OF BEGINNING and the centerline of said easement;  
Thence South 83°41'92" West, 93.2 feet; -  
Thence North 52°20'24" West, 103.6 feet to the South property line of said Parcel P42397 and the terminus of said easement centerline.

Situate in the County of Skagit, State of Washington

**EXHIBIT "B"**  
**GRAPHIC DEPICTION OF TEMPORARY LICENSE AREA**



**EXHIBIT "C"**  
**LEGAL DESCRIPTION OF GRANTEE'S PROPERTY (P42397)**

(21.9300 ac) THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 35 NORTH, RANGE 7 EAST, W.M., LYING NORTHERLY OF THE 300 FOOT WIDE RIGHT-OF-WAY OF THE BURLINGTON NORTHERN RAILROAD COMPANY, AS CONVEYED BY DEED RECORDED JANUARY 19, 1900 UNDER AUDITORS FILE NO. 32495, IN VOLUME 40 OF DEEDS, PAGE 277, EXCEPT THAT PORTION THEREOF LYING WITHIN THE BOUNDARIES OF THE DAVID RUSSELL ROAD, AS CONVEYED TO SKAGIT COUNTY BY DEED RECORDED OCTOBER 24, 1944, UNDER AUDITORS FILE NO. 375409, RECORDS OF SKAGIT COUNTY, WASHINGTON.

Situate in the County of Skagit, State of Washington

**EXHIBIT "D"**  
**LEGAL DESCRIPTION OF GRANTOR'S PROPERTY (P111550 & P42413).**

Parcel 111500: (5.6200 ac) THAT CERTAIN TRACT OF LAND IN THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 CONVEYED TO THE SEATTLE AND NORTHERN RAILWAY COMPANY BY DEED FILED IN VOLUME 40 OF DEEDS PAGE 277 UNDER AUDITORS FILE #32495 EXCEPT THE SOUTHERLY 115 FEET THEREOF

Parcel 42413: (15.75 ac) ABANDON R/W THRU SEC EXCEPT THAT CERTAIN TRACT OF LAND IN THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 CONVEYED TO THE SEATTLE AND NORTHERN RAILWAY COMPANY BY DEED FILED IN VOLUME 40 OF DEEDS AT PAGE 277 UNDER AUDITORS FILE #32495 EXCEPT THE SOUTHERLY 115 FEET THEREOF

Situate in the County of Skagit, State of Washington