CITY OF SEQUIM
RECEIVED
JUL 19 2013
BY

2013-1297036
Page 1 of 35 Easement
City Of Sequim
Clallam County Washington 07/02/2013 01:58:26 PM

RETURN ADDRESS

City Clerk
City of Sequim
152 W. Cedar St.
Sequim WA 98382

Please print neatly or type information

Document Title(s)

Aquatic Lands Outfall Easement

Reference Number of related documents

Grantor(s) (Last, First and Middle initial)

Washington State Dept of Natural Resources

Grantee(s) (Last, First and Middle initial)

City of Sequim

Brief Legal Description (abbreviated form: lot, block, plat or section, township, range, quarter/quarter)

Sections 15 & 22, T30N, R3W, W.M.

Assessor's Property Tax Parcel/Account Number

—

The Auditor/Record will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

EMERGENCY NONSTANDARD REQUEST – SIGN ONLY WHEN RECORDING AS NONSTANDARD

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

SIGNATURE

DATE

When recorded, return to:
City of Sequim – City Clerk
152 W Cedar St
Sequim WA 98382

WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

AQUATIC LANDS OUTFALL EASEMENT

EASEMENT NO. 51-082037

Grantor: Washington State Department of Natural Resources
Grantee(s): City of Sequim
Legal Description: Section 15 & 22, Township 30 North, Range 03 West, W.M.
Assessor's Property Tax Parcel or Account Number: Not Applicable
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this Easement: Not Applicable

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and City of Sequim, a government agency ("Grantee").

BACKGROUND

Grantee desires to use state-owned aquatic lands located in Clallam County, Washington for the purpose of discharging effluent from an outfall pipeline. Grantee has obtained regulatory authorizations for this purpose including, but not limited to, a National Pollutant Discharge Elimination System ("NPDES") Permit.

State is willing to grant an easement for a term to Grantee in reliance upon Grantee's promises to operate the outfall in compliance with all laws and permits and in the manner as described in all regulatory authorizations.

Nonetheless, State's goals are to promote water re-use and reduce reliance on in-water disposal of waste effluent, storm water and other discharges that affect the use and environmental conditions of state-owned aquatic lands and associated biological communities. Therefore, future grants of easement rights will depend on Grantee's satisfactory progress toward implementation of reasonably practical disposal alternatives.

THEREFORE, the Parties agree as follows:

SECTION 1 GRANT OF EASEMENT

1.1 Easement Defined.

(a) State grants and conveys to Grantee a nonexclusive easement, subject to the terms and conditions of this agreement, over, upon, and under the real property described in Exhibit A. In this agreement, the term "Easement" means this agreement and the rights granted; the term "Easement Property" means the real property subject to the easement.

(b) This Easement is subject to all valid interests of third parties noted in the records of Clallam County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.

(c) This Easement does not include any right to harvest, collect or damage any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable materials.

1.2 Survey and Easement Property Descriptions.

(a) Grantee prepared Exhibit A, which describes the Easement Property. Grantee warrants that Exhibit A is a true and accurate description of the Easement boundaries and the improvements to be constructed or already existing in the Easement area.

(b) Grantee shall not rely on any written legal descriptions, surveys, plats, or diagrams ("property description") provided by State. Grantee shall not rely on State's approval or acceptance of Exhibit A or any other Grantee-provided property description as affirmation or agreement that Exhibit A or other property description is true and accurate. Grantee's obligation to provide a true and accurate description of the Easement Property boundaries is a material term of this Easement.

1.3 Condition of Easement Property. State makes no representation regarding the condition of the Easement Property, improvements located on the Easement Property, the

suitability of the Easement Property for Grantee's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Easement Property, or the existence of hazardous substances on the Easement Property.

1.4 Documentation of Easement Property Condition.

(a) To the extent satisfactory to State, Grantee shall video the condition and appearance of the Easement Property at the beginning of Term, documenting the condition of both the water surface and the underwater land. Grantee shall provide a true copy of such video to State prior to the Commencement Date.

(b) Within 180 days before the End of Term, or within 180 days of any valid early notice to terminate, Grantee shall video the appearance of the Easement Property to the same extent as documented at the beginning of Term. Grantee shall provide a true copy of such documentation to State within 90 days of End of Term.

(c) The Parties shall use the documentation under Paragraphs 1.4(a)-(b) to apportion liability for conditions requiring remedial action under Subsection 3.3.

(d) If Grantee fails to provide documentation described in Paragraphs 1.4(a) - (b), Grantee is liable for all conditions requiring remedial action under Subsection 3.3 when Grantee finally vacates, regardless of whether Grantee vacates by the End of Term or at the end of successive terms or holdovers.

SECTION 2 USE

2.1 Permitted Use. Grantee shall use the Easement Property for: Municipal Wastewater Outfall (the "Permitted Use"), and for no other purpose. The Permitted Use is described or shown in detail in Exhibit B.

2.2 Restrictions on Use.

(a) Grantee shall not cause or permit any damage to natural resources on the Easement Property or adjacent state-owned aquatic lands, except to the extent expressly permitted in Exhibit B, regardless of whether the damages are a direct or indirect result of the Permitted Use.

(b) Unless approved by State in writing, Grantee shall not cause or permit any filling activity to occur on the Easement Property or adjacent state-owned aquatic land. This prohibition includes any deposit of rock, earth, ballast, wood waste, refuse, garbage, waste matter (including chemical, biological, or toxic wastes), hydrocarbons, any other pollutants, or other matter. Outfall discharges in full compliance with a valid NPDES Permit are not subject to this prohibition.

(c) Grantee shall neither commit nor allow waste to be committed to or on the Easement Property or adjacent state-owned aquatic land.

(d) Failure to Comply with Restrictions on Use.

(1) Grantee's failure to comply with the restrictions on use under this Subsection 2.2 is a breach subject to Subsection 14.1. Grantee shall cure the breach by taking all steps necessary to remedy the failure and restore the Easement Property and adjacent state-owned aquatic lands to the

condition before the failure occurred within the time for cure provided in Subsection 14.1. Additionally, Grantee shall mitigate environmental damages in accordance with Paragraph 2.2(d)(3).

(2) If Grantee fails to cure the default in the manner described in this Paragraph 2.2(d), State may terminate in accordance with Subsection 14.1. In addition, the State may (1) restore the Easement Property and adjacent state-owned aquatic lands and charge Grantee remedial costs and/or (2) charge Grantee environmental damages. Upon demand by State, Grantee shall pay all remedial costs and environmental damages.

(3) Mitigation of Environmental Damages

(i) Grantee shall prepare a written plan, subject to State's approval, incorporating measures to (1) eliminate or minimize future impacts to natural resources, (2) replace unavoidable lost or damaged natural resource values, and (3) monitor and report on plan implementation. Grantee shall implement the plan upon State's approval.

(ii) Grantee shall compensate State in accordance with Subsection 5.4 for lost or damaged resource values that are not replaceable.

(iii) If a regulatory authority requires Grantee to provide mitigation on state-owned aquatic lands, Grantee shall coordinate the proposed mitigation activities with state and obtain an appropriate use authorization prior to commencement of activities.

(e) State's failure to notify Grantee of Grantee's failure to comply with all or any of the restrictions set out in this Subsection 2.2 does not constitute a waiver of any remedies available to State.

(f) This Section 2.2 does not limit Grantee's liability under Section 8, below.

2.3 Conformance with Laws. Grantee shall keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its use of the Easement Property.

2.4 Liens and Encumbrances. Grantee shall keep the Easement Property free and clear of any liens and encumbrances arising out of or relating to its use of the Easement Property, unless expressly authorized by State in writing.

2.5 Interference with Other Uses.

(a) Grantee shall exercise Grantee's rights under this Easement in a manner that minimizes or avoids interference with the rights of State, the public or others with valid right to use or occupy the Easement Property or surrounding lands and water.

(b) To the fullest extent reasonably possible, Grantee shall place and construct Improvements in a manner that allows unobstructed movement in and on the waters above and around the Easement Property.

(c) Except in an emergency, Grantee shall provide State with written notice of construction or other significant activity on Easement Property at least thirty (30) days in advance. "Significant Activity" means any activity that may affect use or

enjoyment by the State, public, or others with valid rights to use or occupy the Easement Property or surrounding lands and water.

(d) Grantee shall mark the location of any hazards associated with the Permitted Use and any Improvements in a manner that ensures reasonable notice to the public.

2.6 Amendment Upon Change of Permit Status. State reserves the right to amend the terms and conditions of this Easement whenever any regulatory authority (1) modifies a permit in a manner affecting the provisions of this Easement or (2) allows for a change in the manner of outfall operation including, but not limited to, a change in the type, quality, or quantity of discharge.

SECTION 3 TERM

3.1 Term Defined. The term of this Easement is Thirty (30) years (the "Term"), beginning on the 1st day of December, 2012 (the "Commencement Date"), and ending on the 30st day of November, 2042 (the "Termination Date"), unless terminated sooner under the terms of this Easement.

3.2 Renewal of the Easement.

(a) This Easement does not provide a right of renewal. Grantee may apply for a new Easement, which State has discretion to grant subject to requirements in Paragraph 3.2(b). Grantee must apply for a new Easement at least one (1) year prior to Termination Date and State will respond with denial or consent within ninety (90) days.

(b) Reduction of Discharge on State-Owned Aquatic Lands

(1) Grantee warrants that Grantee considered alternatives to minimize impact of discharge as summarized in Exhibit B.

(2) At the time of application to renew the NPDES Permit, or every five (5) years, whichever is first, Grantee shall submit to State a report addressing progress to reduce discharges on state-owned aquatic land and associated biological communities. "Progress" means Grantee is analyzing or developing alternative disposal methods including, but not limited to, (1) reduction of inflow and infiltration; (2) groundwater recharge; (3) stream augmentation, industrial process supply, and/or agricultural application; (4) water conservation programs; (5) other water re-use projects.

(3) State will consider reports submitted under Subparagraph 3.2(b)(1) in evaluation of Grantee's application to enter into a new Easement. If reports demonstrate insufficient progress toward disposal alternatives that abate impacts to state-owned aquatic land and associated biological communities, State may either:

(i) Require Grantee to undertake investigation and analysis of reasonably practical disposal alternatives to the Permitted Use, or

(ii) Rely on State's alternatives analysis developed in accordance with WAC 332-30-122(2)(d) and other regulations.

(4) Grantee's failure to anticipate and conduct disposal alternatives investigation and analysis may delay or prevent issuance of a new Easement.

(5) State is under no obligation to issue a new Easement if Grantee fails to comply with this Paragraph 3.2(b).

3.3 End of Term.

(a) Upon the expiration or termination of this Easement, Grantee shall remove Improvements in accordance with Section 7, Improvements, and surrender the Easement Property to State restored to a condition substantially like its natural state before construction and operation of the outfall.

(b) If Easement Property does not meet the condition described in Paragraph 3.3(a), the following provisions apply.

(1) State shall provide Grantee a reasonable time to take all steps necessary to remedy the condition of the Easement Property. State may require Grantee to enter into a right-of-entry or other use authorization prior to the Grantee entering the Easement Property to remedy any breach of this Subsection 3.3.

(2) If Grantee fails to remedy the condition of the Easement Property in a timely manner, State may take any steps reasonably necessary to remedy Grantee's failure. Upon demand by State, Grantee shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly on the Easement Property, lost revenue resulting from the condition of the Easement Property prior to and during remedial action, and any administrative costs associated with the remedial action.

SECTION 4 FEES

4.1 Fee. For the Term, Grantee shall pay to State an administrative fee calculated in accordance with RCW 79.110.230(1) payable on or before the Commencement Date. The administrative fee is One Thousand Three Hundred Ten and 00/100 ($1,310.00) dollars. Any payment not paid by State's close of business on the date due is past due.

4.2 Payment Place. Grantee shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

SECTION 5 OTHER EXPENSES

5.1 Utilities. Grantee shall pay all fees charged for utilities in connection with the use of the Easement Property.

5.2 Taxes and Assessments. Grantee shall pay all taxes, assessments, and other governmental charges, of any kind whatsoever, applicable or attributable to the Easement and the Permitted Use.

5.3 Failure to Pay. If Grantee fails to pay any of the amounts due under this Easement, State may pay the amount due, and recover its cost in accordance with Section 6.

5.4 Environmental Damages.

(a) If required to mitigate for environmental damage under Paragraph 2.2(d)(3)(ii), Grantee shall compensate State for lost or damaged resource values upon State's demand. The value of damages shall be determined in accordance with Paragraph 5.4(b).

(b) Unless the Parties otherwise agree on the value, a three-member panel of appraisers will determine the measure of lost or damaged resource values. The appraisers shall be qualified to assess economic value of natural resources. State and Grantee each shall appoint and compensate one member of the panel. By consensus, the two appointed members shall select the third member, who will be compensated by State and Grantee equally. The panel shall base the calculation of damages on generally accepted valuation principles. The written decision of the majority of the panel shall bind the Parties.

5.5 Shellfish Damages Resulting from Shellfish Bed Closure.

(a) Grantee shall compensate State, as set forth below, for loss of public resources when the Permitted Use results in a Shellfish Bed Closure rendering shellfish on or in state-owned aquatic lands unfit for harvest or sale. "Shellfish Bed Closure" means that the regulatory agency authorized by WAC Chapter 246-282, as amended, designates a shellfish bed as "Prohibited," or its functional equivalent, as a direct or indirect result of the Permitted Use.

(b) Grantee shall notify State within fifteen (15) days of the following:

(1) A new Shellfish Bed Closure affecting a commercial shellfish bed lasting longer than ninety (90) days.

(2) A new Shellfish Bed Closure affecting a recreational shellfish bed lasting longer than fifteen (15) days.

(3) Notice to Grantee of change in status of any existing Shellfish Bed Closure.

(c) At the Commencement Date, the Parties have no knowledge of Shellfish Bed Closures resulting from the Permitted Use.

(d) New Shellfish Bed Closures Arising After the Commencement Date.

(1) If and when Shellfish Bed Closures occur, Grantee shall pay State an annual fee for commercial shellfish closures that last longer than ninety (90) days and/or recreational shellfish closures that last longer than fifteen (15) days.

(2) State may demand the annual fee for loss of commercial shellfish harvest regardless of whether State planned or had actual capacity to undertake the harvest or sale. State may demand the annual fee for the loss of

recreational shellfish harvest regardless of whether members of the public had planned or had actual capacity to undertake the harvest.

(3) State shall setoff amount of demand by amounts that State receives from third parties who contribute to shellfish damage. State is not obligated to pursue third parties and the existence of a potential claim against third parties does not affect or abate Grantee's obligations under this Easement.

(4) Grantee shall conduct a survey of shellfish within the closure area within six months of closure and in accordance with methods established by the Washington Department of Fish and Wildlife.

(5) State shall calculate the annual fee in accordance with Paragraph 5.5/6(e).

(6) The annual fee will be due and payable on the next annual anniversary of the Commencement Date. State shall prorate the fee for the first year to coincide with the first day of the Shellfish Bed Closure. Grantee's obligation to pay continues as long as the Shellfish Bed Closure continues.

(e) Calculation of Shellfish Damages.

(1) The formula for calculating the amount of annual fee is (number of shellfish) x (average pounds per individual shellfish) x (value of shellfish) x (value for harvest impact) = (annual payment in dollars), where:

(i) The number of shellfish is equal to the sum of estimated number of shellfish in each bed within the closure zone. The number of shellfish in each bed is estimated by multiplying the average density of shellfish in the bed by the square foot of each bed.

(ii) the value of commercial oysters, Manila clams, and littleneck clams equals the current wholesale market value in dollars per pound.

(iii) the value of geoduck equals the average of the value State received from all geoduck auctions in the preceding four years in dollars per pound

(iv) the value of recreational shellfish equals the current retail value in dollars per pound.

(v) the value for harvest impact equals the largest percentage of total shellfish stock that can be taken under existing environmental conditions on an annualized basis.

(2) If the Parties cannot agree on the retail value of shellfish or the value of harvest impact, a three-member panel of appraisers will determine the value in accordance with Paragraph 5.4(b).

(f) Revaluation of Shellfish Damages. At the end of the first full four-year period of the Term in which the Grantee is obligated to pay shellfish damages, and at the end of each subsequent four-year period, State shall recalculate shellfish damages in accordance with Paragraph 5.5/6(e). When recalculating damages, the State shall also take into account any expansion or reduction in the area effected by a closure.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Late Charge. If State does not receive any payment within ten (10) days of the date due, Grantee shall pay to State a late charge equal to four percent (4%) of the amount of the payment or Fifty Dollars ($50), whichever is greater, to defray the overhead expenses of State incident to the delay.

6.2 Interest Penalty for Past Due Fees and Other Sums Owed.

(a) Grantee shall pay interest on the past due fees at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Subsection 6.1, above.

(b) If State pays or advances any amounts for or on behalf of Grantee, Grantee shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Grantee of the payment or advance. This includes, but is not limited to taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Subsection 2.2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due.

6.3 Referral to Collection Agency and Collection Agency Fees. If State does not receive payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Grantee shall pay collection agency fees in addition to the unpaid amount.

6.4 No Accord and Satisfaction. If Grantee pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

SECTION 7 IMPROVEMENTS

7.1 Improvements Defined.

(a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, structures and fixtures.

(b) "Personal Property" means items that can be removed from the Easement Property without (1) injury to the Easement Property, adjacent state-owned lands or Improvements or (2) diminishing the value or utility of the Easement Property, adjacent state-owned lands or Improvements.

(c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Grantee.

(d) "Grantee-Owned Improvements" are Improvements made by Grantee with State's consent.

(e) "Unauthorized Improvements" are Improvements made on the Easement Property without State's prior consent or Improvements made by Grantee that do not conform with plans submitted to and approved by the State.

(f) "Improvements Owned by Others" are Improvements made by Others with a right to occupy or use the Easement Property or adjacent state-owned lands.

7.2 Existing Improvements. On the Commencement Date, the following Improvements are located on the Easement Property: Municipal Wastewater Outfall. The Improvements are Grantee-owned.

7.3 Construction, Major Repair, Modification, and Demolition.

(a) This Subsection 7.3 governs construction, alteration, replacement, major repair, modification alteration, demolition and deconstruction of Improvements ("Work"). Section 11 governs routine maintenance and minor repair of Improvements and Easement Property.

(b) Except in an emergency, Grantee shall not conduct any Work without State's prior written consent, as follows:

(1) State may deny consent if State determines that denial is in the best interests of the State. State may impose additional conditions reasonably intended to protect and preserve the Easement Property. If Work is for removal of Improvements at End of Term, State may waive removal of any or all Improvements.

(2) Except in an emergency, Grantee shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Grantee and State otherwise agree to coordinate permit applications. At a minimum or if no permits are necessary, Grantee shall submit plans and specifications at least ninety (90) days before commencement of Work.

(3) State waives the requirement for consent if State does not notify Grantee of its grant or denial of consent within sixty (60) days of submittal.

(c) Grantee shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Grantee shall provide State with plans and specifications or as-builts of emergency Work.

(d) Grantee shall not commence or authorize Work until Grantee has:

(1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Grantee shall maintain the performance and payment bond until Grantee pays in full the costs of the Work, including all laborers and material persons.

(2) Obtained all required permits.

(3) Provided notice of Significant Activity in accordance with Paragraph 2.5(c).

(e) Grantee shall preserve and protect Improvements Owned by Others, if any

(f) Grantee shall preserve all legal land subdivision survey markers and witness objects ("Markers.") If disturbance of a Marker will be a necessary consequence of Grantee's construction, Grantee shall reference and/or replace the Marker in

accordance with all applicable laws and regulations current at the time, including, but not limited to Chapter 58.24 RCW. At Grantee's expense, Grantee shall retain a registered professional engineer or licensed land surveyor to reestablish destroyed or disturbed Markers in accordance with U.S. General Land Office standards.

(g) Before completing Work, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to its natural condition before the Work began. If Work is intended for removal of Improvements at End of Term, Grantee shall restore the Easement Property in accordance with Subsection 3.3, End of Term.

(h) Upon completing work, Grantee shall promptly provide State with as-built plans and specifications.

(i) State shall not charge rent for authorized Improvements installed by Grantee during this Term of this Easement, but State may charge rent for such Improvements when and if the Grantee or successor obtains a subsequent use authorization for the Easement Property and State has waived the requirement for Improvements to be removed as provided in Subsection 7.4.

7.4 Grantee-Owned Improvements at End of Easement.

(a) Disposition

(1) Grantee shall remove Grantee-Owned Improvements in accordance with Subsection 7.3 upon the expiration, termination, or cancellation of the Easement unless State waives the requirement for removal or State determines that abandonment of Improvements is in the best interests of State.

(2) Grantee-Owned Improvements remaining on the Easement Property on the expiration, termination or cancellation date become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.

(3) If Grantee-Owned Improvements remain on the Easement Property after the expiration, termination, or cancellation date without State's consent, State may remove all Improvements and Grantee shall pay the costs of removal and disposal.

(b) Determination of Removal or Abandonment.

(1) State may waive removal of any or all Grantee-Owned Improvements whenever State determines that it is in the best interests of the State. State will consider it in the best interests of the State to waive removal where abandonment is less detrimental than removal to the long term use and management of state-owned lands and resources.

(2) If Grantee renews the Easement or enters into a new Easement, State may waive requirement to remove Grantee-Owned Improvements. State also may consent to Grantee's continued ownership of Grantee-Owned Improvements.

(3) If Grantee does not renew the Easement or enter into a new Easement, State and Grantee shall coordinate removal or abandonment as follows:

(i) Grantee must notify State at least one (1) year before the Termination Date of its proposal to either leave or remove Grantee-Owned Improvements.

(ii) State, within ninety (90) days, will notify Grantee whether State (1) does not waive removal or (2) consents to abandonment.

(c) Grantee's Obligations if State Consents to Abandonment.

(1) Grantee shall conduct Work necessary for abandonment in accordance with Subsection 7.3.

(2) The submittal of plans and specifications shall identify means for plugging pipelines and notifying public of abandoned Improvements.

(d) Grantee's Obligations if State Waives Removal.

(1) Grantee shall not remove Improvements if State waives the requirement for removal of any or all Grantee-Owned Improvements.

(2) Grantee shall maintain such Improvements in accordance with this Easement until the expiration, termination, or cancellation date. Grantee is liable to State for cost of repair if Grantee causes or allows damage to Improvements State has designated to remain.

7.5 Disposition of Unauthorized Improvements.

(a) Unauthorized Improvements belong to State, unless State elects otherwise.

(b) State may either:

(1) Consent to Grantee ownership of the Improvements, or

(2) Charge use and occupancy fee in accordance with RCW 79.105.200 of the Improvements from the time of installation or construction and

(i) Require Grantee to remove the Improvements in accordance with Subsection 7.3, in which case Grantee shall pay use and occupancy fee for the Improvements until removal,

(ii) Consent to Improvements remaining and Grantee shall pay use and occupancy fee for the use of the Improvements, or

(iii) Remove Improvements and Grantee shall pay for the cost of removal and disposal, in which case Grantee shall pay use and occupancy fee for use of the Improvements until removal and disposal.

7.6 Disposition of Personal Property.

(a) Grantee retains ownership of Personal Property unless Grantee and State agree otherwise in writing.

(b) Grantee shall remove Personal Property from the Easement Property by the Termination Date. Grantee is liable for any damage to the Easement Property and to any Improvements that may result from removal of Personal Property.

(c) State may sell or dispose of all Personal Property left on the Easement Property after the Termination Date.

(1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Grantee to the State, and State shall pay the remainder, if any, to the Grantee.

(2) If State disposes of Personal Property, Grantee shall pay for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

(a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup, including, but not limited to, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et. seq.,* as amended; Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended; Washington's Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW, as amended; and Washington's Sediment Management Standards, WAC Chapter 173-204.

(b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a) or any similar event defined under any such law.

(c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care established under MTCA, RCW 70.105D.040.

8.2 General Conditions.

(a) Grantee's obligations under this Section 8 extend to the area in, on, under, or above:

(1) The Easement Property and

(2) Adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances may arise from Grantee's use of the Easement Property.

(b) Standard of Care.

(1) Grantee shall exercise the utmost care with respect to Hazardous Substances.

(2) In relation to the Permitted Use, Grantee shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law, including – but not limited to – RCW 70.105D.040.

8.3 Current Conditions and Duty to Investigate.

(a) State makes no representation about the condition of the Easement Property. Hazardous Substances may exist in, on, under, or above the Easement Property or adjacent state-owned lands.

(b) This Easement does not impose a duty on State to conduct investigations or supply information to Grantee about Hazardous Substances.

(c) Grantee is responsible for conducting all appropriate inquiry and gathering sufficient information concerning the Easement Property and the existence, scope, and location of any Hazardous Substances on the Easement Property or on adjacent lands that allows Grantee to meet Grantee's obligations under this Easement.

8.4 Use of Hazardous Substances.

(a) Grantee, its, contractors, agents, employees, guests, invitees, or affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.

(b) Grantee shall not undertake, or allow others to undertake by Grantee's permission, acquiescence, or failure to act, activities that:
  (1) Result in a release or threatened release of Hazardous Substances, or
  (2) Cause, contribute to, or exacerbate any contamination exceeding regulatory cleanup standards whether the regulatory authority requires cleanup before, during, or after Grantee's use of the Easement Property.

(c) If use of Hazardous Substance related to the Permitted Use results in a violation of an applicable law:
  (1) Grantee shall submit to State any plans for remedying the violation, and
  (2) State may require remedial measures in addition to remedial measures required by regulatory authorities.

8.5 Management of Contamination.

(a) Grantee shall not undertake activities that:
  (1) Damage or interfere with the operation of remedial or restoration activities;
  (2) Result in human or environmental exposure to contaminated sediments;
  (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation.

(b) Grantee shall not interfere with access by:
  (1) Employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, health department, or other similar environmental agencies; and
  (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Easement Property. Grantee may negotiate an access agreement with such parties, but Grantee may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

(a) Grantee shall immediately notify State if Grantee becomes aware of any of the following:
  (1) A release or threatened release of Hazardous Substances;
  (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of any Hazardous Substance;
  (3) Any lien or action arising from the foregoing;

(4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;

(5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Easement Property.

(b) Grantee's duty to report under Paragraph 8.6(a) extends to the Easement Property, adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances could arise from the Grantee's use of the Easement Property, and any other property used by Grantee in conjunction with Grantee's use of the Easement Property where a release or the presence of Hazardous Substances on the other property would affect the Easement Property.

(c) Grantee shall provide State with copies of all documents concerning environmental issues associated with the Easement Property, and submitted by Grantee to any federal, state or local authorities. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollution Discharge and Elimination System Permits (NPDES); Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality certification; Substantial Development permit; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Easement Property.

8.7 Indemnification.

(a) "Liabilities" as used in this Subsection 8.7 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.

(b) Grantee shall fully indemnify, defend, and hold State harmless from and against any Liabilities that arise out of, or relate to:

(1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Grantee, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees occurring anytime Grantee uses or has used the Easement Property;

(2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination resulting from any act or omission of Grantee, its contractors, agents, employees, guests, invitees, or affiliates regardless of whether the release, threatened release, or exacerbation occurring anytime Grantee uses or has used the Easement Property.

(c) Grantee shall fully indemnify, defend, and hold State harmless for any Liabilities that arise out of or relate to Grantee's breach of obligations under Subsection 8.5.

(d) Third Parties.

(1) Grantee has no duty to indemnify State for acts or omissions of third parties unless Grantee fails to exercise the standard of care required by Paragraph 8.2(b)(2). Grantee's third-party indemnification duty arises under the conditions described in Subparagraph 8.7(d)(2).

(2) If an administrative or legal proceeding arising from a release or threatened release of Hazardous Substances finds or holds that Grantee failed to exercise care as described in Subparagraph 8.7(d)(1), Grantee shall fully indemnify, defend, and hold State harmless from and against any liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances. This includes any liabilities arising before the finding or holding in the proceeding.

(e) Grantee is obligated to indemnify under the Subsection 8.7 regardless of whether a NPDES or other permit or license authorizes the discharge or release of Hazardous Substances.

8.8 Reservation of Rights.

(a) For any environmental liabilities not covered by the indemnification provisions of Subsection 8.7, the Parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the presence, release, or threatened release of Hazardous Substances that either Party may have against the other under law.

(b) This Easement affects no right, claim, immunity, or defense either Party may have against third parties, and the Parties expressly reserve all such rights, claims, immunities, and defenses.

(c) The provisions under this Section 8 do not benefit, or create rights for, third parties.

(d) The allocations of risks, liabilities, and responsibilities set forth above do not release either Party from, or affect the liability of either Party for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

8.9 Cleanup.

(a) If Grantee's act, omission, or breach of obligation under Subsection 8.4 results in a release of Hazardous Substances, Grantee shall, at Grantee's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law. Cleanup actions include, without limitation, removal, containment, and remedial actions.

(b) Grantee's obligation to undertake a cleanup under Section 8 is limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards.

(c) At the State's discretion, Grantee may undertake a cleanup of the Easement Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Grantee cooperates with the Department of Natural Resources in development of cleanup plans. Grantee shall not proceed with Voluntary Cleanup without Department of Natural Resources approval of final plans. Nothing in the operation of this provision is an agreement by Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Easement. Grantee's completion of a

Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Easement.

8.10 Sampling by State, Reimbursement, and Split Samples.

(a) Grantee shall conduct sediment sampling, if required, in accordance with Exhibit B.

(b) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Easement Property at any time to determine the existence, scope, or effects of Hazardous Substances.

(c) If such Tests, along with any other information, demonstrate the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 8.4, above, Grantee shall promptly reimburse State for all costs associated with such Tests.

(d) State shall not seek reimbursement for any Tests under this Subsection 8.10 unless State provides Grantee written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, except when such Tests are in response to an emergency. Grantee shall reimburse State for Tests performed in response to an emergency if State has provided such notice as is reasonably practical.

(e) Grantee is entitled to obtain split samples of any Test samples obtained by State, but only if Grantee provides State with written notice requesting such samples within twenty (20) calendar days of the date of Grantee's receipt of notice of State's intent to conduct any non-emergency Tests. Grantee solely shall bear the additional cost, if any, of split samples. Grantee shall reimburse State for any additional costs caused by split sampling within thirty (30) calendar days after State sends Grantee a bill with documentation for such costs.

(f) Within sixty (60) calendar days of a written request (unless otherwise required pursuant to Paragraph 8.6(c), above), either Party to this Easement shall provide the other Party with validated final data, quality assurance/quality control information, and chain of custody information, associated with any Tests of the Easement Property performed by or on behalf of State or Grantee. There is no obligation to provide any analytical summaries or the work product of experts.

8.11 Closeout Assessment.

(a) State has discretion to require Grantee to conduct a Closeout Environmental Assessment ("Closeout Assessment") prior to Termination of the Easement.

(b) The purpose of the Closeout Assessment is to determine the existence, scope, or effects of any Hazardous Substances on the Property and any associated natural resources. The Closeout Assessment may include sediment sampling.

(c) State shall provide Grantee with written notice that a Closeout Assessment is required no later than one hundred eighty (180) calendar days prior to the Termination Date, or within ninety (90) days of any valid notice to terminate the Easement earlier than originally agreed.

(d) Within sixty (60) days of State's notice that Closeout Assessment is required and before commencing assessment activities, Grantee shall submit a proposed plan for conducting the Closeout Assessment in writing for State's approval.

(e) If State fails to approve or disapprove of the plan in writing within sixty (60) days of its receipt, State waives requirement for approval.

(f) Grantee shall be responsible for all costs required to complete planning, sampling, analyzing, and reporting associated with the Closeout Assessment.

(g) If the initial results of the Closeout Assessment disclose that Hazardous Substances may have migrated to other property, State may require additional Closeout Assessment work to determine the existence, scope, and effect of any Hazardous Substances on adjacent property, any other property subject to use by Grantee in conjunction with its use of the Easement Property, or on any associated natural resources.

(h) Grantee shall submit Closeout Assessment to State upon completion.

(i) As required by law, Grantee shall report to the appropriate regulatory authorities if the Closeout Assessment discloses a release or threatened release of Hazardous Substances.

SECTION 9 ASSIGNMENT

Grantee shall not assign any part of Grantee's interest in this Easement or the Easement Property or grant any rights or franchises to third parties without State's prior written consent, which State shall not unreasonably condition or withhold. State reserves the right to reasonably change the terms and conditions of this Easement upon State's consent to assignment.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity.

(a) Grantee shall indemnify, defend, and hold State, its employees, officers, and agents harmless from any Claims arising out of the Permitted Use or activities related to the Permitted Use by Grantee, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.

(b) "Claim" as used in this Subsection 10.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury; sickness; disease; death; damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources; and loss of natural resource values. "Damages to tangible property" includes, but is not limited to, physical injury to the Easement Property and damages resulting from loss of use of the Easement Property.

(c) Grantee is obligated to indemnify under this Subsection 10.1 regardless of whether any other provision of this Agreement or NPDES or other permit or license authorizes the discharge or release of a deleterious substance resulting in a claim.

(d) No damages or fees paid by Grantee to State under other provisions of this Easement are a setoff against Grantee's obligation to indemnify under this Subsection 10.1

(e) State shall not require Grantee to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.

(f) Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.

(g) Section 8, Environmental Liability/Risk Allocation, exclusively governs Grantee's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.

10.2 Insurance Terms.

(a) Insurance Required.

(1) Grantee certifies that it is self-insured for all the liability exposures, its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Subsection 10.2 and by Subsection 10.3, Insurance Types and Limits. Grantee shall provide to State evidence of its status as a self-insured entity. Upon request by State, Grantee shall provide a written description of its financial condition and/or the self-insured funding mechanism. Grantee shall provide State with at least thirty (30) days' written notice prior to any material changes to Grantee's self-insured funding mechanism.

(2) Unless State agrees to an exception, Grantee shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of Best's Reports. Grantee may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

(3) The State of Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees must be named as an additional insured on all general liability, excess, umbrella, property, builder's risk, and pollution legal liability insurance policies.

(4) All insurance provided in compliance with this Easement must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

(b) Waiver.

(1) Grantee waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Easement covers these damages.

(2) Except as prohibited by law, Grantee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this Easement.

(c) Proof of Insurance.

(1) Grantee shall provide State with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Easement and, if requested, copies of policies to State.

(2) The certificate(s) of insurance must reference additional insureds and the Easement number.

(3) Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies.

(d) State must receive written notice before cancellation or non-renewal of any insurance required by this Easement, in accordance with the following:

(1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.

(2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State thirty (30) days' advance notice of cancellation or non-renewal.

(e) Adjustments in Insurance Coverage.

(1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.

(2) Grantee shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.

(f) If Grantee fails to procure and maintain the insurance described above within fifteen (15) days after Grantee receives a notice to comply from State, State may either:

(1) Deem the failure an Event of Default under Section 14, or

(2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Grantee shall pay to State the full amount paid by State, together with interest at the rate provided in Subsection 6.2 from the date of State's notice of the expenditure until Grantee's repayment.

(g) General Terms.

(1) State does not represent that coverage and limits required under this Easement will be adequate to protect Grantee.

(2) Coverage and limits do not limit Grantee's liability for indemnification and reimbursements granted to State under this Easement.

(3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to Easement Property first to restore the Easement Property, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Grantee.

10.3 Insurance Types and Limits.

(a) General Liability Insurance.

(1) Grantee shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal

injury, or property damage arising on the Easement Property and/or arising out of the Permitted Use and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars ($1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.

(2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.

(3) MGL insurance must have no exclusions for non-owned watercraft.

(b) Workers' Compensation.

(1) State of Washington Workers' Compensation.

(i) Grantee shall comply with all State of Washington workers' compensation statutes and regulations. Grantee shall provide workers' compensation coverage for all employees of Grantee. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with the Permitted Use or related activities.

(ii) If Grantee fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Grantee shall indemnify State. Indemnity includes all fines; payment of benefits to Grantee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.

(2) Longshore and Harbor Worker's Act. The Longshore and Harbor Worker's Compensation Act (33 U.S.C. Section 901 *et. seq.*) may require Grantee to provide insurance coverage for longshore and harbor workers other than seaman. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Grantee is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with this Act. Grantee is responsible for all civil and criminal liability arising from failure to maintain such coverage.

(3) Jones Act. The Jones Act (46 U.S.C. Section 688) may require Grantee to provide insurance coverage for seamen injured during employment resulting from negligence of the owner, master, or fellow crew members. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Grantee is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance

with this Act. Grantee is responsible for all civil and criminal liability arising from failure to maintain such coverage.

(c) Employer's Liability Insurance. Grantee shall procure employer's liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars ($1,000,000) each accident for bodily injury by accident or One Million Dollars ($1,000,000) each employee for bodily injury by disease.

(d) Pollution Legal Liability Insurance.

(1) Grantee shall procure and maintain for the duration of this Easement pollution legal liability insurance, including investigation and defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has been physically damaged or destroyed. Such coverage must provide for both on-site and off-site cleanup costs and cover gradual and sudden pollution, and include in its scope of coverage natural resource damage claims. Grantee shall maintain coverage in an amount of at least:

(i) One Million Dollars ($1,000,000) each occurrence for Tenant's operations at the site(s) identified above, and

(ii) One Million Dollars ($1,000,000) general aggregate or policy limit, if any.

(2) Such insurance may be provided on an occurrence or claims-made basis. If such coverage is obtained as an endorsement to the CGL and is provided on a claims-made basis, the following additional conditions must be met:

(i) The Insurance Certificate must state that the insurer is covering Hazardous Substance removal.

(ii) The policy must contain no retroactive date, or the retroactive date must precede abatement services.

(iii) Coverage must be continuously maintained with the same insurance carrier through the official completion of any work on the Easement Property.

(iv) The extended reporting period (tail) must be purchased to cover a minimum of thirty-six (36) months beyond completion of work.

(e) Business Auto Policy Insurance.

(1) Grantee shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance with a limit not less than One Million Dollars ($1,000,000) Dollars per accident. Such insurance must cover liability arising out of "Any Auto."

(2) Business auto coverage must be written on ISO Form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy must be endorsed to provide contractual liability coverages and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

(f) Property Insurance.

(1) Grantee shall buy and maintain property insurance covering all real property and fixtures, equipment, improvements and betterments

(regardless of whether owned by Grantee or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived. The policy must include State as an insured and a loss payee.

(2) In the event of any loss, damage, or casualty which is covered by one or more of the types of insurance described above, the Parties shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned on such proceeds, for use according to the terms of this Easement. The Parties shall use insurance proceeds in accordance with Subparagraph 10.2(g)(3).

(3) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:

(i) Repair and restore damaged Improvements to their former condition, or

(ii) Replace and restore damaged Improvements with new Improvements on the Easement Property of a quality and usefulness at least equivalent to, or more suitable than, damaged Improvements.

10.4 Financial Security.

(a) At its own expense, Grantee shall procure and maintain during the Term of this Easement a corporate security bond or provide other financial security that State may approve ("Security"). Grantee shall provide Security in an amount equal to Not Applicable ($N/A), which is consistent with RCW 79.105.330, and secures Grantee's performance of its obligations under this Easement, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Grantee's failure to maintain the Security in the required amount during the Term constitutes a breach of this Easement.

(b) All Security must be in a form acceptable to the State.

(1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of Best's Reports, unless State approves an exception.. Grantee may submit a request to risk manager for the Department of Natural Resources for an exception to this requirement.

(2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*

(3) Savings account assignments, if approved by State, must allow State to draw funds at will.

(c) Adjustment in Amount of Security.

(1) State may require an adjustment in the Security amount:

(i) At the same time as revaluation, if any,
(ii) As a condition of approval of assignment of this Easement,
(iii) Upon a material change in the condition or disposition of any Improvements, or
(iv) Upon a change in the Permitted Use.

(2) Grantee shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.

(d) Upon any default by Grantee in its obligations under this Easement, State may collect on the Security to offset the liability of Grantee to State. Collection on the Security does not (1) relieve Grantee of liability, (2) limit any of State's other remedies, (3) reinstate or cure the default or (4) prevent termination of the Easement because of the default.

SECTION 11 ROUTINE MAINTENANCE AND REPAIR

11.1 State's Repairs. This Easement does not obligate State to make any alterations, maintenance, replacements, or repairs in, on, or about the Easement Property, during the Term.

11.2 Grantee's Repairs and Maintenance.

(a) Routine maintenance and repair are acts intended to prevent a decline, lapse or, cessation of the Permitted Use and associated Improvements. Routine maintenance or repair is the type of work that does not require regulatory permits.

(b) At Grantee's sole expense, Grantee shall keep and maintain all Grantee-Owned Improvements and the Easement Property as it relates to the Permitted Use in good order and repair and in a safe condition. State's consent is not required for routine maintenance or repair.

(c) At Grantee's own expense, Grantee shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Easement Property or to any Improvements on the Easement Property that any public authority requires because of the Permitted Use.

(d) Grantee shall follow procedures for the inspection, routine maintenance, and emergency plans in Exhibit B. Upon State's request, Grantee shall provide State with a copy of complete Operation and Maintenance Manual and/or Facilities Plan.

(e) Upon completion of maintenance activities, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to the condition prior to the commencement of work.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

(a) In the event of any known damage to or destruction of the Easement Property or any Improvements, Grantee shall promptly give written notice to State. State

does not have actual knowledge of the damage or destruction of the Easement Property or any Improvements without Grantee's written notice.

(b) Unless otherwise agreed in writing, Grantee shall promptly reconstruct, repair, or replace any Improvements in accordance with Subsection 7.3, Construction, Major Repair, Modification, and Demolition, as nearly as possible to its condition immediately prior to the damage or destruction. Where damage to state-owned aquatic land or natural resources is attributable to the Permitted Use or related activities, Grantee shall promptly restore the lands or resources to the condition preceding the damage in accordance with Subsection 7.3 unless otherwise agreed in writing.

12.2 State's Waiver of Claim. State does not waive any claims for damage or destruction of the Easement Property unless State provides written notice to Grantee of each specific claim waived.

12.3 Insurance Proceeds. Grantee's duty to reconstruct, repair, or replace any damage or destruction of the Easement Property or any Improvements on the Easement Property is not conditioned upon the availability of any insurance proceeds to Grantee from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Subparagraph 10.2(g)(3).

SECTION 13 CONDEMNATION

In the event of condemnation, the Parties shall allocate the award between State and Grantee based upon the ratio of the fair market value of (1) Grantee's rights in the Easement Property and Grantee-Owned Improvements and (2) State's interest in the Easement Property; the reversionary interest in Grantee-Owned Improvements, if any; and State-Owned Improvements. In the event of a partial taking, the Parties shall compute the ratio based on the portion of Easement Property or Improvements taken. If Grantee and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 TERMINATION

14.1 Termination by Breach. State may terminate this Easement upon Grantee's failure to cure a breach of the terms and conditions of this Easement. State shall provide Grantee written notice of breach. Grantee shall have sixty (60) days after receiving notice to cure. State may extend the cure period if breach is not reasonably capable of cure within sixty (60) days.

14.2 Termination by Nonuse. If Grantee does not use the Easement Property for a period of three (3) successive years, this Easement terminates without further action by State. Grantee's rights revert to State upon Termination by Nonuse.

14.3 Termination by Grantee. Grantee may terminate this Easement upon providing State with sixty (60) days written notice of intent to terminate.

SECTION 15 NOTICE AND SUBMITTALS

15.1 Notice. Following are the locations for delivery of notice and submittals required or permitted under this Easement. Any Party may change the place of delivery upon ten (10) days written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Orca Straits Region
5310 Eaglemount Rd.
Chimacum, WA 98325

Grantee: CITY OF SEQUIM
152 W Cedar St
Sequim, WA 98382

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Easement number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

15.2 Contact Persons. On the Commencement Date, the following persons are designated day-to-day contact persons. Any Party may change the Contact Person upon reasonable notice to the other.

State: Bridget Kaminski-Richardson
Telephone: 360-732-0934
Fax: 360-732-6848
Email: bridget.kaminski-richardson@dnr.wa.gov

Grantee: Pete Tjemsland
Telephone: 360-683-4908
Fax: 360-681-0552
Email: ptjemsland@sequimwa.gov

SECTION 16 MISCELLANEOUS

16.1 Authority. Grantee and the person or persons executing this Easement on behalf of Grantee represent that Grantee is qualified to do business in the State of Washington, that Grantee has full right and authority to enter into this Easement, and that each and every person

signing on behalf of Grantee is authorized to do so. Upon State's request, Grantee shall provide evidence satisfactory to State confirming these representations. This Easement is entered into by State pursuant to the authority granted it in Chapter 43.12 RCW, Chapter 43.30 RCW, and Title 79 RCW and the Constitution of the State of Washington.

16.2 Successors and Assigns. This Easement binds and inures to the benefit of the Parties, their successors, and assigns.

16.3 Headings. The headings used in this Easement are for convenience only and in no way define, limit, or extend the scope of this Easement or the intent of any provision.

16.4 Entire Agreement. This Easement, including the exhibits and addenda, if any, contains the entire agreement of the Parties. This Easement merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Easement Property.

16.5 Waiver.

(a) The waiver of any breach or default of any term, covenant, or condition of this Easement is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Easement. State's acceptance of payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.

(b) The renewal of the Easement, extension of the Easement, or the issuance of a new Easement to Grantee, does not waive State's ability to pursue any rights or remedies under the Easement.

16.6 Cumulative Remedies. The rights and remedies under this Easement are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

16.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Easement.

16.8 Language. The word "Grantee" as used in this Easement applies to one or more persons, as the case may be. The singular includes the plural, and the neuter includes the masculine and feminine. If there is more than one Grantee, their obligations are joint and several. The word "persons," whenever used, includes individuals, firms, associations, and corporations. The word "Parties" means State and Grantee in the collective. The word "Party" means either or both State and Grantee, depending on context.

16.9 Invalidity. The invalidity, voidness, or illegality of any provision of this Easement does not affect, impair, or invalidate any other provision of this Easement.

16.10 Applicable Law and Venue. This Easement is to be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded. Venue for any action arising

out of or in connection with this Easement is in the Superior Court for Thurston County, Washington.

16.11 Recordation. At Grantee's expense and no later than thirty (30) days after receiving the fully-executed Easement, Grantee shall record this Lease in the county in which the Property is located. Grantee shall include the parcel number of the upland property used in conjunction with the Property, if any. Grantee shall provide State with recording information, including the date of recordation and file number.

16.12 Modification. No modification of this Easement is effective unless in writing and signed by the Parties. Oral representations or statements do not bind either Party.

16.13 Survival. Any obligations of Grantee not fully performed upon termination of this Easement do not cease, but continue as obligations of the Grantee until fully performed.

16.14 Exhibits. All referenced exhibits are incorporated in this Easement unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

CITY OF SEQUIM

Dated: June 11, 2013

By: STEVEN C. BURKETT
Title: City Manager
Address: 152 West Cedar St
Sequim, WA 98382

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: June 19, 2013

By: PETER GOLDMARK
Title: Commissioner of Public Lands
Address: 1111 Washington St SE
Olympia, WA 98504-7024

Commissioner's Seal

Aquatic Lands Easement
Approved as to Form this
28 day of April, 2008
Janis Snoey, Assistant Attorney General

Approved as to Form this
11 day of July, 2012 June 2013
Craig A Ritchie, City Attorney

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
County of CLALLAM)

I certify that I know or have satisfactory evidence that Steven C. Burkett is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the City Manager of City of Sequim to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June 11, 2013

(Seal or stamp)



Roberta J Usselman
(Signature)

Roberta J. Usselman
(Print Name)

Notary Public in and for the State of Washington, residing at
Sequim WA

My appointment expires 12/22/2015

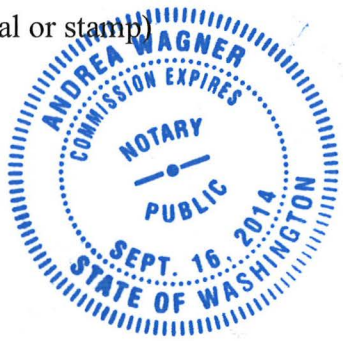
STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
County of Thurston)

I certify that I know or have satisfactory evidence that PETER GOLDMARK is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Commissioner of Public Lands, and ex officio administrator of the Department of Natural Resources of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 6-19-13

(Seal or stamp)



(Signature)

A WAGNER
(Print Name)

Notary Public in and for the State of Washington, residing at Olympia

My appointment expires 9-16-14

EXHIBIT A

Agreement Number 51-082037

Recording number of final DNR approved survey in Clallam County: 761656

Legal description of the Property:
AQUATIC LAND OUTFALL
EASEMENT NO. 20-013128, (WILL BE RECORDED AS 51-082037)

PARCEL A
LEGAL DESCRIPTION

THE FOLLOWING DESCRIBED PORTIONS OF THE SECOND CLASS TIDELANDS AND THE AQUATIC LANDS OF THE STATE OF WASHINGTON IN FRONT OF, ADJACENT TO OR ABUTTING SECTIONS 15 AND 22, TOWNSHIP 30 NORTH, RANGE 3 WEST, W.M., CLALLAM COUNTY, WASHINGTON:

A 50-FOOT WIDE STRIP OF LAND LYING 25 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE CONCRETE MONUMENT MARKING THE NORTHWEST CORNER OF SAID SECTION 22 AS SHOWN ON THE MAP RECORDED APRIL 26, 1984 IN VOLUME 9 OF SRVEYS, PAGE 129 UNDER CLALLAM COUNTY AUDITOR'S FILE NUMBER 553805; THENCE S88°20'37"E ALONG THE NORTH LINE OF SAID SECTION 22, A DISTANCE OF 2688.52 FEET TO A J.U. WRIGHT BRASS CAP IN CONCRETE MARKING THE NORTH QUARTER CORNER OF SAID SECTION 22; THENCE N58°59'09"E, A DISTANCE OF 3022.25 FEET TO THE TRUE POINT OF BEGINNING
OF THIS CENTERLINE DESCRIPTION; THENCE S31°49'14"W, A DISTANCE OF 1958.02 FEET MORE OR LESS TO THE EASTERLY LINE OF GOVERNMENT LOT 1 IN SAID SECTION 22 AND THE SOUTHWESTERLY TERMINUS OF SAID CENTERLINE.

THE SIDELINES OF SAID STRIP SHALL BE PROLONGED OR SHORTENED TO TERMINATE ON THE EASTERLY LINE OF SAID GOVERNMENT LOT 1.

EXCEPTING THEREFROM THAT PORTION OF SAID STRIP LYING WITHIN THE SECOND CLASS TIDELANDS CONVEYED BY THE STATE OF WASHINGTON TO WM. R. JOHNSON CO. BY INSTRUMENT RECORDED OCTOBER 18, 1927 UNDER CLALLAM COUNTY AUDITOR'S FILE NUMBERS 119020 AND 126683.

CONTAINING 1.92 ACRES MORE OR LESS.

Square footage of each of these Use classifications:

Water-dependent	
Nonwater-dependent	83,635.2
Public Access	
Total square feet	83,635.2

EXHIBIT B
PLAN OF OPERATIONS

1. DESCRIPTION OF PERMITTED USE

A. Existing Facilities: The existing facility consists of a Municipal Wastewater Outfall pipe that extends approximately 1,900 ft. (1,500 ft. on SOAL) offshore in about 50 ft. of water. The diffuser is 200 ft. in length with 16 ports of 4 in. diameter. The outfall is used to discharge un-chlorinated Class A reclaimed water and is also used when emergency treatment facility "upset" conditions occur; both types of discharge are allowed under this City's current National Pollutant Discharge Elimination System (NPDES) permit.

B. Proposed Facilities: There are no new proposed facilities.

2. ADDITIONAL OBLIGATIONS

A. Reduction of Discharge On State-Owned Aquatic Lands: The Grantee has complied with laws requiring considerations of opportunities for the use of reclaimed water and, using All Known and Reasonable Technology (AKART), has provided for a reduction of discharge on State-owned aquatic lands.

This facility is authorized to discharge in accordance with NPDES Waste Discharge and Reclaimed Water permits. The City's current permit is in compliance with the provisions of the State of Washington Reclaimed Water Act, Chapter 90.46 RCW and the Water Pollution Control Law Chapter 90.48 RCW as amended, and the Federal Water Pollution Control Act Title 33 USC Sec. 1251 et seq.

The Reclaimed Water Act, Chapter 90.46 RCW requires that reclaimed water be adequately and reliably treated prior to distribution and beneficial use. State regulations require that limitation set forth in a permit issued under Chapter 90.48 RCW must be either technology- or water quality-based. Municipal wastewater must also be treated using All Known and Reasonable Technology (AKART) and not pollute the waters of the state. The minimum criteria to demonstrate compliance with these requirements is derived from Chapter 173-221 WAC.

The plant produces Class A reclaimed water that is reused at various locations around the City of Sequim. The Grantee maintains a water reuse plan, which contains: 1. the description of the reuse distribution system, 2. the identification of uses, users, location of reuse sites, and 3. an evaluation of reuse sites, estimated volume of reclaimed water use, means of application, and for irrigation or surface percolation uses, the application rates, water balance, expected agronomic uptake, potential to impact ground water or surface water at the site, background water quality and hydrogeological information necessary to evaluate potential water quality impacts. The plan is reviewed annually and updated whenever new uses or users are added to the distribution system.

The outfall is also used when emergency treatment facility "upset" conditions occur. This is allowed by the current NPDES permit. In these instances the discharge does not meet the

Reclaimed Water Act Standards. Upset Conditions are defined as those situations when flow exceeds twice the plant's maximum daily hydraulic capacity within a 48 hour period, or when Class A water cannot be achieved due to acts of nature such as earthquakes, lightning, or other unforeseeable catastrophes.

B. Sediment Sampling: The Department of Ecology (WDOE) has promulgated aquatic sediment standards (Chapter 173-204 WAC) to protect aquatic biota and human health. These standards state that the WDOE may require Permittees to evaluate the potential for the discharge to cause a violation of applicable standards (WAC 173-204-400). The WDOE has determined through a review of the discharger characteristics and effluent characteristics that this discharge has no reasonable potential to violate the Sediment Management Standards and therefore the WDOE does not require sediment sampling.

Washington State Department of Natural Resources (DNR) agrees with WDOE and therefore will not require a specific sediment sampling protocol except as included in Section 8.11 of the Easement. However, DNR will require notification, consultation, and reporting as follows:

In the event there is a known discharge that violates the NPDES Permit, the Grantee shall:

- Notify the State in writing by copying the DNR on the detailed written report submitted to Department of Ecology pursuant to the notification requirements in the NPDES permit.
- Consult with DNR Sediment Quality Unit to determine whether sediment sampling is warranted.
- In the case sediment sampling is warranted; consult with DNR Sediment Quality Unit to assist with the development of a sediment sampling plan.
- Following any sampling event, submit to DNR a written report of the Sampling & Analysis Plan and a written and electronic Data Report in the format of Environmental Information Management (EIM) System (Study information, and Location, Result and Bioassay data) to DNR and WDOE.