SEATTLE CITY COUNCIL

Legislative Summary

CB 118395

Record No.: CB 118395 **Type:** Ordinance (Ord) **Status:** Passed

Version: 1 124799 **In Control:** City Clerk

File Created: 04/13/2015

Final Action: 07/07/2015

Title: AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to accept the grant of a non-exclusive easement within the West Waterway of the Duwamish River from the Washington State Department of Natural Resources for a City-owned sanitary sewer line.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Bagshaw

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments:

Drafter: bob.hennessey@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File **Legal Notice Published:** ☐ Yes ☐ No

Ver-sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	05/05/2015	Mayor's leg transmitted to Council	City Clerk			
	Action Text: The Council Bill (CB) was Mayor's leg transmitted to Council to the City Clerk						
	Notes:						
1	City Clerk	05/05/2015	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review to the Council President's Office						
	Notes:						
1	Council President's Office	05/07/2015	sent for review	Seattle Public Utilities and Neighborhoods Committee			
	Action Text: The Council Bill (CB) was sent for review to the Seattle Public Utilities and Neighborhoods Committee						
	Notes:						

1	Full Council	05/18/2015	referred	Seattle Public Utilities and Neighborhoods Committee	

Action Text: The Council Bill (CB) was referred. to the Seattle Public Utilities and Neighborhoods Committee
Notes:

1	Seattle Public Utilities and Neighborhoods Committee	06/23/2015	pass		Pass

Action Text: The Committee recommends that Full Council pass the Council Bill (CB).
In Favor: 2 Chair Bagshaw, Member Harrell
Opposed: 0

1	Full Council	06/29/2015	passed		Pass

Action Text: The Council Bill (CB) was passed by the following vote and the President signed the Bill:
Notes:
In Favor: 8 Councilmember Bagshaw, Council President Burgess, Councilmember Godden, Councilmember Harrell, Councilmember Licata, Councilmember O'Brien, Councilmember Rasmussen, Councilmember Sawant
Opposed: 0

1	City Clerk	07/02/2015	submitted for Mayor's signature	Mayor	

Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor
Notes:

1	Mayor	07/07/2015	Signed		

Action Text: The Council Bill (CB) was Signed.
Notes:

1	Mayor	07/07/2015	returned	City Clerk	

Action Text: The Council Bill (CB) was returned. to the City Clerk
Notes:

1	City Clerk	07/07/2015	attested by City Clerk		

Action Text: The Ordinance (Ord) was attested by City Clerk.
Notes:

Susan Crowley Saffery
SPU DNR Lease ORD
April 24, 2015
#1a

CITY OF SEATTLE

ORDINANCE 124799

COUNCIL BILL 118395

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to accept the grant of a non-exclusive easement within the West Waterway of the Duwamish River from the Washington State Department of Natural Resources for a City-owned sanitary sewer line.

WHEREAS, Seattle Public Utilities owns a sanitary sewer line that crosses under the West Waterway of the Duwamish River, which is owned by the Washington Department of Natural Resources; and

WHEREAS, the sewer line was ruptured in 2009, necessitating installation of a new sewer line south of the damaged sewer line; and

WHEREAS, the Department of Natural Resources gave permission for installation of the new sewer line on an emergency basis; and

WHEREAS, the original sewer line easement granted by the Department of Natural Resources does not include the location of the new line, therefore the City must acquire a new easement; and

WHEREAS, the State of Washington, acting through the Department of Natural Resources ("State") has authority pursuant to Chapter 43.12 RCW, Chapter 43.30 RCW and Title 79 RCW to enter into Aquatic Lands Easements; and

WHEREAS, Seattle Public Utilities determined the interests of the City, the Utility and its customers are best served by accepting the sewer line easement attached to this ordinance. NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Director of Seattle Public Utilities, or the Director's designee, is authorized to accept for and on behalf of the City of Seattle a new easement granted by the State of Washington for a relocated sanitary sewer line as legally described and as shown in Attachment 1.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 29th day of June, 2015, and signed by me in open session in authentication of its passage this 29th day of June, 2015.

President _____ of the City Council

Approved by me this 7 day of July, 2015.

Edward B. Murray, Mayor

Filed by me this 7th day of July, 2015.

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1 – Aquatic Lands Easement #51-085681

When recorded, return to:
Seattle Public Utilities
PO Box 34018
Seattle, WA 98124-4018

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

AQUATIC LANDS EASEMENT

Easement No. 51-085681

Grantor: Washington State Department of Natural Resources
Grantee(s): City of Seattle, Public Utilities
Legal Description: Section 18, Township 24 North, Range 4 East, 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 SEATTLE, PUBLIC UTILITIES a Government Agency/Entity ("Grantee"). State has authority to enter into this Easement under Chapter 43.12 RCW, Chapter 43.30 RCW, and Title 79 of the Revised Code of Washington (RCW).

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 at: West Waterway of the Duwamish River 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 King 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.

(d) This Easement does not include the right to grant easements and franchises to third parties. State reserves the right to reasonably grant, condition, or approve all third party easements and franchises regardless of whether the third party's use is incidental to the Easement. State shall not unreasonably condition or deny third-party easements or franchises necessary for continuation of utilities, including communication systems.

1.2 Survey and Easement Property Descriptions.

(a) Grantee prepared Exhibit A, which describes the Easement Property. Grantee represents 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. Grantee's obligation to provide a true and accurate description of the Easement Property boundaries is a material term of this Easement.

(b) State's acceptance of Exhibit A does not constitute agreement that Grantee's property description accurately reflects the actual amount of land used by Grantee. State reserves the right to retroactively adjust fees if at any time during the Term State discovers a discrepancy between Grantee's property description and the area actually used by Grantee.

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. Exhibit C, which is attached for information only and is not incorporated in the Easement, identifies Hazardous Substances known to exist in, on, under, or above the Property. State makes no representations or warranties of any kind about Exhibit C. State specifically does not guarantee its accuracy or completeness.

SECTION 2 USE

2.1 Permitted Use. Grantee shall use the Easement Property for a sewer force main (the "Permitted Use"), and for no other purpose, including utilities unless specifically identified as part of the Permitted Use. The Permitted Use is described or shown in detail in Exhibit B.

2.2 Restrictions on Use.

(a) The limitations in this Paragraph 2.2 apply to the Property and adjacent state-owned aquatic land. Grantee's compliance with this Paragraph 2.2 does not limit Grantee's liability under any other provision of this Easement.

(b) Grantee shall not cause or authorize:

(1) Damage to natural resources,

(2) Waste, or

(3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.

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 Grantee's 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.

SECTION 3 TERM

3.1 Term Defined. The term of this Easement is Thirty (30) years (the "Term"), beginning on the 1st day of March, 2015 (the "Commencement Date"), and ending on the 28th day of February, 2045 (the "Termination Date"), unless terminated sooner under the terms of this Easement.

3.2 Renewal of the Easement. This Easement does not provide a right of renewal. Grantee may submit a written request for a new easement, which State has discretion to grant, as many as

four (4) years but no less than one (1) year in advance of the termination date. Within ninety (90) days of receipt of Grantee's request, State shall provide Grantee a written response denying the request or stating its intent to approve a new easement subject to agreement on the terms and conditions of such new easement.

3.3 End of Term.

(a) Upon the expiration or termination of this Easement, Grantee shall remove Improvements in accordance with Section 7, Improvements, unless otherwise agreed, and surrender the Easement Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

(b) Definition of Reasonable Wear and Tear.

(1) Reasonable wear and tear is deterioration resulting from the Permitted Use that has occurred without neglect, negligence, carelessness, accident, or abuse by Grantee or Grantee's contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.

(2) Reasonable wear and tear does not include any deposit of material prohibited under Paragraph 2.2(b) unless expressly permitted by State in writing and regardless of whether the deposit is incidental to or the byproduct of the Permitted Use.

(c) If Easement Property is in worse condition, excepting for reasonable wear and tear, on the surrender date than on the Commencement Date, 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 Paragraph 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.

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 required or needed by the Permitted Use.

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.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Failure to Pay. Failure to pay any fees or other expenses is a default by Grantee. State may seek remedies in Section 14 as well as late charges and interest as provided in this Section 6.

6.2 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 unpaid or Fifty Dollars ($50), whichever is greater, to defray the overhead expenses of State incident to the delay.

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

(a) Grantee shall pay interest on the past due fee at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Fee not paid by the close of business day on the due date will begin accruing interest the day after the due date.

(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 Paragraph 2.2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due.

6.4 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.

6.5 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: Twelve inch sewer force main. The Improvements are Grantee-Owned Improvements.

7.3 Construction, Major Repair, Modification, and Demolition.

(a) This Paragraph 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) All Work must conform with State's standards for Improvements current at the time Grantee submits plans and specifications for State's approval.

(c) Except in an emergency, Grantee shall not conduct any Work without State's prior written consent, which State shall not unreasonably withhold:

(1) 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.

(2) 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.

(3) In determining whether to consent State may consider, among other items, (i) whether proposed Work would change the Permitted Use, expand overwater structures, or expand non-water dependent uses; (ii) the value of the Improvements before and after the proposed Work; (iii) such other factors as may reasonably bear upon the suitability of the Improvements to provide the public benefits identified in RCW 79.105.030 in light of the proposed Work.

(4) If the proposed Work does not comply with DNR's then existing standards for the Work State may nonetheless consent to the Work in writing or deny its consent or condition its consent on changes to the Work or Lease reasonably intended to protect and preserve the Property. If Work is for removal of Improvements at End of Term, State may waive removal of some or all Improvements.

(d) 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.

(e) 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).

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

(g) 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.

(h) Before completing Work, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to the condition prior to the commencement of Work. If Work is intended for removal of Improvements at End of Term, Grantee shall restore the Easement Property in accordance with Paragraph 3.3, End of Term.

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

(j) 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 Paragraph 7.4, unless at the time State and Grantee or its successor execute such subsequent use authorization, then existing laws and regulations allow State to authorize the permitted use of such Improvements, as identified in the subsequent use authorization, without charging rent for them.

7.4 Grantee-Owned Improvements at End of Easement.

(a) Disposition.

(1) Grantee shall remove Grantee-Owned Improvements in accordance with Paragraph 7.3 upon the expiration, termination, or cancellation of the Easement unless State waives the requirement for removal.

(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) Conditions Under Which State May Waive Removal of Grantee-Owned Improvements.

(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.

(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 may waive requirement to remove Grantee-Owned Improvements upon consideration of a timely request from Grantee, as follows:

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

(ii) State, within ninety (90) days, will notify Grantee whether State consents to any or all Grantee-Owned Improvements remaining. State has no obligation to grant consent.

(iii) State's failure to respond to Grantee's request to leave Improvements within ninety (90) days is a denial of the request.

(c) 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 Paragraph 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 is now regulated or in the future becomes regulated under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*; Washington's Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW ;

Washington's Sediment Management Standards, WAC Chapter 173-204; the Washington Clean Water Act, RCW 90.48, and associated regulations; and the federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and associated regulations, including future amendments to those laws and regulations.

(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).

(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. Exhibit C, which is attached for information only and is not incorporated in the Easement, identifies Hazardous Substances known to exist in, on, under, or above the Property. State makes no representations or warranties of any kind about Exhibit C. State specifically does not guarantee its accuracy or completeness.

(b) This Easement does not impose a duty on State to conduct investigations or supply information to Grantee about Hazardous Substances, provided, however, this Easement does not alter State's obligations to respond to requests for public documents under the Public Records Act, RCW 42.56. State will cooperate with Grantee's requests for public records and endeavor to provide the requested records promptly.

(c) Grantee is responsible for conducting sufficient inquiries 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 to allow 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 Grantee shall submit to State any plans for remedying the violation and cleanup any contamination as required under Section 8.9.

8.5 Management of Contamination.

(a) Grantee, its, contractors, agents, employees, guests, invitees, or affiliates shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Easement Property.

(b) Grantee shall take reasonable steps to avoid or reduce: human or environmental exposure to contaminated sediments and mechanical or chemical disturbance of on-site habitat mitigation. For purposes of this Subsection 8.5(b) reasonable steps may include access restrictions, fish consumption advisories, and use restrictions and advisories for water bodies.

(c) Grantee, its contractors, agents, employees, guests, invitees, or affiliates 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 that Grantee reports or is required to report to the Washington Department of Ecology;

(2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence or release of any Hazardous Substance;

(3) Any lien or regulatory 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 arises 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 that are asserted by third parties against Grantor or that are incurred by Grantor in order to comply with applicable laws and regulations.

(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 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 permit or license authorizes the discharge or release of Hazardous Substances.

(f) Grantee's obligations under this indemnity provision shall not exceed the appropriation authorized at the time Grantee must fulfill its indemnity obligations and nothing in this Easement may be considered as insuring that Grantee will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the Licensee's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

8.8 Reservation of Rights.

(a) For any environmental liabilities not covered by the indemnification provisions of Subsection 8.7 or the cleanup provisions of Section 8.9, 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 Permitted Use, or Grantee's breach of its obligations under this Easement, results in contamination of the Easement Property with Hazardous Substances, Grantee shall, at Grantee's sole expense, promptly take all actions necessary to report, investigate and remediate the Hazardous Substances in accordance with applicable law. Remedial actions may include, without limitation, treatment, removal, and containment.

(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 under Environmental Laws.

(c) Grantee shall cooperate with the Department of Natural Resources in development of plans for remedial actions and Grantee shall not proceed with remedial actions without Department of Natural Resources approval of final plans, which shall not be unreasonably withheld, unless Grantee is ordered to proceed by a court or a regulatory agency with jurisdiction. Grantee's completion of remedial actions is not an implied 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 Grantee's Permitted Use or any violation of Grantee's obligations under this Lease, 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 and Grantee would be required to reimburse State under section (c).

(e) Grantee is entitled to observe State's collection of samples and 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.

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 Claims arising out of the use, occupation, or control of the Easement Property by Grantee, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.

(b) "Claim" as used in this Paragraph 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, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "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) 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.

(d) 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.

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

(f) Tenant's obligations under this indemnity provision shall not exceed the appropriation authorized at the time Tenant must fulfill its indemnity obligations and nothing in this Easement may be considered as insuring that Tenant will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the Licensee's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

10.2 Insurance Terms.

(a) Insurance Required.

(1) Grantee certifies that it is self-insured for all the liability exposures, including but not limited to employers' liability and business auto liability, and its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph

10.2 and by Paragraph 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) All self-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 self-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 self-insurance maintained pursuant to this Easement.

(c) Proof of Insurance.

(1) Grantee shall provide State with a certification of self-insurance executed by a duly authorized representative of Grantee, showing compliance with insurance requirements specified in this Easement.

(2) The certification of self-insurance must reference the Easement number.

(3) Receipt of such certification of self-insurance or policies by State does not constitute approval by State of the terms of such self-insurance or policies.

(d) Grantee must provide State no less than 30 days notice if Grantee's self-insurance program is cancelled or materially reduced.

(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 provide a certification that meets the requirements of Section 10.2(c)(1) and demonstrates coverage in compliance with the Lease within thirty (30) days after State requires changes in the limits of liability.

(f) If Grantee fails to provide the certification 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 Paragraph 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 are 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 self-insurance or other 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 self-insurance with a limit of not less than Two Million Dollars ($2,000,000) per each occurrence and an aggregate limit of not less than twice any limit established for each occurrence.

(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 Grantee's use, occupation, and control of the Property.

(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 shall include 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 Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Grantee to provide insurance coverage in some circumstances. Grantee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Grantee is responsible for all civil and criminal liability arising from failure to maintain such coverage.

(c) Employers' Liability Insurance. Grantee shall maintain self-insurance that is equivalent to employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than Two Million Dollars ($2,000,000) each accident for bodily injury by accident or Two Million Dollars ($2,000,000) each employee for bodily injury by disease.

(d) Builder's Risk Insurance.

(1) Grantee shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project. Such insurance must be written on a completed form and in an amount equal to the value of the completed Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Grantee, all contractors,

and subcontractors in the work as insured. State must be named additional loss payee.

(2) Insurance described above must cover or include the following:
- (i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;
- (ii) The entire work on the Easement Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
- (iii) Portions of the work located away from the Easement Property but intended for use at the Easement Property, and portions of the work in transit;
- (iv) Scaffolding, falsework, and temporary buildings located on the Easement Property; and
- (v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.

(3) Grantee or Grantee'(s) contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.

(4) Grantee or Grantee's contractor shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Grantee, all contractors, and subcontractors in the work as insured. State must be named additional loss payee.

(e) Pollution Legal Liability Insurance

(1) Grantee shall maintain self-insurance that is equivalent to 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) Two Million Dollars ($2,000,000) each occurrence for Grantee's operations at the site(s) identified above, and at least
- (ii) Four Million Dollars ($4,000,000) 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.

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 Zero Dollars ($0), 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 the 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) 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 Paragraph 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 Paragraph 7.3 unless otherwise agreed in writing.

(c) If the damage or destruction is substantial and Grantee determines it is not cost-effective to repair, replace or reconstruct the Improvements, then Grantee may elect to terminate this Easement by notifying the State in writing within ninety (90) days after the date of damage or destruction. If Grantee elects to terminate this Lease Grantee shall remove the Improvements in accordance with Section7.4.

(d) If Grantee terminates this Easement as provided by this Subsection, Grantee shall pay State a share of any "Insurance Proceeds" that Grantee receives from third-

party insurance policies that insure the Improvements against damage or destruction. State's share of Insurance Proceeds shall be calculated using the ratio of State's interest in the Improvements to Grantee's interest in the Improvements, based on the fair market value of the Improvements and State's reversionary interest in the Improvements immediately before the damage or destruction. It State and Grantee are unable to agree on State's share of Insurance Proceeds, then State's share shall be determined by appraisal in accordance with Exhibit D.

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 Paragraph 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 REMEDIES AND TERMINATION

14.1 Breach.

(a) State may terminate this Easement upon Grantee's failure to cure a breach of its terms within sixty (60) days of State's written notice of breach.

(b) For nonmonetary breach not capable of cure within sixty (60) days, State will not unreasonably withhold approval of a reasonable alternative cure schedule. Grantee must submit a cure schedule with thirty (30) days of a notice of breach. State shall not terminate if State approves the schedule and Grantee works diligently and in good faith to execute the cure. State may terminate if Grantee fails to timely submit a schedule or fails to cure in accordance with an approved schedule.

(c) If breach arises from Grantee's failure to comply with restrictions on Permitted use under Paragraph 2.2, State may, without terminating this Easement, restore the

natural resources or Property and charge Grantee restoration costs and/or charge Grantee damages. On demand by State, Grantee shall pay all costs and/or damages.

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, unless otherwise agreed. 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. Grantee shall comply with Paragraph 3.3, End of Term.

14.4 Remedies Not Exclusive. The remedies specified under this Section 14 are not exclusive of any other remedies or means of redress to which the State is lawfully entitled for Grantee's breach or threatened breach of any provision of this Easement.

SECTION 15 NOTICE AND SUBMITTALS

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
Shoreline District Aquatics
950 Farman Avenue North
Enumclaw, WA 98022-9282

Grantee: CITY OF SEATTLE, PUBLIC UTILITES
PO Box 34018
Seattle, WA 98124-4018

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.

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.

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 of State 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 Easement 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.

DRAFT

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

CITY OF SEATTLE, PUBLIC UTILITIES

Dated: _____, 20__

_____
By: RAY HOFFMAN

Title: Director, Seattle Public Utilities

Address: PO Box 34018
Seattle, WA 98124-4018

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20__

_____
By: PETER GOLDMARK

Title: Commissioner of Public Lands

Address: Shoreline District Aquatics
950 Farman Avenue North
Enumclaw, WA 98022-9282

Approved as to form this
27 day of January 2014
Terence Pruit, Assistant Attorney General

DRAFT

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF)

I certify that I know or have satisfactory evidence that RAY HOFFMAN 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 DIRECTOR, SEATTLE PUBLIC UTILITIES of CITY OF SEATTLE, PUBLIC UTILITIES to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Seal or stamp)

_____
(Signature)

_____
(Print Name)

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

_____

My appointment expires _____

DRAFT

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF)

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: _____

(Seal or stamp)

_____
(Signature)

_____
(Print Name)

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

My appointment expires _____

DRAFT

EXHIBIT A

King County survey recording number 20110511900002

Legal Description:

AQUATIC LEASE FOR A SEWER LINE. DNR LEASE NO. 51-085681

A 20 FOOT WIDE STRIP OF LAND, SITUATE IN A PORTION OF THE WEST WATERWAY AS SHOW IN THE 1991 SUPPLEMENT MAP OF SEATTLE HARBOR, ACCORDING TO THE OFFICIAL MAP ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS, OLYMPIA, WASHINGTON; SITUATE IN THE WEST HALF OF THE NW QUARTER OF SECTION 18, TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M. AND THE EAST HALF OF THE NE QUARTER OF SECTION 13, TOWNSHIP 24 N, RANGE 3 EAST, W.M., BEING 10 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE;

COMMENCING AT THE SOUTHEAST CORNER OF LOT 12, BLOCK 424, PLAT OF SEATTLE TIDELANDS, ACCORDING TO THE OFFICIAL MAP ON FILE IN THE OFFICE OF THE COMMISIONER OF PUBLIC LANDS, OLYMPIA, WASHINGTON; THENCE S 41° 06' 37" E ALONG THE WEST LINE OF SAID WEST WATERWAY A DISTANCE OF 56.14 TO THE POINT OF BEGINNING OF SAID CENTERLINE;

THENCE S 86° 37' 42" E A DISTANCE OF 560.54 FEET TO THE EAST LINE OF SAID WEST WATERWAY AND THE TERMINUS OF SAID CENTERLINE.

THE SIDELINES OF SAID STRIP TO BE LENGTHENED OR SHORTENED TO TERMINATE AT THE EAST AND WEST LINES OF SAID WEST WATERWAY.

CONTAINING 11,210 SQUARE FEET OR 0.26 ACRES, MORE OR LESS

EXHIBIT B

1. DESCRIPTION OF PERMITTED USE

A. Existing Facilities. Seattle Public Utilities Aquatic Easement No. 51-032157, a sewer main, ruptured in 2009. An emergency letter of permission was issued on September 4, 2009 by the Washington Department of Natural Resources. An 800 foot long HDPE pipe, 16" in outside diameter (12" Inside), was installed via Horizontal Hydraulic Drilling under the west waterway of the Duwamish River in September of 2009. The new pipe is south of the ruptured main outside of the original easement, thus requiring a new easement number (51-085681).

B. Proposed Facilities. Grantee has secured the following permits for the new pipe installed in 2009:

WA Department of Fish and Wildlife, Hydraulic Project Approval, 9/03/2009

City of Seattle, Department of Planning and Development, Exemption from Shoreline Management Act Substantial Development Permit, 9/04/2009

Army Corps of Engineers, NWP 12, 9/04/2009

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EXHIBIT C
RECORD OF KNOWN CONTAMINATION

Prepared by John Evered, Sediment Quality Unit, WDNR

In 1985 samples were taken by EPA region 10 as part of a sediment toxicity study called the 1985 Elliot Bay sediment survey. The sampling location was just to the north of the old crossing in the middle of the channel. Exceedances were recorded above cleanup screening levels for 1,2,4-trichlorobenzene, 1,2-dichlorobenzene, 2,4-dimethylphenol, benzyl alcohol, hexachlorobenzene, hexachlorobutadiene and pentachlororphenol.

As part of the Harbor Island Phase II remedial investigation in 1991 samples were taken on the eastern side of the waterway under SW Spokane St. The study was conducted by the EPA superfund program and was part of the contaminated site investigation which included a remedial investigation/feasibility study and remedial design. Exceedances were recorded for 1,2,4-trichlorobenzene, 1,2-dichlorobenzene, 1,4-dichlorobenzene, 2,4-dimethylphenol, dimethyl phthalate, hexachlorobenzene, hexachlorobutadiene, n-nitrosodiphenylamine and 2-methylphenol.

In 2012 samples were taken on the western side of the waterway directly underneath SW Spokane St, adjacent to the 'seawall'. The samples were taken as part of a sediment dredging study called the Duwamish Waterway, East Waterway and West Waterway Subsurface Sediment Characterization. The purpose of the study was to determine the level of contamination in subsurface sediments of the Lower Duwamish, East Waterway and West Waterway; to compare analytical techniques for PCB analysis; and to monitor the confined aquatic disposal site in the West Waterway. Exceedances above cleanup screening levels were recorded for 1,2,4-trichlorobenzene and 1,2-dichlorobenzene.

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EXHIBIT D

A. **Procedure for Selection of Appraiser.** Unless the parties otherwise agree in writing, any appraisal required under the Easement shall be conducted as set forth in this Exhibit D. Appraisals shall be conducted by a qualified appraiser licensed in the State of Washington. Appraisals must comply with the Uniform Standards of Professional Appraisal Practice (USPAP). State shall select an appraiser that is acceptable to both parties from State's pool of qualified expert independent appraisers, or, if no pool of qualified appraisers exists, through a request for proposal (RFP) for appraisal services consistent with State contracting requirements. Tenant will have the opportunity to review and comment on the RFP. Both State and Tenant shall be identified as co-clients and intended users and will share the costs equally for the appraisal. State shall contact Tenant to discuss appraisal bids before selecting an appraisal firm. For thirty days following the receipt of the initial appraisal report, Tenant and State will each have an opportunity to review the appraisal report and jointly submit, through State, comments to the appraiser for clarification or correction of any of the report's content or conclusions. The objective of State and Tenant is to have an acceptable appraisal report. The appraiser shall use the appraiser's independent professional judgment regarding the contents and conclusions of the final appraisal report which shall be issued no later than 30 days after State submits the joint comments of the parties on the draft appraisal report. State and Tenant will be responsible for their own review costs.

B. **Appraisal Procedure:**

1. Purpose. State currently manages the aquatics land easement (Easement No. 51-085861) commonly known as the West Waterway Sewer Main Easement in Seattle, King County, Washington. In the event that Improvements authorized under the Lease are substantially damaged or destroyed and not repaired as authorized under Section 12.1(c) of the Easement, the Easement, under Section 12.1(d), requires the division of insurance proceeds in proportion to the interest of State and Tenant in the Improvements authorized under the Easement. The appraisal assignment is to develop and report the fair market value of the State's and Tenant's interests in the Improvements under the Easement immediately prior to the damage or destruction.

2. Fair Market Value. For purposes of any appraisal authorized under this Agreement the term "fair market value" shall mean:

"The most probable price that the specified property interest should sell for in a competitive market after a reasonable exposure time, as of a specified date, in cash, or in terms equivalent to cash, under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, for self-interest, and assuming that neither is under duress." [The Dictionary of Real Estate Appraisal, 5th Edition]

3. Appraisal Standards. The appraisal report must conform to the Uniform Standards of Professional Appraisal Practice (USPAP-current Edition) or current appraisal standards required by law in effect as of the report date.

   In addition to the above, the following are required in all appraisal reports:

   - Written report of contact with owner, including dates and methods of contact, whether owner accompanied the appraiser during inspection, and general comments and communications between the appraiser and the owner.
   - A minimum of five sales required in the market approach.
   - Data on similar property listings/offerings of properties in the immediate neighborhood, when relevant, and in addition to comparable sales.
   - Topographical map, site map, etc., are required as relevant to the valuation assignment.
   - Confirmation data to identify the source of data and sales information, including a telephone number for the source and the appraiser who conducted the confirmation interview.

4. Report Format: The appraisal must be reported in a Self-Contained format and comply with USPAP 2-2(a) or current appraisal reporting standards required by law in effect as of the report date. The report will be subject to review and the appraiser will be required to clarify any issues in writing. Failure to do so may result in the report being considered unacceptable.

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STATE OF WASHINGTON -- KING COUNTY

--ss.

326789

No. 124795,796,798,799,800,801, 797

CITY OF SEATTLE,CLERKS OFFICE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:TITLE ONLY ORDINANCES

was published on

07/28/15

The amount of the fee charged for the foregoing publication is the sum of $124.00 which amount has been paid in full.

JENNIFER A. BURKERO
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
10-24-15

Subscribed and sworn to before me on

07/28/2015

Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

State of Washington, King County

City of Seattle

Title Only Ordinances

The full text of the following legislation, passed by the City Council on June 29, 2015, and published below by title only, will be mailed upon request, or can be accessed at http://clerk.seattle.gov. For information on upcoming meetings of the Seattle City Council, please visit http://www.seattle.gov/council/calendar.

Contact: Office of the City Clerk at (206) 684-8344.

Ordinance 124795

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Ordinance 124796

AN ORDINANCE relating to transportation; providing for the submission to the qualified electors of the City at an election to be held on November 3, 2015, a proposition authorizing the City to levy regular property taxes for up to nine years in excess of the limitation on levies in Chapter 84.55 RCW for the purpose of providing City facilities and services, including transportation improvements, both capital and operating, with possible debt financing; creating a new oversight committee; and ratifying and confirming certain prior acts.

Ordinance 124797

AN ORDINANCE granting SDC Creative LLC permission to maintain and operate a skybridge over and across South Orcas Street, east of 5th Avenue South, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Ordinance 124798

AN ORDINANCE relating to the City Light Department; granting authority to accept and execute revenue and funding source agreements to support the operation and services of the Lighting Design Lab; and ratifying and confirming certain prior acts.

Ordinance 124799 AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to accept the grant of a non-exclusive easement within the West Waterway of the Duwamish River from the Washington State Department of Natural Resources for a City-owned sanitary sewer line.

Ordinance 124800

AN ORDINANCE relating to wastewater services of Seattle Public Utilities; and amending subsections 21.28.040.B and 21.76.040.A of the Seattle Municipal Code to adjust the wastewater volume rate and adjust credits to low-income wastewater customers.

Ordinance 124801

AN ORDINANCE relating to drainage services of Seattle Public Utilities; amending Sections 21.33.010, 21.33.030, and 21.33.040, and subsection 21.76.040.A of the Seattle Municipal Code to update definitions; adjust drainage rates and provide clarification regarding assignment of parcels to rate categories; define additional conditions under which rate credits may be applicable; and revise credits to low-income drainage customers.

Date of publication in the Seattle Daily Journal of Commerce, July 28, 2015.

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