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Clark County, WA 02/05/2016 02:38

When recorded, return to:
John Peterson, Clark Regional Wastewater District
Administrative Lead for the Discovery Clean Water Alliance
P.O. Box 8979
Vancouver, WA 98668

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

NOTICE OF AND CONSENT TO ASSIGNMENT OF EASEMENT

Easement No. 51-076024

Grantor: Washington State Department of Natural Resources
Grantee(s): Discovery Clean Water Alliance
Legal Description: A portion of the Northeast 1/4 of the Northwest 1/4 of Section 24, Township 4 North, Range 1 West, W.M. Adjacent Parcels: 986028601 68314000 68360000 68319000

I. NOTICE OF ASSIGNMENT

This Notice of Assignment ("Agreement") is made by and between the City of Ridgefield, a government entity, whose address is PO Box 608, Ridgefield, WA 98642 ("Assignor") and the Discovery Clean Water Alliance, a government entity, whose address is P.O. Box 8979, Vancouver, WA 98668 ("Assignee").

BACKGROUND

Easement No. 51-076024 was entered into on the 1st day of January, 2006, by and between the City of Ridgefield as Grantee and the STATE OF WASHINGTON, acting through the Department of Natural Resources, as landlord ("State"), and recorded with the Clark County Auditor's office under recording number 4250679 and shown on the DNR approved survey recorded in Book 63, Page 190 (the "Easement").

Assignor desires to assign and Assignee desires to assume the rights, duties, and liabilities of Grantee under the Easement. The Easement prohibits an assignment without State's consent. State is willing to give its consent based upon the assurances and agreements made in this Agreement.

THEREFORE, Assignor and Assignee agree as follows:

SECTION 1 NOTICE OF INTENT TO ASSIGN

Assignor gives notice of its intent to assign Easement to Assignee. Assignor warrants to State and Assignee that Assignor will assign all of its rights, title, and interest as Grantee under the Easement to Assignee effective the 1st day of January, 2016, for the balance of the term as provided in the Easement upon State's consent to the assignment.

SECTION 2 NOTICE OF INTENT TO ASSUME

Assignee gives notice of its intent to assume all the duties and liabilities of Grantee under the Easement for the balance of the Easement term as provided in the Easement effective the 1st day of January, 2016. By signing this Agreement, Assignee guarantees faithful performance and discharge of the duties and liabilities of Grantee according to the terms of the Easement.

SECTION 3 NO RELEASE

State does not release Assignor from fully performing the provisions of the Easement. Assignor agrees that State and Assignee may change, modify, or amend the Easement in any way, including the rent to be paid. Any change, modification, or amendment of the Easement shall not release Assignor from fully performing the provisions of the Easement. Assignor remains liable to State to the same extent as if no assignment had been made.

SECTION 4 MODIFICATION OF EASEMENT AT TIME OF ASSIGNMENT

The assignment and any change, modification, or amendment to the Easement shall occur contemporaneously. Assignee has the obligation to obtain a copy of the Easement and any contemporaneous amendments. Assignee has the further obligation to provide Assignor with a copy of any contemporaneous amendments.

SECTION 5 FURTHER ASSIGNMENTS

Further assignments may be made, without notice to or consent of Assignor, and without in any manner releasing or relieving Assignor from liability under the Easement. Assignor shall remain

liable under all the terms, covenants, and conditions of the Easement as to the end of the term of the Easement. Further assignment shall not be made without prior written consent of State.

SECTION 6 WARRANTIES

Assignor represents and warrants to State and to Assignee that:

(a) The Easement is in full force and effect;
(b) Assignor is not in default or breach of the Easement;
(c) Assignor has no knowledge of any claims, offsets, or defenses of any Grantee under the Easement;
(d) Fees due subsequent to this assignment have not been paid in advance by any Grantee; and,
(e) To the best of Assignor's knowledge, the property is in full compliance with all applicable federal, state, and local governmental permits, rules, ordinances, and laws.

Assignor shall defend, indemnify and hold State harmless from any breach of the foregoing warranties and from any claims or causes of action, known or unknown, of Assignor that have or may arise from circumstances that precede this assignment.

SECTION 7 NOTICE

Assignor instructs State to send all future notices to Assignee. Assignee has the obligation to keep Assignor informed about the activities on the property and Assignee's performance of its obligations under the Easement. Assignee shall send to Assignor copies of any notices it receives or sends to State. Assignor has the obligation to remain informed of Assignee's activities on the property, Assignee's performance of its obligations under the Easement, and Assignee's financial condition. State has no obligation to provide Assignor any notice or information concerning the Easement. Assignee and Assignor shall not rely on State to inform Assignor.

SECTION 8 NOTICE TO STATE AND RECORDATION

Assignor agrees to provide written notice to State that the assignment has been executed and to record the assignment in the county in which the property resides. Such assignment, notice, and recording must occur within 60 days of the date upon which this Agreement is executed. Assignor may record either the assignment document or a memorandum of assignment. Written notice to State under this Section shall include a copy of the assignment document or memorandum of assignment. If Assignor fails to notify State of the assignment in accordance with this Section, this Agreement shall be void.

SECTION 9 CONSTRUCTION

This Agreement shall be construed under the laws of the State of Washington. In the event of conflict between any term, condition, or provision of any agreement between the Assignor and Assignee, and the terms of this Agreement or the Easement, the terms of this Agreement and the Easement shall control. In the event of conflict between any term, condition, or provision of this Agreement and the Easement, this Agreement shall control.

THIS AGREEMENT requires the signature of all Parties and is executed as of the date of the last signature below.

ASSIGNOR: CITY OF RIDGEFIELD

Dated: November 20, 2015

By: ~~TIM SHELL~~ Bryan Kast BK
Title: Public Works Director (KC) - Notary
Address: P.O. Box 608
Ridgefield, WA 98642
Phone: 360-857-5023

ASSIGNEE: DISCOVERY CLEAN WATER ALLIANCE

Dated: November 20, 2015

By: TOM MIELKE
Title: Board Chairman
Address: P.O. Box 8979
Vancouver, WA 98668
Phone: 360-993-8819

I. CONSENT TO ASSIGNMENT BY STATE

In consideration of the foregoing Agreement, State consents to the Assignment of the Easement to Assignee. However, State expressly conditions this consent on the understanding that neither State's consent nor its collection of rent from Assignee shall be a waiver of the covenant restricting future assignments or subletting. Furthermore, State's acceptance of Assignee as Grantee shall not be construed as releasing Assignor from full performance of the provisions of the Easement. Except as set forth in the foregoing Agreement, no provision of the Agreement or this consent alters or modifies any of the terms and conditions of the Easement, including the requirement that the written consent of State be obtained before any further assignment of the Easement or subletting of the property occurs. If State fails to receive written notice of the assignment in accordance with Section 8 of the foregoing Agreement, State's consent shall be void.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: 14 December 2015

By: MEGAN DUFFY
Title: Deputy Supervisor for Aquatics and Geology
Address: 1111 Washington Street SE
Olympia, WA 98504

Approved as to Form
This 17 day of September 2014 by
Jennifer Morey, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that ~~TIM SHELL~~ Bryan Kast (BK) 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 Public Works Director of the City of Ridgefield to be the free and voluntary act of such party for ~~the~~ uses and purposes mentioned in the instrument.

Dated: November 20, 2015

Kimberly Chambers
(Signature)

(Seal or stamp)

KIMBERLY CHAMBERS
Commission Expires
NOTARY PUBLIC
MAR. 24, 2018
STATE OF WASHINGTON

Kimberly Chambers
(Print Name)

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

My appointment expires 03-24-2018

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that TOM MIELKE 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 Chairman of the Board of Directors of the Discovery Clean Water Alliance to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument

Dated: November 20, 2015

Kimberly Chambers
(Signature)

(Seal or stamp)

Kimberly Chambers
(Print Name)

KIMBERLY CHAMBERS
Commission Expires
NOTARY
PUBLIC
MAR. 24, 2018
STATE OF WASHINGTON

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

My appointment expires 03-24-2018

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of Thurston)

I certify that I know or have satisfactory evidence that MEGAN DUFFY is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Deputy Supervisor for Aquatics and Geology of The Department of Natural Resources to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12.14, 2015

(Signature)

(Seal or stamp)

AMY LYN RIBERA
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES DECEMBER 17, 2016

Amy Lyn Ribera
(Print Name)

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

My appointment expires 12.17.16

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Clark County, WA 02/05/2016 02:38

When recorded, return to:
John Peterson, Clark Regional Wastewater District
Administrative Lead for the Discovery Clean Water Alliance
PO Box 8979
Vancouver, WA 98668

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

AQUATIC LANDS AGREEMENT AMENDMENT

Easement No. 51-076024

Grantor: Washington State Department of Natural Resources
Grantee(s): City of Ridgefield
Legal Description: A portion of the Northeast ¼ of the Northwest ¼ of Section 24, Township 4 North, Range 1 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 Adjacent Parcels: 986028601 68314000 68360000 68319000

THIS EASEMENT AMENDMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and CITY OF RIDGEFIELD, a government agency/entity (Grantee).

BACKGROUND

Easement No. 51-076024 was entered into on the 1st day of January, 2006 by and between the CITY OF RIDGEFIELD as Grantee and the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, as landlord ("State"), and recorded with the Clark County Auditor's office under recording number 4250679 (the "Agreement").

Copies of the agreement are attached as Exhibit A. Grantee now possesses the rights, duties, and liabilities under the agreement as amended.

The parties now desire to amend this Agreement under the following terms and conditions:

THEREFORE, the parties agree as follows:

SECTION 1 AMENDMENTS

Sections 1.1, 1.2, 1.3, 1.4, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 3.2, 3.3, 3.4, 3.5, 3.6, 4.2, 4.3, 4.4, 4.5, 5.1, 5.2, 5.3, 5.4, 6.1, 6.2, 6.3, 6.4, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 9.1, 9.2, 9.3, 10.1, 10.2, 10.3, 10.4, 11.1, 11.2, 12.1, 12.2, 12.3, 13.1, 13.2, 13.3, 13.4, 13.5, 14.1, 14.2, 14.3, 15.1, 15.2, 15.3, 16.1, 16.2, 16.3, 16.4, 16.5, 16.5, 16.7, 16.8, 16.9, 16.10, 16.11, 16.12, 16.13, 16.14, 17, 18, 19, 20, 21, 22, 23, 24, 25.1, 25.2, 25.3, 25.4, 25.5, 25.6, 25.7, the Property Description, and Plan of Operations and Maintenance of the Easement are amended to read as specified in Exhibit B attached hereto.

SECTION 2 EFFECTIVE DATE

The amended provisions shall become effective as of January 1, 2016.

SECTION 3 NO RELEASE

State is not releasing any previous Assignor from fully performing the provisions of the Agreement in effect at the time of such assignment or as otherwise agreed in writing between the State, previous Assignor, and the Grantee.

SECTION 4 WARRANTIES

Grantee represents and warrants to State that (i) the Agreement is in full force and effect; (ii) Grantee is not in default or breach of the Agreement; (iii) Grantee has no knowledge of any claims, offsets, or defenses of the Grantee under the Agreement; and (iv) to the best of Grantee knowledge, the Property is in full compliance with all applicable federal, state, and local governmental permits, rules, ordinances, and laws.

SECTION 5 CONFIRMATION OF AGREEMENT

All other terms of the Agreement not inconsistent with this Amendment are hereby affirmed and ratified.

SECTION 6 RECORDATION

At Grantee's expense and no later than thirty (30) days after receiving the fully-executed Agreement, Grantee shall record this Agreement 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.

THIS AGREEMENT requires the signature of all parties and is executed as of the date of the last signature below.

CITY OF RIDGEFIELD

Dated: November 20, 2015

By: ~~TIM SHELL~~ Bryan Kast BK
Title: Public Works Director (KC) Notary
Address: P.O. Box 608
Ridgefield, WA 98642
Phone: 360-857-5023

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: 14 December, 2015

By: ~~MEGAN DUFFY~~
Title: Deputy Supervisor for Aquatics and Geology
Address: 1111 Washington Street SE
Olympia, WA 98504

Approved as to Form this
This 28 day of September 2011
Janis Snoey, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of Clark)

Bryan Kast (BK) (BK)

I certify that I know or have satisfactory evidence that ~~TIM SHELL~~ 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 Public Works Director of the City of Ridgefield to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: November 20, 2015

Kimberly Chambers
(Signature)

(Seal or stamp)

KIMBERLY CHAMBERS
Commission Expires
NOTARY
PUBLIC
MAR. 24, 2018
STATE OF WASHINGTON

Kimberly Chambers
(Print Name)

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

My appointment expires 03-24-2018

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of Thurston)

I certify that I know or have satisfactory evidence that MEGAN DUFFY is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Deputy Supervisor for Aquatics and Geology of The Department of Natural Resources to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12·14, 2015

(Signature)

(Seal or stamp)

AMY LYN RIBERA
COMMISSION EXPIRES
NOTARY
PUBLIC
DECEMBER 17, 2016
STATE OF WASHINGTON

Amy Lyn Ribera
(Print Name)

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

My appointment expires 12·17·16

Exhibit A: Agreement as Executed 1/1/2006

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands

AQUATIC LANDS OUTFALL EASEMENT

AQUATIC LANDS EASEMENT NO. 51-076024

THIS EASEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources (State), and the CITY OF RIDGEFIELD, a government agency/entity (Grantee).

SECTION 1 GRANT AND LOCATION OF EASEMENT

1.1 **Easement Property.** State grants and conveys to Grantee a nonexclusive easement for a term of years (the Easement) over, upon, and under the property described in Exhibit A (the Easement Property).

1.2 **Rights of Third Parties.** This Easement is subject to all valid interests of third parties noted in the records of Clark 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 the federal navigation servitude; and treaty rights of Indian Tribes. Not included in this Easement are any right to harvest or collect 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. State reserves the right to grant easements and other land uses on the Easement Property to others when the easement or other land uses will not unreasonably interfere with Grantee's Permitted Use.

1.3 **Inspection.** 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. Grantee has inspected the Easement Property and accepts it "AS IS."

1.4 Surveys, Maps, and Plans. In executing this Easement, State is relying upon the surveys, plats, diagrams, and/or legal descriptions provided by Grantee. Grantee is not relying upon and State is not making any representations about any surveys, plats, diagrams, and/or legal descriptions provided by State.

SECTION 2 USE OF EASEMENT

2.1 Permitted Use. This Easement is granted for the purpose of and is limited to constructing, installing, operating, maintaining, and repairing the outfall pipeline shown in Exhibit A ("Permitted Use") and Exhibit B ("Plan of Operations"). No modification to the permitted use shall be allowed without State's prior written consent. Any modification to the improvements approved under this subsection shall only be undertaken after complying with Sections 6 and 13. The outfall, and associated facilities that make use of the outfall, shall be constructed and operated in accordance with the provisions of the Plan of Operations contained in Exhibit B.

2.2 Restrictions on Use. Grantee shall not cause or permit any damage to natural resources on or adjacent to the Easement Property. Grantee shall also not cause or permit any filling activity to occur on the Easement Property. This prohibition includes any deposit of rock, earth, ballast, refuse, garbage, waste matter (including chemical, biological or toxic wastes), hydrocarbons, any other pollutants, or other matter in, on, or adjacent to the Easement Property, except as approved in writing by State or pursuant to discharges made in full compliance with a valid NPDES permit. Grantee shall neither commit nor allow waste to be committed to, on, or adjacent to the Easement Property. If Grantee fails to comply with all or any of the restrictions on use set out in this Subsection 2.2, State may terminate this Easement in accordance with Section 12 and, at State's discretion, may take any steps reasonably necessary to remedy such 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 in, on, or adjacent to the Easement Property. This section shall not in any way limit Grantee's liability under Section 8, below.

The prohibitions in this section against damage to natural resources, filling, deposition of any unapproved materials, and waste, shall also apply to protect state-owned aquatic lands adjacent to the Property from any of Grantee's activities related to Grantee's occupation of the Property. All obligations imposed by this section on Grantee to cure any violation of the prohibited activities in this section shall also extend to state-owned aquatic lands adjacent to the Property when the violation arose from Grantee's activities related to Grantee's occupation of the Property.

2.3 Conformance with Laws. Grantee shall, at all times, 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 or occupancy of the Easement Property. This includes, but is not limited to, all state and federal laws, regulations, order or permits governing the construction, operation, repair and maintenance of the outfall pipeline shown in Exhibit A.

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 or occupancy of the Easement Property.

2.5 Amendment upon Change of Permit Status. This Easement is granted in reliance upon Grantee's agreement to operate an outfall in substantially the same manner as described in the regulatory permits it has obtained as of the date this Easement was executed, and in full compliance with those permits. State reserves the right to amend the terms and conditions of this easement in those cases where any regulatory permit (including, but not limited to, any National Pollutant Discharge Elimination Systems (NPDES) Permit, Hydraulic Project Approval, U.S. Army Corps of Engineers Section 404 Permit, or Shoreline Substantial Development Permit) is modified in any manner that affects the performance of any obligation or covenant under this Easement. This right to amend the Easement shall expressly include those circumstances where the permit is modified to allow for a change in the manner in which the outfall is operated, or a change in the type, quality, or quantity of effluent being discharged. State similarly reserves the right to amend this Easement where Grantee fails to operate in conformance with its permits and where such failure could affect the lands and natural resources associated with the Easement area and any adjacent state lands or natural resources. This right to amend the Easement shall operate independent of any right to terminate the Easement pursuant to Section 12 or any other provision of this Easement. In the event that Grantee disagrees with any amendments that are required by State under this Subsection, Grantee's sole option shall be to request that the Easement be terminated upon sixty days written notice. In the event that the Easement is terminated under these circumstances, Grantee shall be allowed a pro rata reduction in any fees paid under Subsection 4.1 for the remaining unused Term, with the exception that no refund of any fees shall be provided if the outfall is allowed to remain in place pursuant to the provisions of Subsection 13.4.

SECTION 3 TERM

3.1 Term Defined. The term of this Easement is thirty (30) years (the "Term"), beginning on the 1st day of January, 2006 (the "Commencement Date"), and ending on the 31st day of December, 2035, (the "Termination Date"), unless renewed pursuant to subsection 3.2 or terminated sooner under the terms of this Easement.

3.2 Renewal of the Easement. No interim renewals are contemplated. Grantee may apply for a new easement prior to, or upon expiration of this easement. Any renewal application will be evaluated using the statutes, guidelines and policies utilized by State at the time the application is being reviewed in conjunction with the provisions of Subsection 3.3.

3.3 · Development of Disposal Alternatives. Grantee acknowledges that it is State's goal to reduce the reliance on the receiving waters of Washington State for the disposal of waste effluent, stormwater and other discharges, and to promote water re-use. Any renewal of this easement shall be dependent upon Grantee's satisfactory progress towards the implementation of reasonably practical disposal alternatives that abate the effect of the pollution constituents on state-owned aquatic lands and their associated biological communities. To assure that such progress is made during the Term of this Easement, Grantee shall submit a written report at the time of application to renew the NPDES Permit, or every five (5) years, whichever is sooner. The report will identify: (1) activities undertaken since the previous report to reduce discharges as well as efforts to decrease chemical, biological and physical impacts to state-owned aquatic lands and their associated biological communities; and (2) current and future plans, including funding, for reducing discharges and decreasing chemical, biological and physical impacts to state-owned aquatic lands and their associated biological communities. In any request for renewal, if Grantee has not provided evidence satisfactory to State, that it is making progress towards disposal alternatives that abate pollution impacts, the State may require Grantee to undertake a thorough investigation and analysis of reasonably practical disposal alternatives to the Permitted Use. If such review is required, it shall be completed prior to any renewal of this Easement. In the alternative, State may rely on its own alternatives analysis in accordance with WAC 332-30-122 and such other regulations as State has or may promulgate. Grantee acknowledges that the processing of any renewal application is contingent upon compliance with this Subsection 3.3, and that State is under no obligation to issue a new Easement. Grantee further acknowledges that a failure to anticipate and conduct the disposal alternatives investigation and analysis may delay or prevent renewal of this Easement.

3.4 Delay in Delivery of Possession. If State, for any reason whatsoever, cannot deliver possession of the Easement Property to Grantee on the Commencement Date, this Easement shall not be void or voidable, nor shall State be liable to Grantee for any loss or damage resulting from the delay in delivery of possession. In such event, the date of delivery of possession shall be the Commencement Date for all purposes, including the payment of any Use Fee. In the event Grantee takes possession before the Commencement Date, the date of possession shall be the Commencement Date for all purposes, including the payment of any Use Fee. If the Easement Term commences earlier or later than the scheduled Commencement Date, the Termination Date shall be adjusted accordingly.

3.5 End of Term. Upon the expiration or termination of this Easement, Grantee shall surrender the Easement Property to State in the same or better condition as on the Commencement Date.

3.6 Existing Pipeline. The parties acknowledge that Grantee has been occupying a portion of the Easement Property with an unauthorized pipeline. This occupancy shall not be considered for purposes of adjusting the Commencement Date of this Easement. The parties agree that the existing pipeline shall be governed by the terms of this Easement in all other respects.

SECTION 4 USE FEE

4.1 Fee. Pursuant to RCW 79.110.230 and RCW 79.110.240, so long as the Permitted Use is consistent with the purposes of RCW 79.105.010 through RCW 79.105.210 and does not obstruct navigation or other public uses of Lake River and its surrounding waters, this use is Granted to government owned public utilities for the cost of administrative fees associated with the processing of the application and document, plus the cost of administrative fees associated with the processing of any future application made with respect to this easement for the term specified in Section 3.1 (Term Defined). The use fee specified pursuant to RCW 79.110.240 shall be paid upon execution of this easement. Any administrative fees shall be paid within thirty (30) days after a bill is submitted to Grantee. Nothing in this subsection shall preclude State's ability to charge Grantee a fee for any impacts to natural resources on or adjacent to the Easement Property that are directly or indirectly associated with the Permitted Use or Grantee's use or occupation of the Easement Property.

4.2 Payment Place. Payment for any annual Use Fee or other sum payable to State under the terms of this agreement is to be made to State at the following address:

DEPARTMENT OF NATURAL RESOURCES
Financial Management Division
1111 Washington St SE
PO Box 47041
Olympia, WA 98504-7041

4.3 Late Charges and Interest. If any Use Fee or sum payable to State under the terms of this Easement is not received by State 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 as a result of the delay. If any Use Fee is not paid within thirty (30) days of the date due, then Grantee shall, in addition to paying the late charges established above, pay interest on the amount outstanding at the rate of one percent (1%) per month until paid.

4.4 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. In the absence of an election, the payment or receipt shall be applied first to accrued taxes which State has advanced or may be obligated to pay, then to other amounts advanced by State, then to late charges and accrued interest, and then to the earliest Use Fee due. State may accept any payment in any amount without prejudice to State's right to recover the balance of the Use Fee or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment shall constitute or be construed as accord and satisfaction.

4.5 No Counterclaim, Setoff, or Abatement of Use Fee. Except as expressly set forth elsewhere in this Easement, the Use Fee and all other sums payable by Grantee pursuant to this

Easement shall be paid without the requirement that State provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement.

SECTION 5 COORDINATION OF ACTIVITIES

Grantee shall coordinate the dates of its construction and other major activities on the Easement Property with State. Except in the case of an emergency, Grantee shall provide State with written notice of its intent to enter upon the Easement Property at least five (5) days prior to entry.

SECTION 6 MAINTENANCE AND REPAIR OF EASEMENT AND IMPROVEMENTS

During the term of this Easement, Grantee shall maintain the outfall pipeline, and any other Improvements on the Easement Property, in good condition and working order. Subject to the limitations in Section 13, Grantee shall promptly repair, at its sole cost, all damages to any improvements on the Easement Property, or to any natural resources on or adjacent to the Easement Property, which are caused by Grantee's activities. All work performed by Grantee shall be completed in a careful and workmanlike manner to State's satisfaction, free of any claims or liens. Upon completion of any work performed by Grantee, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to the condition it was in prior to commencement of the work. Pursuant to Section 13 of this Easement, State's prior written consent and approval shall be required prior to undertaking any significant work within the Easement Property, but shall not be required for any routine maintenance or repair of improvements made by the Grantee pursuant to its obligation to maintain the Easement Property in good order and repair. Exhibit B describes the routine maintenance that does not require State's prior consent. In the event of an Emergency, Grantee may take reasonable steps to abate the emergent event, but shall promptly notify State in writing of the actions it has taken and that it proposes to take thereafter. Once the immediate emergency is under control, any further work shall require State's prior written consent in accordance with the provisions of this Easement.

SECTION 7 INTERFERENCE WITH OTHER USES OF EASEMENT PROPERTY

Grantee shall exercise its rights under this Easement so as to minimize and avoid, to the fullest extent reasonably possible, interference with State's use of the Easement Property or with the public's right to use Lake River and its associated waters for purposes of recreation, navigation, or commerce including rights under the Public Trust Doctrine. Any improvements constructed by Grantee on the Easement Property shall be placed and constructed so as to allow, to the fullest extent reasonably possible, unobstructed movement through the water column in the Easement Property. Grantee shall also mark or record the location of the Permitted Use and any related improvements in such locations and with such publications as are necessary to give reasonable notice to the public of the existence of any hazards associated with the improvements, and the location and limitations, if any, of the improvements. The signs and notices shall identify the type of installation (e.g., an outfall pipe) and shall identify Grantee as the person responsible for the Permitted Use and its maintenance.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definition. "Hazardous Substance" means any substance which now or in the future becomes defined or regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination or cleanup, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, and Washington's Model Toxics Control Act (MTCA), RCW 70.105D.010 *et seq.*

8.2 Use of Hazardous Substances. Grantee covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of on, in, under, or above the Easement Property, except in accordance and compliance with all applicable laws, permits or licenses.

8.3 Current Conditions, Duty of Utmost Care, 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. With regard to any Hazardous Substances that may exist in, on, under, or above the Easement Property, State disclaims any and all responsibility to conduct investigations, to review any State records, documents or files, or to obtain or supply any information to Grantee.

(b) Grantee shall exercise the utmost care with respect to both Hazardous Substances in, on, under, or above the Easement Property as of the Commencement Date, and any Hazardous Substances that come to be located in, on, under, or above the Easement Property during the Term of this agreement, along with the foreseeable acts or omissions of third parties affecting those Hazardous Substances, and the foreseeable consequences of those acts or omissions. The obligation to exercise utmost care under this Subsection 8.3 includes, but is not limited to, the following requirements:

(1) Grantee shall not undertake activities that will cause, contribute to, or exacerbate contamination of the Easement Property;

(2) Grantee shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Easement Property or undertake activities that result in human or environmental exposure to contaminated sediments on the Easement Property;

(3) Grantee shall not undertake any activities that result in the mechanical or chemical disturbance of on-site habitat mitigation;

(4) If requested, Grantee shall allow reasonable access to the Easement Property by employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, or other similar environmental agencies; and

(5) If requested, Grantee shall allow reasonable access to potentially liable or responsible parties who are the subject of an order or consent decree which requires access to the Easement Property. Grantee's obligation to provide access to potentially liable or responsible parties may be conditioned upon the negotiation of an access agreement with such parties, provided that such agreement shall not be unreasonably withheld.

(c) It shall be Grantee's obligation to gather sufficient information concerning the Easement Property and the existence, scope, and location of any Hazardous Substances on the Easement Property, or adjoining the Easement Property, that allows Grantee to effectively meet its obligations under this easement. The standard of care required of Grantee by this Subsection 8.3 shall be that required of a person with actual knowledge of the presence of Hazardous Substances, whether or not Grantee had such actual knowledge.

8.4 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 in, on, under, or above the Easement Property, any adjoining property, or any other property subject to use by Grantee in conjunction with its use of the Easement Property;

(2) Any problem or liability related to, or derived from, the presence of any Hazardous Substance in, on, under, or above the Easement Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Easement Property;

(3) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Easement Property, any adjoining property, or any other property subject to use by Grantee in conjunction with its use of the Easement Property;

(4) Any lien or action with respect to any of the foregoing; or,

(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.

8.5 Indemnification and Burden of Proof.

(a) Notwithstanding any NPDES permit or other permit or license that authorizes the discharge or release of Hazardous Substances or other deleterious substances, Grantee shall fully indemnify, defend, and hold State harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, cleanup costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs, and expenses (including attorneys' fees and disbursements), that arise out of or are in any way related to:

(1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Grantee, its subgrantees, contractors, agents, employees, guests, invitees, or affiliates in, on, under, or above the Easement Property or any adjoining property during the term of this Easement or during any time when Grantee occupies or occupied the Easement Property or any adjoining property;

(2) The release or threatened release of any Hazardous Substance in, on, under, or above the Easement Property or any adjoining property, which release or threatened release occurs or occurred during the term of this Easement or during any time when Grantee occupies or occupied the Easement Property or adjoining property and as a result of:

(i) Any act or omission of Grantee, its subgrantees, contractors, agents, employees, guests, invitees, or affiliates; or,

(ii) Any foreseeable act or omission of a third party unless Grantee exercised the utmost care with respect to the foreseeable acts or omissions of the third party and the foreseeable consequences of those acts or omissions.

(3) A breach of the obligations of Subsection 8.3, above, by Grantee, its subgrantees, contractors, agents, employees, guests, invitees, or affiliates.

(b) Grantee will have use of and access to the Easement Property. Accordingly, if State seeks to impose liability under Subsection 8.5(a), State will have the initial burden of proving by a preponderance of the evidence the existence, release, or threatened release of Hazardous Substances in, on, under, or above the Easement Property or any adjoining property. Grantee shall then have the burden of proving

by a preponderance of the evidence that none of the indemnification provisions apply.

8.6 Cleanup. If a release of Hazardous Substances occurs on, in, under, or above the Easement Property or other State-owned property arising out of any action or inaction described or referred to in Subsection 8.5 above, Grantee shall, at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances. These actions shall include, without limitation, removal, containment and remedial actions and shall be performed in accordance with all applicable laws, rules, ordinances, and permits. Grantee shall also be solely responsible for all cleanup, administrative, and enforcement costs of governmental agencies, including natural resource damage claims. Any cleanup shall be performed in a manner approved in advance in writing by State, except that in emergency situations Grantee may take reasonable and appropriate actions without advance approval.

8.7 Sampling.

(a) As a condition of State entering into this Easement, Grantee agrees to promptly conduct the environmental investigation specified in Exhibit B (Section 8) of this document. The investigation specified in Exhibit B will be conducted in accordance with generally accepted scientific methods and principles. State shall be provided the opportunity to review and approve the sampling and analysis plan.

(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 on the Easement Property, any adjoining property, any other property subject to use by Grantee in conjunction with its use of the Easement Property, or any natural resources. If such Tests, along with any other information, demonstrates the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Grantee shall promptly reimburse State for all costs associated with such Tests.

(c) State's ability to seek reimbursement for any Tests under this Subsection shall be conditioned upon State providing Grantee written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, unless such Tests are performed in response to an emergency situation in which case State shall only be required to give such notice as is reasonably practical.

(d) Grantee shall be 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 Grantee is deemed to have received notice of State's intent to conduct any non-emergency Tests. The

additional cost, if any, of split samples shall be borne solely by Grantee. Any additional costs State incurs by virtue of Grantee's split sampling shall be reimbursed to State within thirty (30) calendar days after a bill with documentation for such costs is sent to Grantee.

(e) Within thirty (30) calendar days of a written request (unless otherwise required pursuant to Subsection 8.4(b), 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 expert opinion work product.

8.8 Sediment Investigation.

(a) If State has reason to believe that a release or threatened release of Hazardous Substances has occurred on the Easement Property during Grantee's occupancy, State may require Grantee to conduct a Closeout Environmental Assessment (Closeout Assessment) by providing Grantee with written notice of this requirement 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. The purpose of the Closeout Assessment shall be to determine the existence, scope, or effects of any Hazardous Substances on the Easement Property and any associated natural resources. If the initial results of the Closeout Assessment disclose the existence of Hazardous Substances that 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 adjoining property, any other property subject to use by Grantee in conjunction with its use of the Easement Property, or on any associated natural resources. The Closeout Assessment may include Sediment Sampling. Any Sediment Sampling must include those sample locations and parameters reported in Grantee's Sediment Investigation Report completed at the initiation of this Easement as well as any additional testing requirements State may require based on changes in scientific, statutory, or regulatory standards for information concerning the activities of Grantee, its subgrantees, contractors, agents, employees, guests, invitees, or affiliates.

(b) Prior to undertaking the Closeout Assessment, Grantee shall submit a proposed plan in writing for State's approval. The plan shall be provided to State within sixty (60) days of the State's notice requiring the Closeout Assessment. If State fails to respond in writing, either approving or disapproving of the proposed plan, within sixty (60) days of its receipt, the proposed plan shall be deemed approved. Grantee shall be responsible for all costs required to complete planning, sampling, analyzing, and reporting associated with the Closeout Assessment.

8.9 . Reservation of Rights. The parties have agreed to allocate certain environmental risks, liabilities, and responsibilities by the terms of Section 8. With respect to those environmental liabilities covered by the indemnification provisions of Subsection 8.5, that subsection shall exclusively govern the allocation of those liabilities. With respect to any environmental risks, liabilities, or responsibilities not covered by Subsection 8.5, 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 in, on, under, or above the Easement Property, any adjoining property, or any other property subject to use by Grantee in conjunction with its use of the Easement Property, that either party may have against the other under federal, state, or local laws, including but not limited to, CERCLA, MTCA, and the common law. No right, claim, immunity, or defense either party may have against third parties is affected by this Easement and the parties expressly reserve all such rights, claims, immunities, and defenses. The allocations of risks, liabilities, and responsibilities set forth above do not release either party from, or affect either party's liability for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

SECTION 9 NATURAL RESOURCE DAMAGES

9.1 Impacts to Natural Resources. In accordance with Subsection 2.2, Grantee's use or occupation of the Easement Property must be undertaken in a manner that will not result in any damage to natural resources on or adjacent to the Easement Property. In the event that Grantee's use or occupation of the Easement Property results in damage to natural resources, Grantee shall be in default of this Easement agreement and State may exercise its right to terminate the Easement pursuant to Section 12 of this agreement in addition to any other remedies available to State under Sections 8 and 9 of this agreement or at law or in equity.

9.2 Mitigation for Unanticipated or Excessive Natural Resource Damages. Grantee agrees that if any natural resources are lost or damaged as a direct or indirect result of the Permitted Use, then Grantee shall be required to undertake the following steps:

(a) Grantee shall be required to prepare and implement a written plan for eliminating or minimizing any future impacts that is satisfactory to State;

(b) To the extent that it is not possible to avoid impacts, Grantee shall be required to prepare and implement a plan for the replacement of any lost or damaged natural resource values that is satisfactory to the State;

(c) Grantee shall be required to prepare and implement a written plan for monitoring and reporting on the implementation of all actions required under Subsections 9.2 (a) and (b) that is satisfactory to State.

(d) To the extent that lost resource values cannot be replaced, or continue to be damaged, Grantee shall pay State for the value of the lost or damaged resource values. In the event the parties to this Agreement cannot agree upon any measure

of damages, a three-member panel of appraisers shall be appointed, consisting of natural resource economists. One member shall be appointed by and at the cost of State, one member by and at the cost of Grantee, and the third member by mutual agreement of the first two panel members with the cost to be borne equally by State and Grantee. The decision of a majority of the members of the panel shall be made based upon generally accepted valuation principles utilized by natural resource damage trustees in Comprehensive Environmental Response, Compensation, and Liability Act and Model Toxic Control Act proceedings. The decision shall be binding on the parties to this Agreement.

9.3 Indemnification. Notwithstanding any mitigation plan, any regulatory permits or licenses authorizing discharges, or any other provision in this Agreement (including subsection 2.1), Grantee shall indemnify, defend, and hold the State harmless from all claims for damages to, or the loss of, natural resource values that are made against the State as a direct or indirect result of Grantee's Permitted Use, including all resource claims brought by Indian tribes, other federal, state, or local agencies, or members of the public. No damages or fees paid by Grantee to State under any other provision of this Agreement shall be allowed as a setoff against Grantee's obligations under this Subsection 9.5 to indemnify, defend, and hold the State harmless against the claims of third parties.

SECTION 10 REPORTING

Grantee shall, at State's request, provide State with copies of all reports, studies, or audits which pertain to environmental problems and concerns associated with the Easement Property, and which are or were prepared by or for Grantee and submitted to any federal, state, or local authorities as required by any federal, state, or local permit, license, or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System Permit, any Army Corps of Engineers permit, any State Hydraulics Permit, any State Water Quality Certification, or Substantial Development Permit.

SECTION 11 PRESERVATION OF SURVEY CORNERS

Grantee shall exercise the utmost care to ensure that all legal land subdivision survey corners and witness objects are preserved. If any survey corners or witness objects are destroyed or disturbed, Grantee shall reestablish them by a registered professional engineer or licensed land surveyor in accordance with U.S. General Land Office standards, at Grantee's own expense. Corners and/or witness objects that must necessarily be disturbed or destroyed in the process of construction of improvements must be adequately referenced and/or replaced in accordance with all applicable laws and regulations in force at the time, including but not limited to, Chapter 58.24 RCW. The references must be approved by State prior to removal of the survey corners and/or witness objects.

SECTION 12 TERMINATION OF EASEMENT

This Easement shall terminate if Grantee receives notice from State that Grantee is in breach of this Easement and Grantee fails to cure that breach within sixty (60) days of State's notice. If the breach is not reasonably capable of being cured within the sixty (60) days, Grantee shall commence the cure within the sixty (60) day period and continue the cure with diligence until completion. In addition to terminating this Easement, State shall have any other remedy available to it. State's failure to exercise its right to terminate at any time shall not waive State's right to terminate for any future breach. If Grantee ceases to use the Easement Property for the purposes set forth in this Easement for a period of five (5) successive years, this Easement shall terminate without further action by State and Grantee's rights shall revert to State. This Easement may also terminate if Grantee provides State with sixty (60) days written notice of its intent to terminate the Easement, in a form satisfactory to State. Any obligations of Grantee which are not fully performed upon termination of this Easement shall not cease, but shall continue as obligations until fully performed.

SECTION 13 OWNERSHIP AND REMOVAL OF IMPROVEMENTS AND EQUIPMENT

13.1 Existing Improvements. On the Commencement Date, the following improvements are located on the Easement Property: 10 inch sewer outfall pipeline. These improvements are not owned by State (Existing Improvements).

13.2 Grantee-Owned Improvements. So long as this Easement remains in effect, Grantee shall retain ownership of all Existing Improvements, and all improvements and trade fixtures it may place on the Easement Property in accordance with Subsection 2.1 (collectively Grantee-Owned Improvements as more fully described in Exhibits A and B). Grantee-Owned Improvements shall not include any construction, reconstruction, alteration, or addition to any Unauthorized Improvements as defined in Subsection 13.5 below. No Grantee-Owned Improvements shall be placed on the Easement Property without State's prior written consent.

13.3 Construction. Prior to any construction, alteration, replacement, removal or major repair of any improvements (whether State-Owned or Grantee-Owned), Grantee shall submit to State plans and specifications which describe the proposed activity. A "major repair" or an "alteration" shall be defined as any work performed within the Easement Property that substantially changes the configuration or location of any Improvement or that may result in substantial adverse impacts to the environment. Construction shall not commence until State has approved those plans and specifications and Grantee has obtained a performance and payment bond in an amount equal to 125% of the estimated cost of construction. The performance and payment bond shall be maintained until the costs of construction, including all laborers and material persons, have been paid in full. State shall have sixty (60) days in which to review the proposed plans and specifications. The plans and specifications shall be deemed approved unless State

notifies Grantee otherwise within the sixty (60) days. Upon completion of construction, Grantee shall promptly provide State with as-built plans and specifications. Routine maintenance and emergency maintenance activities shall be undertaken in accordance with the provisions of Section 6.

13.4 Removal. Upon the termination of this Easement without any renewal, Grantee shall remove or retire any improvements located upon the Easement Property in accordance with the provisions of this Subsection and shall restore the Easement Property to a condition substantially similar to its natural state prior to the construction and operation of the outfall.

(a) Notification. Prior to, or within one hundred eighty (180) days after, the Termination Date, State shall notify Grantee in writing whether it intends to require the removal of the improvements or whether the improvements shall be abandoned in place. In the event State fails to provide any notice of its intent, Grantee shall remove the improvements in accordance with the provisions of this Subsection.

(b) Removal. In those cases where the improvements shall be removed, Grantee agrees to provide a written plan, to be approved in writing by State, for the removal of the improvements and for the restoration of the Easement Property. The plan shall identify a timeline for removal and restoration, shall identify any impacts to the Easement Property, associated natural resources, or surrounding lands and resources, and shall identify any measures needed to restore the Easement Property. In those cases where State determines that the proposed removal would disrupt existing state lands or natural resources and would be detrimental to the long term use and management of the state's lands and resources, State may notify Grantee that the improvements must be abandoned in place in accordance with the provisions of this Subsection.

(c) Abandonment. In those cases where the improvements shall be abandoned in place, Grantee agrees to provide a written plan, to be approved in writing by State, for abandonment and restoration. The plan shall identify a timeline for abandonment and restoration, shall identify the location of the improvements, shall propose a suitable means for plugging any abandoned pipelines, shall identify the means for notifying the public of the existence of any abandoned improvements, and shall identify any measures needed to restore the Easement Property. In those cases where State determines that the proposed abandonment would be detrimental to the long-term use and management of the state's lands and resources, State may notify Grantee that the improvements must be removed in accordance with the provisions of this Subsection.

(d) Plans for Removal or Abandonment. Grantee shall provide the plan for removal or abandonment within ninety (90) days after the actual or deemed notification of state's removal or abandonment requirement is provided. State shall then have

ninety (90) days in which to approve or reject the plan. State's failure to respond within the time allowed shall be deemed an approval of the plan.

(e) Costs to Remove or Abandon, and to Restore. Grantee agrees to undertake the removal and disposal of the improvements, or the abandonment of the improvements, and the restoration of the Easement Property, at its sole cost and expense. Grantee agrees to perform any removal and restoration activities in a prompt and expeditious manner upon approval of any plans. If Grantee fails to timely meet its obligations under this Subsection State may perform Grantee's obligations and seek reimbursement.

(f) Ownership of Abandoned Improvements. Any improvements that are allowed to be abandoned in place shall become the property of State without any payment by State.

To the extent that Grantee-Owned Improvements include items of personal property which may be removed from the Easement Property without harming the Property, or diminishing the value of the Property or the improvements, State asserts no ownership interest in these improvements unless the parties agree otherwise in writing upon termination of this Easement. Any Grantee-Owned Improvements specifically identified as personal property in Exhibit A or B shall be treated in accordance with this provision.

13.5 Unauthorized Improvements. Improvements made on the Easement Property without State's prior written consent or which are not in conformance with the plans submitted to and approved by State in Exhibit A (Unauthorized Improvements) shall immediately become the property of State, unless State elects otherwise. Regardless of ownership of Unauthorized Improvements, State may, at its option, require Grantee to sever, remove, and dispose of them, charge Grantee a Use Fee for the use of them, or both. If Grantee fails to remove an Unauthorized Improvement upon request, State may remove it and charge Grantee for the cost of removal and disposal.

SECTION 14 INDEMNITY

Grantee shall indemnify, defend, and hold harmless State, its employees, officers, and agents from any and all liability, damages (including bodily injury, personal injury and damages to land, aquatic life, and other natural resources), expenses, causes of action, suits, claims, costs, fees (including attorneys fees), penalties, or judgments, of any nature whatsoever, arising out of the use, occupation, or control of the Easement Property by Grantee, its contractors, subcontractors, invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents. To the extent that RCW 4.24.115 applies, Grantee shall not be required to indemnify, defend, and hold State harmless from State's sole or concurrent negligence. This section shall not in any way limit Grantee's liability under Section 8 or Section 9, above.

SECTION 15 INSURANCE

15.1 Financial Security.

(a) At its own expense, Grantee shall procure and maintain a corporate surety bond or provide other financial security satisfactory to State (the "Bond") in an amount equal to Zero Dollars ($0.00), which shall secure Grantee's full performance of its obligations under this Easement, with the exception of the obligations under Section 8 (Environmental Liability/Risk Allocation) above. The Bond shall be in a form and issued by a surety company acceptable to State. State may require an adjustment in the amount of the Bond.

(b) Upon any default by Grantee in its obligations under this Easement, State may collect on the Bond to offset the liability of Grantee to State. Collection on the Bond shall not relieve Grantee of liability, shall not limit any of State's other remedies, and shall not reinstate or cure the default or prevent termination of the Easement because of the default.

15.2 Insurance. At its own expense, Grantee shall procure and maintain during the Term of this Easement, the insurance coverages and limits described in Subsections 15. 2 (a) and (b) below. This insurance shall be issued by an insurance company or companies admitted and licensed by the Insurance Commissioner to do business in the State of Washington. Insurers must have a rating of B+ or better by Best's Insurance Reports, or a comparable rating by another rating company acceptable to State. If non-admitted or non-rated carriers are used, the policies must comply with Chapter 48.15 RCW.

(a) Types of Required Insurance.

(1) Commercial General Liability Insurance. Grantee shall procure and maintain Commercial General Liability insurance covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Grantee's operations. If necessary, commercial umbrella insurance covering claims for these risks shall be procured and maintained. Insurance must include liability coverage with limits not less than those specified below:

Description	
Each Occurrence	$2,000,000
General Aggregate Limit	$5,000,000

State may impose changes in the limits of liability:

(i) As a condition of approval of assignment of this Easement;

(ii) Upon any breach of Section 8, above;

(iii) Upon a material change in the condition of the Property or any improvements; or,

(v) Upon a change in the Permitted Use.

New or modified insurance coverage shall be in place within thirty (30) days after changes in the limits of liability are required by State.

(2) Property Insurance. Grantee shall procure and maintain property insurance covering all real property located on or constituting a part of the Easement Property in an amount equal to the replacement value of all improvements on the Easement Property. Such insurance may have commercially reasonable deductibles.

(3) Worker's Compensation/Employer's Liability Insurance. Grantee shall procure and maintain:

(i) State of Washington Worker's Compensation coverage, as applicable, with respect to any work by Grantee's employees on or about the Easement Property and on any improvements;

(ii) Employers Liability or "Stop Gap" insurance coverage with limits not less than those specified below. Insurance must include bodily injury coverage with limits not less than those specified below:

Each Employee		Policy Limit
By Accident	By Disease	By Disease
$1,000,000	$1,000,000	$1,000,000

(iii) Longshore and Harbor Worker's Act and Jones Act coverage, as applicable, with respect to any work by Grantee's employees on or about the Easement Property and on any improvements.

(4) Builder's Risk Insurance. As applicable, Grantee shall procure and maintain builder's risk insurance in an amount reasonably satisfactory to State during construction, replacement, or material alteration of the Property or improvements on the Easement Property. Coverage shall be in place until such work is completed and evidence of completion is provided to State.

(5) Business Auto Policy Insurance. As applicable, Grantee shall procure and maintain a business auto policy. The insurance must include liability coverage with limits not less than those specified below:

Description	Each Accident
Bodily Injury and Property Damage	$1,000,000

(6) Contractor's Pollution Liability. Grantee shall require all contractor's performing work on the Easement Property procure and maintain Contractor's Pollution Legal Liability, 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 cost, cover gradual and sudden pollution, and includes in its scope of coverage natural resource damage claims. Coverage shall be maintained in an amount of al least:

1. $1,000,000 each occurrence for contractor's operations on the Easement Property; and

2. If the policy contains a general aggregate limit or policy limit, it shall be at least $5,000,000.

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.

(b) Terms of Insurance. The policies required under Subsection 15.2 shall name the State of Washington, Department of Natural Resources as an additional insured (except for State of Washington Worker's Compensation coverage, and Federal Jones' Act and Longshore and Harbor Worker's Act coverages). Furthermore, all

policies of insurance described in Subsection 15.2 shall meet the following requirements:

(1) Policies shall be written as primary policies not contributing with and not in excess of coverage that State may carry;

(2) Policies shall expressly provide that such insurance may not be canceled or nonrenewed with respect to State except upon forty-five (45) days prior written notice from the insurance company to State;

(3) To the extent of State's insurable interest, property coverage shall expressly provide that all proceeds shall be paid jointly to State and Grantee;

(4) With the exception of Contractor's Pollution Liability (governed by the provisions of Subsection 15.2(a)(6)), all liability policies must provide coverage on an occurrence basis; and,

(5) Liability policies shall not include exclusions for cross liability.

(c) Proof of Insurance. Grantee shall furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the State accompanied by a checklist of coverages provided by State, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements described in Section 15, and, if requested, copies of policies to State. The Certificate of Insurance shall reference the State of Washington, Department of Natural Resources and the easement number. Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies. Grantee acknowledges that the coverage requirements set forth herein are the minimum limits of insurance the Grantee must purchase to enter into this agreement. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these limits of coverage does not relieve the Grantee from liability for losses and settlement expenses greater than these amounts.

15.3 State's Acquisition of Insurance. 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 shall have the right to procure and maintain comparable substitute insurance and to pay the premiums. Grantee shall pay to State upon demand the full amount paid by State, together with interest at the rate provided in Subsection 4.3 from the date of State's notice of the expenditure until Grantee's repayment.

SECTION 16 TAXES AND ASSESSMENTS

Grantee shall promptly pay all taxes, assessments and other governmental charges of any kind whatsoever levied as a result of this Easement or relating to Grantee's improvements constructed pursuant to this Easement.

SECTION 17 ADVANCE BY STATE

If State advances or pays any costs or expenses for or on behalf of Grantee, including but not limited to taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials, costs of removal and disposal of improvements, or other amounts not paid when due, Grantee shall reimburse State the amount paid and shall pay interest on such amount at the rate of one percent (1%) per month from the date State notifies Grantee of the advance or payment.

SECTION 18 NOTICE

Any notices required or permitted under this Easement may be personally delivered, delivered by facsimile machine, or mailed by certified mail, return receipt requested, to the following addresses or to such other places as the parties may direct in writing from time-to-time:

To State: DEPARTMENT OF NATURAL RESOURCES
Aquatics Region/Rivers District
PO Box 280
Castle Rock, WA 98611

To Grantee: CITY OF RIDGEFIELD
PO Box 608
Ridgefield, WA 98642

A notice shall be deemed given and delivered upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after being mailed as set forth above, whichever is applicable.

SECTION 19 ASSIGNMENT

Grantee shall not assign its rights in the Easement or grant any rights or franchises to third parties, without State's prior written consent. State reserves the right to change the terms and conditions of this Easement upon its consent to any assignment.

SECTION 20 SUCCESSORS AND ASSIGNS

This Easement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

SECTION 21 TIME IS OF THE ESSENCE

TIME IS OF THE ESSENCE as to each and every provision of this Easement.

SECTION 22 APPLICABLE LAW AND VENUE

This Easement shall be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute shall mean that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out of or in connection with this Easement shall be in the Superior Court for Thurston County, Washington.

SECTION 23 RECORDATION

Grantee shall record this Easement in the county in which the Easement Property is located, at Grantee's sole expense. Grantee shall provide State with recording information, including the date of recordation and file number. Grantee shall have thirty (30) days from the Commencement Date to comply with the requirements of this subsection. If Grantee fails to record this Easement, State may record it and Grantee shall pay the costs of recording upon State's demand.

SECTION 24 MODIFICATION

Any modification of this Easement must be in writing and signed by the parties. State shall not be bound by any oral representations or statements.

SECTION 25 MISCELLANEOUS

25.1 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 will provide evidence satisfactory to State confirming these representations. This Easement is entered into by State pursuant to the authority granted it in Chapters 79.105 to 79.145 RCW and the Constitution of the State of Washington.

25.2 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.

25.3 Entire Agreement. This Easement, including the exhibits and addenda, if any, contains the entire agreement of the parties. All prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Easement Property, if any, are merged into this Easement.

25.4 Waiver. The waiver by State of any breach or default of any term, covenant, or condition of this Easement shall not be deemed to be 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.

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

25.6 Language. The word "Grantee" as used in this Easement shall be applicable to one or more persons, as the case may be. The singular shall include the plural, and the neuter shall include the masculine and feminine. If there is more than one Grantee, their obligations shall be joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations.

25.7 Invalidity. If any provision of this Easement shall prove to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of this Easement.

THIS EASEMENT requires the signature of all parties and is executed as of the date of the last signature below.

CITY OF RIDGEFIELD

Dated: August 31, 2006

By: _____
JUSTIN L. CLARY
Title: Public Works Director
Address: PO Box 608
Ridgefield, WA 98642

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: 9/9/6

By: _____
DOUG SUTHERLAND
Title: Commissioner of Public Lands
Address: 1111 SE Washington Street
Olympia, WA 98507

SEAL OF THE COMMISSIONER OF PUBLIC LANDS STATE OF WASHINGTON

Approved as to Form in May, 2005
by Joe Panesko
Assistant Attorney General
State of Washington

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
County of CLARK)

MONA L. LINDSAY-WARREN
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
JANUARY 15, 2009

I certify that I know or have satisfactory evidence that JUSTIN L. CLARY is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Public Works Director of the City of Ridgefield to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: AUGUST 31, 2006

(Signature)

MONA L. LINDSAY-WARREN
(Print Name)

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

My appointment expires 1/15/09

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
County of)
Thurston

I certify that I know or have satisfactory evidence that DOUG SUTHERLAND 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: 9-9-06

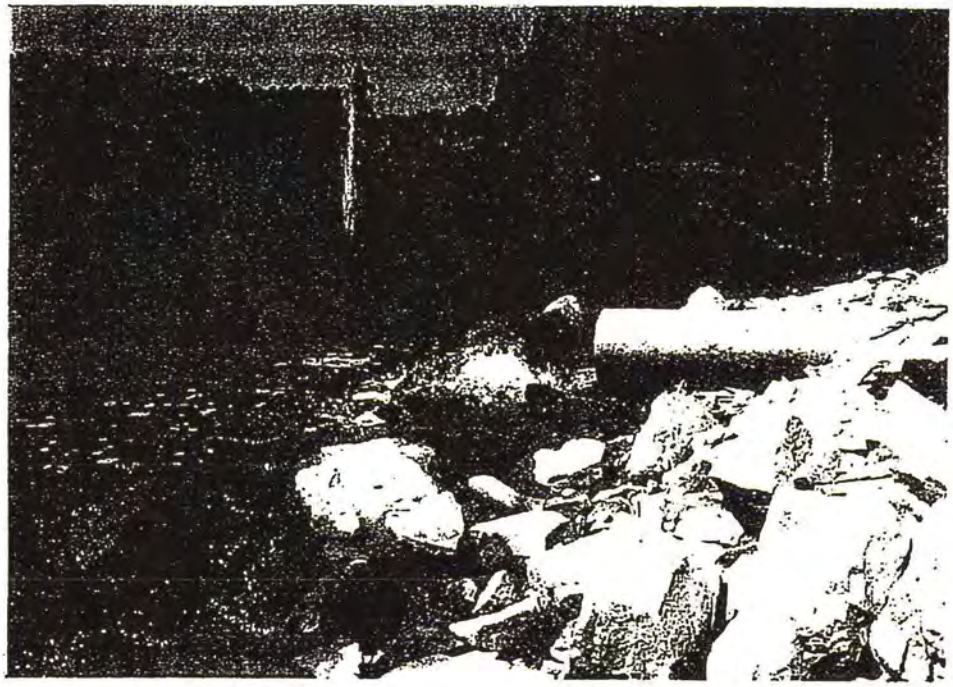
Bonita R Hill
(Signature)

Bonita R Hill
(Print Name)

BONITA R. HILL
COMMISSION EXPIRES
NOTARY
PUBLIC
5-19-09
STATE OF WASHINGTON

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

My appointment expires 5-19-09



Survey Data for the Wastewater Treatment Facility Outfall
City of Ridgefield, Washington

Washington State Plane Coordinates:
186285.2500 Northing
1065866.7900 Easting

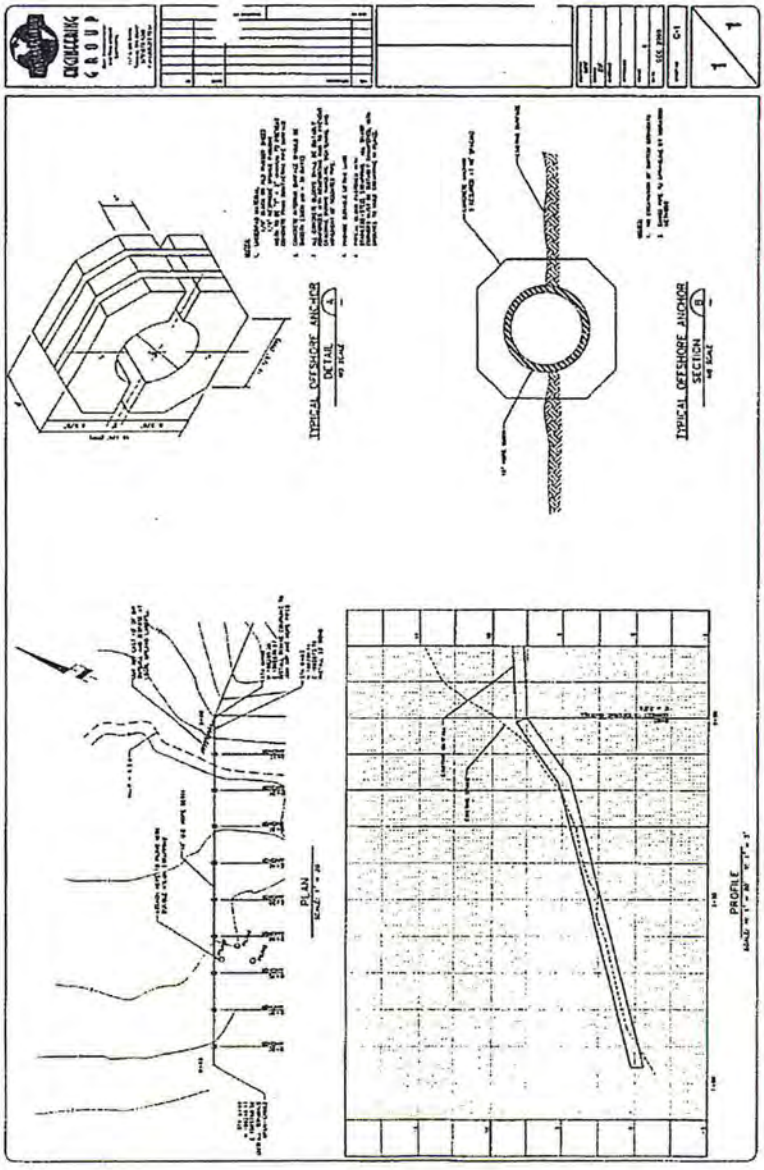
In Lat/Long:
Latitude: North 45deg-49min-17.969sec
Longitude: West 122deg-45min-13.665sec

Elevation 7.95 feet based on the North American Vertical Datum (NAVD) 1988

Recorders Note
Legibility poor in a portion of
this document when received

51-076024
Exhibit A (1 of 2)

Recorders Note
Legibility poor in a portion of
this document when received



51-076024
Exhibit A (2 of 2)

Exhibit B – Plan of Operations, Maintenance and Development
City of Ridgefield Wastewater Treatment Plant Outfall
Aquatic Lands Outfall Easement No. 51-076024

SITE DESCRIPTION AND PRESENT USE

The purpose of this easement is for the continued use and maintenance of a 10-inch concrete outfall pipe and the construction of a 110-foot outfall extension from the City of Ridgefield Wastewater Treatment Plant. The outfall pipeline is located on portions of beds of navigable water and unplatted 1st class tidelands of Lake River, owned by the State of Washington, in Clark County, located within the East ½ of Section 24, Township 4 North, Range 1 West, W.M. It has been in place for more than 40 years.

The City of Ridgefield Wastewater Treatment Plant treats wastewater from commercial and residential dischargers to the system; there are no industrial users of the system. The plant uses an activated sludge system followed by secondary clarification and UV-disinfection.

The City of Ridgefield WWTP Outfall currently discharges to Lake River at Latitude: North 45°49'17. 969" and Longitude: West 122°45'13. 665" on the northwestern portion of the City of Ridgefield, Washington (186285.2500 Northing, 1065866.7900 Easting). The existing 10-inch outfall pipe terminates at an elevation of 7.95 feet NAVD. The end of the pipe is located on quarry spalls. Construction of the outfall extension will require excavation and removal of approximately ten feet of the existing outfall. The new 10-inch outfall pipe will be attached to the end of the existing pipe and run offshore (west) for approximately 100 feet. It will be weighted and dropped into place on the bottom of Lake River. The upper 10 to 20 feet will be vibrated into the sediments using either a pneumatic or hydraulic head.

FUTURE USE AND CONDITIONS

Discharge of effluent from the Ridgefield WWTP will cease at the existing outfall site. Approximately 110 feet of 10-inch HDPE pipe will be connected to the existing pipe. This new effluent pipeline will extend offshore to the west into Lake River to a depth of at least seven feet at low tide (-10 MLLW). Weights will be attached to the new pipe at ten-foot intervals to provide negative buoyancy. The upper end of the pipe will be vibrated into the sediment using a hydraulic or pneumatic vibratory head to minimize disturbance of potentially contaminated sediments. The outfall pipe extension will be used to convey WWTP effluent treated to advanced secondary standards to the receiving waters in Lake River. Extending the outfall offshore will assure proper mixing of effluent even during low tide events. The Ridgefield WWTP will be authorized to discharge up to 0.7 MGD of effluent treated to advanced secondary standards via the proposed temporary outfall to Lake River.

. DESCRIPTION OF SCHEDULED PLAN OF DEVELOPMENT AND MAINTENANCE

Construction Schedule: The in-water work window established by the Hydraulic Project Approval for this project extends from July 1 to September 30. In-water work associated with outfall construction is not likely to take more than one or two days. Excavation of the outer ten feet of the existing outfall and attachment of the new outfall pipe to the existing effluent pipeline will occur at +7.9 feet MLLW and is not likely to take more than one day. All construction and inspection associated with construction of the 100-foot outfall extension is likely to be completed within one week during the summer of 2006, provided the Rivers & Harbors Act, Section 10 permit is issued by the US Army Corps of Engineers.

Description of Operation:
Construction:
Contractors from Cosmopolitan Engineers will excavate the end of the existing outfall back into the bank to the point where ten feet of the pipe is exposed using hand tools (a backhoe may be used if necessary and access to the site can be provided). This portion of the pipe will be cut off and removed from the site. Ten-foot sections of HDPE pipe will be fused together at the WWTP site, or at the Ridgefield Boat Launch. The new HDPE outfall pipe will be towed to the outfall site by a workboat, and it will be clamped onto the end of the existing effluent pipeline. Once at the site, the pre-cast, pre-weathered concrete collars will be installed at 10-foot intervals along the outfall pipe. The pipe will then be capped and towed offshore by the workboat. Once the pipe is in position and properly aligned, the cap will be removed from the pipe. The outfall pipe assembly will then be lowered into place on the bottom of Lake River from the boat using a series of lines. The upper twenty feet of the outfall pipeline will be vibrated into the sediments using a pneumatic or hydraulic vibratory head. The entire construction process should take about one day. Divers will inspect the new outfall pipeline once construction is complete and annually thereafter.

Operation & decommissioning:
The Ridgefield WWTP Outfall will be in continuous operation once the new outfall is connected. Flows through the plant are anticipated to increase from 0.5 MGD to approximately 0.7 MGD over the next few years. Once the new outfall to the Columbia River is online, the temporary outfall pipe will be disconnected from the effluent pipeline upland of the intertidal area. The outfall pipeline will be towed ashore using a tractor. The HDPE outfall pipe will be cut into convenient lengths and stored on the site of the Ridgefield WWTP. It is likely that the outfall pipe will be put to other uses around the plant or in the upland conveyance system. Sediments near the outfall will be sampled and tested per the requirements of the Ecology Toxics Clean-up Group.

HAZARDOUS MATERIALS

. The only flammable, toxic, reactive/explosive materials to be utilized associated with the proposed HPDE outfall installation project are fuels, lubricants and coolants associated with operation of trucks and equipment in upland areas and in the workboat in the aquatic environment. No corrosive materials will be utilized on site, and concrete collars used to provide negative buoyancy to the outfall pipe will be cast off-site and will be weathered/cured at least 21 days prior to installation to minimize caustic chemical reactions associated with curing concrete.

EQUIPMENT & MAINTENANCE

The only power equipment directly involved in installation of the proposed outfall pipeline extension is the workboat and possibly a backhoe. Proper operation and maintenance of the boat and a requirement to equip the boat with hazardous materials spill containment kits will be included in the contract documents. A backhoe may be used to uncover the ten-foot upland portion of the existing effluent pipeline; similar operation and maintenance requirements will be in place if the backhoe is utilized.

SECTION 3 TERM

3.3 Development of Disposal Alternatives

Grantee will provide updated reports to the State at each renewal of the NPDES permit for the project addressing the progress made toward reducing the reliance on the receiving waters of the state for the disposal of waste effluent and to promote water re-use. Progress also includes but is not limited to:

- Reduction of inflow and infiltration (I&I)
- Groundwater recharge
- Stream augmentation, industrial process supply, and//or agricultural application
- Water conservation programs
- Other water re-use projects

The City is currently evaluating options to upgrade their wastewater system to address wastewater treatment needs for the next 20 years. These options include facility alternatives as well as alternatives combining different treatment and disposal methods.

A section of the facilities plan is attached to the Exhibit B and the following is a synopsis of relevant sections of the facilities plan to show that Grantee has utilized AKART to minimize the impact of the discharge and that Grantee has conducted an alternatives analysis for the discharge:

- Chapter 5, page 11 of the City of Ridgefield General Sewer and Wastewater Facilities Plan describes the problems associated with the existing outfall to Lake River. Figure 5-2 illustrates the outfall and its location at +7.95 feet MLLW.
- Chapter 6, page 4 discusses contaminants of concern and the existing wastewater service population, flows and loading.
- Projected Wastewater Flows and Loadings are discussed Chapter 6, page 16.

- Projected Effluent NPDES Permit Limits are discussed in Chapter 6, page 19: there is concern regarding potential ammonia loadings and their impact on Lake River.
- Projected wastewater flows and WWTP loading are discussed on Page 6-16; the WWTP Service Area and population are projected to grow from 2,195 in 2004 to approximately 12,000 in 2024. Peak Day Flows are projected to grow from 0.6 MGD in 2004 to 1.14 MGD in 2009 and 3.71 MGD in 2024.
- Receiving water issues are discussed on Page 6-20. Ecology's continued classification of Lake River as an estuary would allow continued discharge to Lake River through 2024. Re-classification of Lake River as a "River" would require relocation of the WWTP Outfall to the Columbia River in the next few years, given the projections for rapid growth in the area. The Plan recommends that the City acquire the necessary permits to relocate the outfall to the Columbia River. The majority of the alternative analysis presented in the Facilities Plan deals with WWTP components and processes.
- Analysis of the various routes for the new outfall to the Columbia River is on-going. The proposed route would involve installation of a 24-inch pipe across the bottom of Lake River to the Ridgefield Wildlife Refuge and extension of a new outfall into the Columbia about one half mile upstream of Bachelor Slough, which separates the southeastern portion of the Wildlife Refuge from Bachelor Island. In the event that the proposed Columbia River Outfall fails the Refuge's Compatibility Analysis, the most likely route for the outfall en route to the Columbia would be via the bottom of Lake River, as the shoreline areas along Lake River have a high probability for discovery and disturbance of materials of cultural, historic or archaeological significance. The City of Ridgefield has hired an environmental consulting firm to prepare a NEPA Environmental Assessment or Impact Statement regarding the various effluent pipeline routes and outfall options for the Columbia River as part of the Compatibility Analysis for crossing of the Ridgefield National Wildlife Refuge. This process is estimated to take two to three years.

SECTION 6 MAINTENANCE AND REPAIR OF EASEMENT AND IMPROVEMENTS

State defines maintenance as those usual acts designed to prevent a decline, lapse, or cessation of the approved use and associated improvements. Maintenance does not include any expansion of the permitted use nor does it result in any substantive change from the granted use and associated improvements. Grantee may be required to apply for a Right of Entry for certain maintenance activities.

Grantee agrees to provide State with a copy of the Operation and Maintenance (O & M) Manual (WAC 173-240-080) and/or Facilities Plan (WAC 173-240-060) upon request. These documents must detail procedures for the inspection, routine maintenance, and emergency plans for the outfall.

. Synopsis of procedures for the inspection, routine maintenance, and emergency plans for the outfall: Divers will inspect the outfall immediately post-installation and annually thereafter.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.7 Sediment Sampling

Grantee should conduct sediment sampling that is representative of the discharge depositional zone and in compliance with all of the Department of Ecology (Ecology) requirements and/or the Sediment Sampling and Analysis Plan Appendix[1], Sediment Management Standards[2], and Sediment Source Control Standards User Manual[3]. At the point that sediment sampling is required by Ecology, the following sampling events should be conducted:

- New discharges:
  - Baseline: Conducted before the outfall is commissioned
  - Interim: Conducted within 5 years of commencement of effluent discharge to determine if effluent is impacting sediment
  - Close-out sampling within 5 years of termination of the easement
- Existing discharges:
  - Initial: Conducted within 12 months of notification by the State or Ecology
  - Close-out sampling within 5 years of termination of the easement

The State will allow Grantee to adhere to a sediment sampling schedule determined by Ecology through the National Pollutant Discharge Elimination System (NPDES) permit. In the event that Ecology does not require sediment sampling or sampling that is satisfactory to the State, Grantee may be notified by State to conduct the above-mentioned sediment sampling. Grantee agrees to comply with any notification by State or Ecology to conduct initial, baseline, or continued sediment sampling. If Grantee has previously conducted sediment sampling that may meet the baseline or initial sampling requirements the data report must be submitted to State in a written report and to the Department of Ecology in electronic SEDQUAL format[4].

Sediment Quality Issues: According to David Templeton of Anchor Environmental, sediment sampling has occurred in the vicinity of the existing Ridgefield WWTP Outfall in the past few years. He will attempt to provide this background information for submittal to Ecology. Further, Anchor Environmental will be conducting a sediment characterization study for the Port of Ridgefield and the Union Pacific Railroad; the sampling area for this study will include the existing WWTP Outfall and the proposed temporary offshore outfall locations. Apparently, a wood products treatment facility (creosote plant) was operated on the Port property until the late 1970s and the potential

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[1] Ecology 2003. Sediment Sampling and Analysis Plan Appendix: Guidance on the Development of Sediment Sampling and Analysis Plans Meeting the Requirements of the Sediment Management Standards (Chapter 173-204 WAC). Revised April 2003.

[2] Ecology 1995. Sediment Management Standards, Chapter 173-204. Amended December 1995.

[3] http://www.ecy.wa.gov/programs/tcp/smu/sediment.html

[4] Sediment Quality Information System www.ecy.wa.gov/programs/tcp/smu/sedqualfirst.htm

. for contamination of the offshore sediments exists. Additional sediment characterization may be required by Ecology.

SECTION 13 OWNERSHIP AND REMOVALOF IMPROVEMENTS AND EQUIPMENT

13.3 Construction. All construction permits for the use defined in Section 2.1 of the Easement shall be in place before construction commences, with construction contingent upon continued compliance with required permits.

Construction Schedule: The in-water work window established by the Hydraulic Project Approval for this project extends from July 1 to September 30. In-water work associated with outfall construction is not likely to take more than one or two days. Excavation of the outer ten feet of the existing outfall and attachment of the new outfall pipe to the existing effluent pipeline will occur at +7.9 feet MLLW and is not likely to take more than one day. All construction and inspection associated with construction of the 100-foot outfall extension is likely to be completed within one week during the summer of 2006, provided the Rivers & Harbors Act, Section 10 permit is issued by the US Army Corps of Engineers.

Construction Plan/Profile/Sequence:

- Footprint: 260 square feet
- Alignment: 100 feet westerly from end of outfall
- Connection location: +7.95 ft. MLLW
- Pipe material: 10-inch HDPE
- Length of outfall: 100 feet
- Diffuser details: Single-port, outfall approx. 100 feet from shoreline
- Anchoring: Pre-weathered concrete collars at 10-foot intervals along pipe

Construction Mitigation Methods:

- Type of dredge: No in-water dredging required, hand tools (pick, shovel etc.) and possibly a backhoe will be used above +8 feet to excavate the existing outfall pipe.
- Pipe jointing procedure: HDPE pipe will be fused to length prior to entering aquatic environment. HDPE pipe will be clamped to existing outfall pipe.
- Anchoring: The 10-inch HDPE outfall pipeline will be anchored by pre-weathered/cured concrete collars spaced at 10-foot intervals. Anchors will be cast off-site and cured at least 21 days prior to deployment.
- Armor blanket: No armoring is required, as the outfall will be temporary.
- Drilling vs. trenching: No in-water trenching is anticipated or required. Upland trenching will be limited to the first 10 feet of the existing outfall pipe and will be completed by hand.
- Construction swath: Upland; 3 feet X 10 feet, offshore; 1 foot X 100 feet.
- Sheeted trenching: Not applicable, as no in-water trenching is proposed.

Mitigation for Lost Habitat:

There will be no permanent loss of aquatic habitat associated with the proposed temporary WWTP outfall extension by 100 feet into Lake River. Mitigating design features/measures include:

- Relocation of the outfall offshore will improve water quality and fisheries habitat along the shoreline where juvenile salmonids migrate;
- Implementation of the proposed project together with proposed upgrades at the WWTP will improve dilution of the WWTP effluent and allow the plant to meet the requirements of its NPDES Permit until a new outfall to the Columbia River can be permitted and constructed (anticipated in 2010);
- The construction method chosen for installation of the outfall extension will minimize potential disturbance of contaminated sediments on the bottom of Lake River, as no in-water excavation will be required;
- The use of pre-cast & weathered concrete collars at 10-foot intervals will alleviate the need to place rock over the pipe, installation of rocks would provide habitat for salmonid predators. This anchoring method will also facilitate removal of the temporary outfall pipe;
- The outfall pipe will be removed from the bottom of Lake River, once a new pipeline to the Columbia River is permitted and constructed;
- Sediments in the vicinity of the existing outfall and at the site of the proposed outfall will be tested for chemical and bacterial contamination and general aquatic toxicity in accordance with the requirements of the Department of Ecology's Toxics Clean-up Program prior to pipe installation and once the temporary outfall pipeline is removed.

SECTION 18 NOTICE

Personnel changes related to the WTP shall be conveyed to State at the time they occur. Should either party deem it necessary, the change may lead to a meeting whereby the terms and conditions of this contract may be discussed.

Operations Contact
Name: Fred Crippen
Title: Treatment Plant Operator
Address: West Cook Street
Ridgefield, WA 98642
Phone: (360) 887-3897

WA DNR Contact
Name: Lisa Faubion
Title: Land Manager
Address: PO Box 280
Castle Rock, WA 98611
Phone: (360) 740-6813
E-mail: lisa.faubion@wadnr.gov

Public Works Department Contact
Name: Justin Clary
Title: Public Works Director
Address: 127 Main Avenue, PO Box 608
Ridgefield, WA 98642
Phone: (360) 887-8251 ext. 411

Exhibit B: Amendment to Easement No. 51-076024

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 Clark 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.

SECTION 2 USE

2.1 Permitted Use. Grantee shall use the Easement Property for the purpose of and is limited to operating, maintaining, and repairing the outfall pipeline (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, 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

3.2 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, (6) low impact development, and (7) stormwater treatment processes.

(3) State will consider reports submitted under Subparagraph 3.2(b)(2) 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

4.2 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), except that shellfish damages shall be calculated in accordance with Paragraph 5.5.

(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.

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: One 10" 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 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 licesnse 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) At its own expense, Grantee shall procure and maintain during the Term of this Easement, the insurance coverages and limits described in this Subsection 10.2 and in Subsection 10.3, Insurance Types and Limits. State may terminate this Easement if Grantee fails to maintain required insurance.

(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 Two Million Dollars ($2,000,000) 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) Five Million Dollars ($5,000,000) 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) 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 zero Dollars ($0.00), 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
PACIFIC CASCADE REGION
Aquatics Division / Rivers District
P.O. Box 280
Castle Rock, WA 98611

Grantee: CITY OF RIDGEFIELD
P.O. Box 608
Ridgefield, WA 98642

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: Brandon Kingsbury / Land Manager
Telephone: 360-740-6807

E-mail: Brandon.kingsbury@dnr.wa.gov

Grantee: John Peterson / General Manager, Clark Regional Wastewater District
Telephone: 360-993-8819
E-mail: JPeterson@crwwd.com

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 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.

Exhibit B: Amendment to Easement No. 51-076024

PROPERTY DESCRIPTION (Exhibit A)
Supersedes all previous versions of Exhibit A

Agreement Number 51-076024

Recording number of final DNR approved survey in Clark County:
Recorded 10/14/2014 Book 63, Page 190

Legal description of the Property:
A portion of the Northeast 1/4 of the Northwest 1/4 of Section 24, Township 4 North, Range 1 West, W.M.

Square footage of each of these Use classifications:

Water-dependent	
Nonwater-dependent	3,168
Public Access	
Total square feet	3,168

Exhibit B: Amendment to Easement No. 51-076024

PLAN OF OPERATIONS AND MAINTENANCE (Exhibit B)
Supersedes all previous versions of Exhibit B

1. DESCRIPTION OF PERMITTED USE

A. Existing Facilities

The purpose of this easement is for the continued use and maintenance of a 10-inch concrete outfall pipe required for discharges from the City of Ridgefield Wastewater Treatment Plant. The outfall pipeline is located on portions of beds of navigable water and unplatted 1st class tidelands of Lake River, owned by the State of Washington, located in the NE ¼ of the NW ¼ of Section 24, Township 4 North, Range 1 West, W.M. The outfall pipe was extended 110 feet into Lake River in 2006. The extension is constructed of 10" HDPE pipe and anchored at each 10 foot section by a precast concrete collar. The end of the outfall has been demarcated by a green buoy.

The City of Ridgefield Wastewater Treatment Plant treats wastewater from commercial, industrial, and residential discharges to the system. Although five businesses are considered Potential Significant Industrial Users, none indicated a process discharge to the system. The WWTP effluent discharges to Lake River and is regulated by the Washington State Department of Ecology through NPDES Permit WA0023272. The City of Ridgefield uses an activated sludge system followed by secondary clarification and UV-disinfection. Secondary treated and disinfected effluent is discharged from the facility via a ten-inch outfall into Lake River, which is a tributary to the Columbia River. There is no diffuser on the outfall.

B. Proposed Facilities.

None

2. ADDITIONAL OBLIGATIONS

A. National Pollutant Discharge Elimination System (NPDES) permit

i. The NPDES Permit start date is July 1, 2011 and requires renewal at least every 5 years.

ii. Grantee shall notify State when they contact the Department of Ecology to apply or renew a National Pollutant Discharge Elimination System (NPDES) permit.

iii. Grantee shall notify State of any proposed changes/additions/deletions to the NPDES permit and allow State a reasonable period to comment.

iv. Grantee shall submit to State all NPDES Outfall Evaluation Reports to the Department of Ecology.

B. Reduction of Discharge On State-Owned Aquatic Lands

In accordance with RCW 90.48.110 and WAC 173-240-060, the City of Ridgefield has provided a Wastewater Treatment Plant Evaluation including an Alternatives to Disposal Analysis dated March 2013. The following three alternatives and all known and reasonable technologies (AKART) were evaluated for treatment and disposal of wastewater generated by the City of Ridgefield:

Alternative 1- City Owned Conveyance and Treatment.
Alternative 2A- Regional Conveyance and Treatment Partnership with City Owned Collection System.
Alternative 2B- Regional Conveyance and Treatment Partnership with Clark Regional Wastewater District (District) Owned Collection System

Based on the evaluation matrix in (Attachment 1 to exhibit B) Alternative 2B provides the preferred alternative for wastewater treatment and disposal for the city of Ridgefield. It provides these services at the lowest projected rate impact to customers and provides the least amount of long-term financial risk in terms of financing new wastewater infrastructure needed to treat projected flow rates. The City has identified Alternative 2B as its preferred alternative and is working to implement that direction. Over time, this alternative will result in reduced dependence on the Lake River discharge by sending wastewater to the Salmon Creek Treatment Plant and their respective Columbia River outfall. Moreover, Alternative 2B will allow the resources of the District to be utilized to acquire capital financing and respond to rapid changes in demand for sewerage services brought about by economic development. Therefore, grantee has complied with RCW 90.48.112 and 90.48.010.

Due to the large amount of remediation work and required sediment sampling to accompany the remedial efforts, DNR does not require any further sediment chemistry analysis prior to reassignment of the easement. However, a round of closeout sampling will be required in accordance with the guidelines set forth in part C of this exhibit B.

C. Sediment Sampling

Sampling shall include the discharge depositional zone. It should comply with Department of Ecology (Ecology) requirements and/or the Sediment Sampling and Analysis Plan Appendix 2008, Sediment Management Standards, and Sediment Source Control Standards User Manual. DNR has the discretion to request any/all of the following:

Existing discharges:

- Close-out sampling within 5 years of termination of the easement.

Written Report: Following each sampling event, Grantee shall submit to State 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 State and the Department of Ecology.