When recorded, return to:
Discovery Clean Water Alliance
Leanne Mattos
8000 NE 52 Court
Vancouver, WA 98665
OR
P.O. Box 8979
Vancouver, WA 98668

5900924 EAS 04/27/2021 01:49
Total Pages: 41 Rec Fee: $143.50
CLARK REGIONAL WASTEWATER DIST
Recorded in Clark County, WA

Real Estate Excise Tax
$ 0 Paid
Aff. # 0
Date 4.27.2021
Initials KH

HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

AQUATIC LANDS OUTFALL EASEMENT

EASEMENT NO. 51-100008

Grantor: Washington State Department of Natural Resources
Grantee(s): Discovery Clean Water Alliance
Abbreviated Legal Description:
SW1/4 and SE1/4 NW1/4, Section 24, Township 03 North, Range 01 West W.M.
NE1/4 NE1/4, Section 24, Township 03 North, Range 01 West W.M.
SE 1/4 NW 1/4, Section 19, Township 03 North, Range 01 East W.M.
Complete Legal Description on Page 34
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: 183508000

THIS EASEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and DISCOVERY CLEAN WATER ALLIANCE, a Washington Joint Municipal Utility Services Agency ("Grantee"). State has authority to enter into this Easement under Chapter 43.12 RCW, Chapter 43.30 RCW, and Title 79 of the Revised Code of Washington (RCW).

BACKGROUND

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

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

State's goals are to promote water re-use and reduce reliance on in-water disposal of waste effluent, storm water, and other discharges that affect the use and environmental conditions of state-owned aquatic lands and associated biological communities.

THEREFORE, the Parties agree as follows:

SECTION 1 GRANT OF EASEMENT

1.1 Easement Defined.

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

(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 resources, including, but not limited to, aquatic life or living plants; any water rights; any mineral rights; or any right to excavate or withdraw sand, gravel, or other valuable materials.

(d) This Easement is not exclusive. State may enter and use the Easement Property for any purpose or permit others to enter and use the Easement Property for any purpose so long as such use does not unreasonably interfere with the rights granted herein.

1.2 Survey and Easement Property Descriptions.

(a) Grantee's obligation to provide a true and accurate description of the Easement Property, the location of the Improvements to be constructed, and the location of the Improvements existing on the Easement Property is a material term of this Easement. Grantee warrants that the record of survey referenced in Exhibit A includes a true and accurate description of the Easement Property, the location of the Improvements to be constructed, and the location of the Improvements existing on the Easement Property.

(b) Grantee's use of any state-owned aquatic lands outside the Easement Property boundaries is a material breach of this Easement and State may seek remedies under Section 14 of this Easement in addition to any other remedies afforded by law or equity or otherwise.

(c) Grantee shall submit an updated record of survey for State's acceptance within ninety (90) days of the Commencement Date. Upon State's written acceptance of the updated record of survey, the updated record of survey shall supersede the record of survey referenced in Exhibit A. The specific location of the Easement Property shall be deemed to be as shown on the updated record of survey.

(d) Grantee's submission of the updated record of survey shall constitute a warranty that the updated record of survey is a true and accurate description of the Easement Property. Grantee's obligation to provide a true and accurate description of the Easement Property in the updated record of survey is a material term of this Easement.

(e) At Grantee's expense, and no later than thirty (30) days after receiving State's written acceptance of the updated record of survey, Grantee shall record the updated record of survey in the County in which the Property is located. Grantee shall provide State with recording information, including the date of recordation and the file number, within fifteen (15) days after recording the updated record of survey.

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. This Easement is granted for the purpose of and is limited to:

Two parallel pipelines coming from the Salmon Creek Treatment Plant crossing Salmon Creek and then Lake River. From there the northern most pipeline, a thirty (30) inch diameter concrete cylinder pipe, will intersect and connect to the southernmost pipeline, a forty-eight (48) inch diameter HDPE and steel pipe. The forty-eight (48) inch diameter HDPE and steel pipe will then discharge into the Columbia River via an outfall and diffuser.

There are ten (10), twenty (20) inch risers on the diffuser section of the forty-eight (48) inch steel pipe that ends in elastomeric (rubber) check valves. The diffuser section is not anchored or pile-supported, but is buried seven to ten (7-10) feet below the river bottom. This encumbrance is permitted to only discharge treated effluent (the "Permitted Use").

Exhibit B includes additional details about the Permitted Use, the Easement Property, and the Improvements. Exhibit B also includes additional obligations on Grantee. The Permitted Use is subject to the restrictions and additional obligations set forth in this Easement. The Permitted

Use of this Easement shall not be changed or modified without the written consent of State, which shall be at State's sole discretion.

2.2 Restrictions on Permitted Use and Operations.

(a) Grantee shall not cause or permit:

(1) Damage to land or 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.

(2) Waste on the Easement Property or adjacent state-owned aquatic lands; or

(3) Deposit of material or filling activity on the Easement Property or adjacent state-owned aquatic lands, unless approved by State in writing and except to the extent expressly permitted in Exhibit B. This prohibition includes, without limitation, any deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter (including, but not limited to, chemical, biological, or toxic wastes), hydrocarbons, pollutants, or other matter.

(b) Nothing in this Easement shall be interpreted as an authorization to dredge the Easement Property.

(c) Grantee shall immediately notify State if Grantee breaches any of the terms and conditions of this Easement.

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

(e) Grantee's compliance with the restrictions in this Paragraph 2.2 does not limit Grantee's liability under any other provision of this Easement or the law.

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

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

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 rights 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 regarding the start of construction or other significant activity on Easement Property at least sixty (60) days in advance. "Significant Activity" means any activity that may affect the use or enjoyment of the Easement Property or adjacent state-owned aquatic lands by the State of Washington, public, or others with valid rights to use or occupy the Easement Property or adjacent state-owned aquatic lands.

(d) Grantee shall mark the location of any hazards associated with the Permitted Use and any hazards associated with the Improvements in a manner that ensures reasonable notice to the public, including but not limited to, boaters, kayakers, swimmers, and divers. Grantee shall post signs and notices notifying the public that an outfall is located on the Property. The signs and notices shall be posted in a location that gives reasonable notice to the public. Grantee shall mark the location and limits of the Improvements located on the Easement Property. The signs and notices shall identify the type of installation (e.g., an outfall pipe), identify Grantee as the entity responsible for the Permitted Use and its maintenance, and be posted in location that gives reasonable notice to the public. When required by applicable law or regulation Grantee shall facilitate amendment of official navigational charts to indicate existence and location of submerged Improvements.

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. Nothing in this Paragraph or Easement shall be deemed to allow Grantee to change the type, quality, or quantity of discharge without first obtaining the consent of State.

SECTION 3 TERM

3.1 Term Defined. The term of this Easement is thirty (30) years (the "Term"), beginning on the 1st day of March, 2021 (the "Commencement Date"), and ending on the 28th day of February, 2051 (the "Termination Date"), unless terminated sooner under the terms of this Easement. Whenever the phrase "termination of this Easement" or "termination of the Easement" is used in this Easement, it shall refer to the ending, termination, cancellation, or expiration of the Easement.

3.2 Renewal of Easement and/or Application for New Easement.

(a) This Easement does not provide a right of renewal. Grantee may apply for a new Easement, which State has discretion to grant. Grantee must apply for a new Easement at least one (1) year prior to Termination Date.

3.3 End of Term.

(a) Removal of Improvements: Prior to the termination of this Easement, Grantee shall remove Improvements in accordance with Section 7.

(b) Restoration of the Easement Property:

(1) Prior to the termination of this Easement, Grantee shall restore the Easement Property to its condition before the installation of any Improvements on the Easement Property.

(2) Restoration of the Easement Property is to be done at Grantee's expense and to the satisfaction of State. Restoration of the Easement Property is considered to be Work, as described in Section 7 of the Easement.

Grantee's plans for restoring the Easement Property shall be submitted to State for prior approval in accordance with Section 7 of this Easement.

(3) If Permittee fails to restore the condition of the Easement Property as required by this Paragraph, State may take steps reasonably necessary to remedy Permittee's failure. Upon demand by State, Permittee shall pay all costs of State's remedy, lost revenue resulting from the condition of the Easement Property, and administrative costs associated with State's remedy.

(c) Vacation of Property: Upon the termination of this Easement, Grantee shall cease all operations on and use of the Easement Property.

SECTION 4 FEES

4.1 Fee. For the Term, Grantee shall pay to State an administrative fee calculated in accordance with RCW 79.110.240. Grantee's payment is due thirty (30) days after Grantee receives State's invoice. State's invoice is a "notice" under Section 15 of this Easement; and the invoice shall be deemed received by Grantee when the notice is effective under Section 15. Any payment not paid by State's close of business on the date due is past due.

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

SECTION 5 OTHER EXPENSES

5.1 Utilities. Grantee shall pay all fees charged for utilities required or needed by the Permitted Use.

5.2 Taxes and Assessments. Grantee shall pay all taxes, assessments, and other governmental charges applicable or attributable to the Easement, the Grantee-Owned Improvements, or the Permitted Use.

5.3 Proof of Payment. If required by State, Grantee shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Easement requires Grantee to pay.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Failure to Pay. Failure to pay any fees or other expenses due under this Easement is a breach by Grantee. State may seek remedies in Section 14 as well as late charges and interest as provided in this Section 6. In addition, if Grantee fails to pay any amounts due to third parties under this Easement, State may pay the amount due, and recover its cost in accordance with this Section 6.

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

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

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

(b) If State pays or advances any amounts for or on behalf of Grantee, Grantee shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Grantee of the payment or advance. This includes, but is not limited to State's payment of taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials, costs of removal and disposal of Improvements under any provision of this Easement, or other amounts not paid when due.

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

6.5 No Accord and Satisfaction. If Grantee pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

SECTION 7 IMPROVEMENTS, PERSONAL PROPERTY, AND WORK

7.1 Improvements and Personal Property Defined.

(a) "Improvements," consistent with RCW 79.105 through 79.140, are additions within, upon, or attached to the Easement Property. Improvements include, but are not limited to, fill, 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 the State of Washington. State-Owned Improvements include any construction, alteration, or addition to State-Owned Improvements made by Grantee.

(d) "Grantee-Owned Improvements" are (1) Improvements owned by Grantee that are existing on the Easement Property on the Commencement Date or (2) Improvements made by Grantee with State's consent.

(e) "Unauthorized Improvements" are Improvements made on the Easement Property during the Term of the Easement without State's prior consent or Improvements made by Grantee that do not conform with plans submitted to and approved by 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 Grantee-Owned Improvements are located on the Easement Property: one treated effluent pipeline, outfall, and diffuser.

7.3 Construction, Major Repair, Modification, and Other Work.

(a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, and removal of Improvements (collectively "Work").

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

(1) Grantee shall submit to State plans and specifications describing the proposed Work and any design plans and specifications developed pursuant to Washington Department of Ecology laws and rules for discharges 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 to State at least ninety (90) days before commencement of Work. Grantee shall submit the following additional information to State with Grantee's plans and specifications:

(i) Grantee shall submit the mixing zone analysis for new or reconstructed outfalls prepared by the Washington State Department of Ecology in accordance with the Department of Ecology Water Quality Program Permit Writer's Manual Publication No. 92-109 Appendix C.

(ii) Grantee shall include documentation that the designs and specifications of the outfall are consistent with Department of Ecology Criteria for Sewage Works Design (Publication #98-37). If State, Department of Ecology, or any other regulatory agency establishes different standards, Grantee shall meet the most protective standard.

(2) State may deny consent if State determines that denial is in the best interests of the State of Washington, or if the proposed Work does not comply with Paragraph 7.4. State may impose additional conditions intended to protect and preserve the Easement Property or adjacent state-owned aquatic lands.

(c) Grantee shall immediately notify State of emergency Work. Upon State's request, Grantee shall provide State with as built plans and specifications of emergency Work.

(d) Grantee shall not commence Work until Grantee or Grantee's contractor 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 or Grantee's contractor shall maintain the performance and payment bond until the costs of the Work, including all laborers and material persons, are paid in full.
(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 Paragraph 3.3, End of Term.

(h) Upon completing Work, Grantee shall promptly provide State with as-built plans and specifications. State may also require Grantee to obtain an updated record of survey showing the Easement Property boundaries and the as-built location of all Improvements on the Easement Property.

(i) State shall not charge additional fees for authorized Improvements installed by Grantee on the Easement Property during this Term of this Easement, but State may charge additional fees for such Improvements if and when the Grantee or successor obtains a subsequent use authorization for the Easement Property and State has waived the requirement for removal of Improvements as provided in Paragraph 7.5.

7.4 Standards for Work.

(a) Applicability of Standards for Work.
(1) All Work must conform to the requirements of Paragraph 7.4.
(2) The standards for Work in Paragraph 7.4(b) apply to Work commenced in the five-year period following the Commencement Date. Work commences when State approves plans and specifications.
(3) If Grantee commences Work five years or more after the Commencement Date, Grantee shall comply with State's then-current standards for Work.
(4) If Grantee commences Work five years or more after the Commencement Date, Grantee shall ascertain State's current standards for Work as follows:
(i) Before submitting plans and specifications for State's approval as required by Paragraph 7.3 of the Easement, Grantee shall request

State to provide Grantee with State's current standards for Work on state-owned aquatic lands.

(ii) Within thirty (30) days of receiving Grantee's request, State shall provide Grantee with State's current standards for Work, which will be effective for the purpose of State's approval of Grantee's proposed Work, provided Grantee submits plans and specifications for State's approval within two (2) years of Grantee's request for standards.

(iii) If State does not timely provide State's current standards for Work upon Grantee's request, the standards for Work under Paragraph 7.4(b) apply to Grantee's Work, provided Grantee submits plans and specifications as required by Paragraph 7.3 within two (2) years of Grantee's request for State's current standards for Work.

(iv) If Grantee fails to (1) make a request for State's current standards for Work; or (2) timely submit plans and specifications to State after receiving State's current standards for Work, Grantee, at Grantee's sole expense, shall make changes in plans or Work necessary to conform to State's current standards for Work upon State's demand.

(b) The following standards for Work apply to Work commenced in the five-year period following the Commencement Date.

(1) Grantee shall only conduct in-water Work during time periods authorized for such work under WAC 220-660-110, Authorized Work Times in Freshwater Areas, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW), United States Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS).

7.5 Grantee-Owned Improvements at End of Easement.

(a) Disposition.

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

(2) Grantee-Owned Improvements remaining on the Easement Property on the termination of the Easement shall 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 termination of the Easement without State's consent, State may remove all Improvements and Grantee shall pay State's costs of removal and disposal.

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

(1) State may waive removal of any Grantee-Owned Improvements whenever State determines that it is in the best interests of the State of Washington.

(2) If Grantee 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. If the

Grantee-Owned Improvements are no longer used as part of an operational or active outfall, State may condition its waiver of removal on Grantee entering into a new Easement for the storage of the Grantee-Owned Improvements.

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

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

(ii) State, within ninety (90) days of receiving Grantee's request, will notify Grantee whether State consents to any Grantee-Owned Improvements remaining. State has no obligation to grant consent.

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

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

(1) Grantee shall not remove a Grantee-Owned Improvement if State waives the requirement for removal of that Grantee-Owned Improvement.

(2) Grantee shall maintain such Grantee-Owned Improvements in accordance with this Easement until the termination of this Easement. State may require Grantee to take appropriate steps to decommission the structure. Grantee is liable to State for cost of repair if Grantee causes or allows damage to Grantee-Owned Improvements State has designated to remain.

(3) State may condition its waiver of removal on Grantee entering into a new Easement for the Grantee-Owned Improvements.

7.6 Unauthorized Improvements.

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

(b) The placement of Unauthorized Improvements on the Easement Property is a breach of this Easement and State may require removal of any or all Unauthorized Improvements. If State requires removal of Unauthorized Improvements and if Grantee fails to remove the Unauthorized Improvements, State may remove the Unauthorized Improvements and Grantee shall pay for the cost of removal and disposal.

(c) In addition to requiring removal of Unauthorized Improvements, State may charge Grantee a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until the time the Unauthorized Improvements are removed.

(d) If State consents to Unauthorized Improvements remaining on the Easement Property, upon State's consent, the Unauthorized Improvements will be treated as Grantee-Owned Improvements and the removal and ownership of such Improvements shall be governed by Paragraph 7.5. If State consents to the Unauthorized Improvements remaining on the Easement Property, State may charge a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until State consents.

7.7 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 of the Easement. Grantee is liable for damage to the Easement Property and to any Improvements that may result from removal of Personal Property.

(c) State may remove, sell, or dispose of all Personal Property left on the Easement Property after the termination of the Easement.

(1) If State conducts a sale of Personal Property, State shall first apply proceeds to State's costs of removing the Personal Property, State's costs in conducting the sale, and any other payment due from the Grantee to State. State shall pay the remainder, if any, to the Grantee. Grantee shall be liable for any costs of removing the Personal Property and conducting the sale that exceed the proceeds received by State.

(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.

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

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

(d) "Grantee and affiliates" when used in this Section 8 means Grantee or Grantee's subgrantees, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Easement Property with the Grantee's permission.

(e) "Liabilities" as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.

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 if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.

(b) Standard of Care.

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

(2) As relates 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.

8.3 Current Conditions and Duty to Investigate.

(a) State makes no representation about the condition of the Easement Property or adjacent state-owned aquatic lands. Hazardous Substances may exist in, on, under, or above the Easement Property or adjacent state-owned aquatic 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 Hazardous Substances on or near the Easement Property necessary for Grantee to meet Grantee's obligations under this Easement and utilize the Easement Property for the Permitted Use.

8.4 Use of Hazardous Substances.

(a) Grantee and 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 result in a release or threatened release of Hazardous Substances.

(c) If use of Hazardous Substances related to the Permitted Use results in a violation of law:

(1) Grantee shall submit to State any plans for remedying the violation, and

(2) Grantee shall implement any measures to restore the Easement Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.

8.5 Management of Contamination.

(a) Grantee and affiliates shall not undertake activities that:

(1) Damage or interfere with the operation of remedial or restoration activities, if any;

(2) Result in human or environmental exposure to contaminated sediments, if any;

(3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.

(b) If requested, Grantee shall allow reasonable access to:

(1) Employees and authorized agents of the United States Environmental Protection Agency (EPA), 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 Hazardous Substances;
   (3) Any lien or action arising from Hazardous Substances;
   (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 EPA or the Washington State Department of Ecology 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 lands described in Paragraph 8.2(a), and to any other property used by Grantee in conjunction with the Easement Property if a release of Hazardous Substances on the other property could affect the Easement Property.

(c) Grantee shall provide State with copies of all documents Grantee submits to any federal, state, or local authorities concerning environmental impacts or proposals relative to the Easement Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollutant Discharge Elimination System permits (NPDES); U.S. Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality Certifications; Substantial Shoreline Development permits; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Easement Property.

8.7 Indemnification.

(a) Grantee shall fully indemnify, defend, and hold harmless State 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 and affiliates occurring whenever Grantee uses or has used the Easement Property;
   (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Grantee and affiliates occurring whenever Grantee uses or has used the Easement Property.

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

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

(d) If Grantee fails to exercise care as described in Paragraph 8.2(b)(2), Grantee shall fully indemnify, defend, and hold harmless State from and against Liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances.

8.8 Reservation of Rights.

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

(b) The Parties expressly reserve all such rights, claims, immunities, and defenses that either Party may have against third parties. Nothing in this Section 8 benefits or creates rights for third parties.

(c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 8 do not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.

8.9 Cleanup.

(a) If Grantee's act, omission, or breach of obligation under Paragraph 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standards, 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.

(b) 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 the Department of Natural Resources' approval of final plans. Nothing in the operation of this provision is an agreement by the 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 <u>not</u> a release from or waiver of any obligation for Hazardous Substances under this Easement.

8.10 Sampling by State, Reimbursement, and Split Samples.

(a) 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.

(b) If such Tests, along with any other information, demonstrate a breach of Grantee's obligations regarding Hazardous Substances under this Easement, Grantee shall promptly reimburse State for all costs associated with such Tests, provided State gave Grantee thirty (30) days' advance notice in nonemergencies, and reasonably practical notice in emergencies.

(c) In nonemergencies, Grantee is entitled to obtain split samples of Test samples, provided Grantee gives State written notice requesting split samples at least ten (10) days before State conducts Tests. Upon demand, Grantee shall promptly reimburse State for additional cost, if any, of split samples.

(d) If either Party conducts Tests on the Easement Property, the conducting Party shall provide the other Party with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) days of a written request by the other party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Grantee shall submit data and information to State without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

8.11 Closeout Assessment.

(a) State may require Grantee to conduct a Closeout Environmental Assessment ("Closeout Assessment") prior to Termination of the Easement or after a valid notice of early termination according to the procedures set forth in (b)-(j) below.

(b) The purpose of the Closeout Assessment is to determine the existence, scope, or effects of any Hazardous Substances on the Easement Property and any associated natural resources. The Closeout Assessment may include sediment sampling. Sediment sampling includes the sample locations and parameters reported in Exhibit C as well as any additional testing State may require.

(c) No later than one hundred eighty (180) days prior to the Termination Date, or within ninety (90) days of any valid notice of early termination, State shall provide Grantee with written notice that State requires a Closeout Assessment.

(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) State may require Grantee to enter into a right-of-entry or other use authorization prior to the Grantee entering the Easement Property for any Closeout Assessment work required by this Paragraph 8.11 if the Easement has terminated.

(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.

(j) 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. Grantee shall submit additional assessment work to State upon completion. As required by law, Grantee shall report to the appropriate regulatory authorities if the additional assessment discloses a release or threatened release of Hazardous Substances.

SECTION 9 NATURE OF ESTATE AND ASSIGNMENT

This Easement shall be in gross for the sole benefit of Grantee's use associated with the Permitted Use. This Easement shall not run with the land. This Easement is indivisible. Grantee shall not sell, convey, mortgage, assign, pledge, grant franchises for, or otherwise transfer or encumber any part of Grantee's interest in this Easement or any part of Grantee's interest in the Easement Property without State's prior written consent, which shall be at State's sole discretion. State reserves the right to reasonably change the terms and conditions of this Easement upon State's consent to requests made under this Section 9.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity.

(a) Grantee shall indemnify, defend, and hold harmless State, its employees, officials, officers, and agents from any Claim arising out of the Permitted Use, any Claim arising out of activities related to the Permitted Use, or any Claim arising out of the use of the Easement Property by Grantee, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees to the fullest extent permitted by law and subject to the limitations provided below.

(b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, costs, fees (including attorneys' fees), fines, 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, diminution in value, and/or damages resulting from loss of use of the Easement Property.

(c) Grantee is obligated to indemnify under this Paragraph 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 Paragraph 10.1.

(e) State shall not require Grantee to indemnify, defend, and hold harmless State, its employees, officials, officers, and agents for a Claim caused solely by or resulting solely from the negligence or willful act of State or State's employees, officials, officers, or agents.

(f) Grantee specifically and expressly waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51 RCW in connection with its obligation to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents. Further, Grantee's obligation under this Easement to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents shall not be limited in any way by any limitation on amount or type of damages, compensation, or benefits payable to or for any third party under the workers' compensation acts.

(g) Only to the extent RCW 4.24.115 applies and requires such a limitation, if a Claim is caused by or results from the concurrent negligence of (a) State or State's employees, officials, officers, or agents and (b) the Grantee or Grantee's

agents or employees, these indemnity provisions shall be valid and enforceable only to the extent of the negligence of the Grantee and those acting on its behalf.

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

10.2 Insurance Terms.

(a) Insurance Required.

Grantee certifies that on the Commencement Date of this Easement it is a member of a self-insured risk pool for all the liability exposures, its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 10.2 and by Paragraph 10.3, Insurance Types and Limits. Grantee shall provide to State evidence of its status as a member of a self-insured risk pool. Upon request by State, Grantee shall provide a written description of its financial condition and/or the self-insured funding mechanism. Grantee shall provide State with at least thirty (30) days' written notice prior to any material changes to Grantee's self-insured funding mechanism. If during the Term of this Easement Grantee's self-insurance plan fails to provide coverage equal to that required in Paragraphs 10.2 and Paragraph 10.3 of this Easement, Grantee shall procure additional commercial insurance coverage to meet the requirements of this Easement. The requirements in Paragraphs 10.2(a)(3) and (4) only apply where the Grantee procures additional commercial insurance to meet the requirements of this Easement.

(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 A.M. Best's Insurance Reports. Grantee may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.

(3) All general liability, excess, umbrella, and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as an additional insured by way of endorsement.

(4) All property, builder's risk, and equipment breakdown insurance must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as loss payees.

(5) 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) and endorsement(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 the Easement number.

(3) Receipt of such certificates, endorsements, 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, as follows:

(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 twenty (20) 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) Terminate this Easement; or

(2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Grantee shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.3 from the date of State's notice of the expenditure until Grantee's repayment.

(g) General Terms.

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

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

(3) The Parties shall use any 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 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 shall include all fines; payment of benefits to Grantee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.

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

(c) Employers' Liability Insurance. Grantee shall procure employers' 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 and 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, cover gradual and sudden pollution, and include in its scope of coverage natural resource damage claims. Grantee shall maintain coverage in an amount of at least:

(i) Two Million Dollars ($2,000,000) each occurrence for Grantee's operations at the site(s) identified above, and

(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 a loss payee.

(2) Grantee shall buy and maintain equipment breakdown insurance covering all real property and fixtures, equipment, Improvements and betterments (regardless of whether owned by Grantee or State) from loss or damage caused by the explosion of equipment, fired or unfired vessels, electric or steam generators, electrical arcing, or pipes.

(3) In the event of any loss, damage, or casualty that 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 Paragraph 10.2(g)(3).

(4) 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.

(f) Business Auto Policy Insurance.

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

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

10.4 Financial Security.

(a) On the Commencement Date of this Easement, Grantee is not required to procure and maintain a corporate security bond or other financial security ("Security"). During the Term of this Easement, State may require Grantee to procure and maintain Security upon any of the events listed in Paragraph 10.4(c)(1).

(b) All Security must be in a form acceptable to 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 A.M. Best's Insurance Reports, unless State approves an exception in writing. Grantee may submit a request to the Risk Manager for the Department of Natural Resources for an exception to this requirement.

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

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

(c) Adjustment in Amount of Security.

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

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

(ii) Upon a material change in the condition or disposition of any Improvements, or

(iii) 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 breach 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 the Easement or cure the breach or (4) prevent termination of the Easement because of the breach.

SECTION 11 MAINTENANCE AND REPAIR

11.1 State's Repairs. State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Easement Property, or any part thereof, during the Term.

11.2 Grantee's Repairs and Maintenance.

(a) Grantee shall, at its sole cost and expense, keep and maintain the Easement Property and all Grantee-Owned Improvements in good order and repair, in a clean, attractive, and safe condition. Grantee shall repair all damage caused or permitted by Grantee to Improvements Owned by Others on the Easement Property.

(b) Grantee shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Easement Property or to any Grantee-Owned Improvements on the Easement Property that may be required by any public authority having jurisdiction over the Easement Property and requiring it for public health, safety, and welfare purposes.

(c) Except as provided in Paragraph 11.2(d), all additions, repairs, alterations, maintenance, replacements, or changes to the Easement Property and to any Grantee-Owned Improvements on the Easement Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.

(d) Routine maintenance and repair are acts intended to prevent a decline, lapse, or cessation of the Permitted Use and associated Grantee-Owned Improvements. Routine maintenance or repair that does not require regulatory permits does not require authorization from State pursuant to Section 7.

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

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Damage to Improvements.

(a) In the event of any damage to or destruction of any Improvements on the Easement Property, Grantee shall immediately notify State, with subsequent written notice to State within five (5) days.

(b) Grantee shall be solely responsible for any reconstruction, repair, or replacement of any Grantee-Owned Improvements. If Grantee elects not to reconstruct, repair, or replace all or a portion of any damaged Improvements, Grantee shall promptly remove any damaged or destroyed Improvements and restore the Easement Property. Any reconstruction, repair, or replacement of Improvements is governed by Section 7 Improvements, Personal Property, and Work, and Section 11, Maintenance and Repair, and any Additional Obligations in Exhibit A.

(c) If Grantee is in breach of this Easement at the time damage or destruction occurs to Grantee-Owned Improvements, State may elect to terminate the Easement without giving Grantee an opportunity to cure, and State may retain any insurance proceeds payable as a result of the damage or destruction.

12.2 Damage to Land or Natural Resources

(a) In the event of any damage to or destruction to the land or natural resources on the Easement Property, Grantee shall immediately notify State, with subsequent written notice to State within five (5) days. In the event of any damage or destruction to land or natural resources on adjacent state-owned aquatic lands that is attributable to Grantee's use of the Property, to the Permitted Use, or to related activities, Grantee shall immediately notify State, with subsequent written notice to State within five (5) days.

(b) Grantee, at Grantee's sole cost, shall remedy any damages to land or natural resources on the Easement Property and adjacent state-owned aquatic lands that are attributable to Grantee's use of the Property, the Permitted Use, or related activities, in accordance with a plan approved by State. Grantee shall also compensate State for any lost or damaged natural resource values in accordance with Paragraph 12.2(c).

(c) Compensation for lost resource values:

(1) If damages to the land or natural resources result in lost or damaged natural resource values, Grantee shall compensate State with (1) monetary compensation; (2) the completion of a project approved by State that includes replacing, enhancing, or otherwise providing in-kind habitats, resources, or environments on other state-owned aquatic lands in order to offset the damage and impacts; or (3) a mixture of both monetary compensation and a project. State shall have the discretion to determine if Grantee will compensate with monetary compensation, a project, or both. If State requires monetary compensation, the value of damages shall be determined in accordance with Paragraph 12.2(c)(2).

(2) If State requires monetary compensation under Paragraph 12.2(c)(1), unless the Parties otherwise agree on the value, a three-member panel of professional appraisers or resource economists will determine the measure of lost resource values, and issue a written decision. The appraisers or resource economists 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 compensation on generally

accepted valuation principles. The written decision of the majority of the panel shall bind the Parties.

(d) If damage to land or natural resources on the Easement Property or adjacent state-owned aquatic lands are attributable to Grantee's use of the Property, to the Permitted Use, or to related activities, or if such damage occurs when Grantee is in breach of the Easement, State may elect to terminate the Easement in accordance with Section 14. If State elects to terminate the Easement, Grantee is still responsible for restoring any damages to land or natural resources on the Easement Property and adjacent state-owned aquatic lands, and for compensating State for any lost resource values in accordance with Paragraph 12.2(c). State may retain any insurance proceeds payable as a result of the damage or destruction.

(e) State may, with or without terminating the Easement, at the sole expense of Grantee, remedy any damages and complete a project that offsets lost or damaged natural resource values. If State takes any such actions, upon demand by State, Grantee shall pay all costs incurred by State.

12.3 State's Waiver of Claim. State does not waive any claims for damage or destruction of the Easement Property or adjacent state-owned aquatic lands unless State provides written notice to Grantee of each specific claim waived.

12.4 Insurance Proceeds. Grantee's duties under Paragraphs 12.1 and 12.2 are not conditioned upon the availability of any insurance proceeds to Grantee from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

SECTION 13 CONDEMNATION

In the event of condemnation, the Parties shall allocate the condemnation 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, if any. In the event of a partial taking, the Parties shall compute the ratio based on the portion of Easement Property or Improvements taken. If Grantee and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 REMEDIES AND TERMINATION

14.1 Termination by Breach. State may terminate this Easement upon Grantee's failure to cure a breach of the terms and conditions of this Easement. Unless otherwise stated in this Easement, State shall provide Grantee written notice of breach, and Grantee shall have sixty (60) days after receiving the notice to cure the breach. State may extend the cure period if breach is not reasonably capable of cure within sixty (60) days. This sixty (60) day cure period does not apply where State terminates this Easement under Paragraph 10.2(f) or Section 12.

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 and Grantee's rights revert to State. Grantee shall still be responsible for complying with all end of Term requirements.

14.3 Termination by Grantee. Grantee may terminate this Easement upon providing State with sixty (60) days written notice of intent to terminate. If Grantee terminates under this Paragraph, the date of Grantee's termination shall be deemed the Termination Date and Grantee shall comply with all end of Term requirements. Grantee is not entitled to any refunds of Easement fees already paid to State.

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

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
Aquatic Resources, Rivers District
601 Bond Rd | P.O. Box 280
Castle Rock, WA 98611

Grantee: DISCOVERY CLEAN WATER ALLIANCE
8000 NE 52nd Court
Vancouver, WA 98665
OR
P.O. Box 8979
Vancouver, WA 98668

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: DEPARTMENT OF NATURAL RESOURCES
Aquatic Resources, Rivers District

601 Bond Rd | P.O. Box 280
360-748-2387
rivers@dnr.wa.gov

Grantee: DISCOVERY CLEAN WATER ALLIANCE
John Peterson
360-993-8819
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.

16.2 Successors and Assigns. Subject to the limitations set forth in Section 9, 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, attachments, 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 a payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.

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

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

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

16.8 Language. The word "Grantee" as used in this Easement applies to one or more persons, and regardless of gender, 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, shall include 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 the 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. Venue for any action arising out of or in connection with this Easement is in the Superior Court for Thurston County, Washington.

16.11 Statutory Reference. Any reference to a statute or rule means that statute or rule as presently enacted or hereafter amended or superseded.

16.12 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 Easement Property is located. Grantee shall include the parcel number of the upland property used in conjunction with the Easement Property, if any. Grantee shall provide State with recording information, including the date of recordation and file number.

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

16.14 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.

16.15 Exhibits and Attachments. All referenced exhibits and attachments are incorporated in this Easement unless expressly identified as unincorporated.

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

DISCOVERY CLEAN WATER ALLIANCE

Dated: MARCH 24, 2021

By: JOHN PETERSON
Title: Executive Director
Address: 8000 NE 52nd Court
Vancouver, WA 98668
Phone: 360-993-8819

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: April 12, 2021

By: ALEXANDRA K. SMITH
Title: Deputy Supervisor for Aquatics
Address: 1111 Washington St SE
MS 47027
Olympia, WA 98504

Aquatic Lands Outfall Easement
Template approved as to form this
1st day of February 2021
Jennifer Clements, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF Washington)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that JOHN PETERSON 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 Executive Director of Discovery Clean Water Alliance to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: March 24, 2021

Kim L. Thur
(Signature)

(Seal or stamp)

KIM L. THUR
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
SEPTEMBER 28, 2022

Kim L. Thur
(Print Name)

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

My appointment expires 09-28-22

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of Thurston)

I certify that I know or have satisfactory evidence that ALEXANDRA K. SMITH 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 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: 4/12, 2021

(Seal or stamp)

REBECCA TORRENCE
COMMISSION NO. 208091
NOTARY
PUBLIC
EXPIRES MAY 10, 2023
STATE OF WASHINGTON

Rebecca Torrence
(Signature)

Rebecca Torrence
(Print Name)

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

My appointment expires 5/10/2023

EXHIBIT A
PROPERTY DESCRIPTION

Agreement Number 51-100008

1. LEGAL DESCRIPTION OF THE PROPERTY:

   The proposed pipeline and outfall with diffuser legally described as DNR Easement Application and File No. 51-100008, also in that Record of Survey recorded in Clark County, Washington on November 25th, 2020 in Book 70 of Surveys on page 145.

   The existing pipeline and outfall legally described as DNR Easement Application and File No. 51-076959, also in that Record of Survey recorded in Clark County, Washington on December 15, 2005 in Book 55 of Surveys on Page 66.

2. SQUARE FOOTAGE OF EASEMENT:

   Total square feet 38,032.

EXHIBIT B

1. DESCRIPTION OF PERMITTED USE

A. Existing Facilities.

One (1) treated effluent pipeline, outfall, and diffuser owned by Discovery Clean Water Alliance and authorized under Use Authorization 51-076959. The pipeline exits from the Salmon Creek Wastewater Treatment Plant crosses Salmon Creek, Lake River and discharges into the Columbia River. The pipeline and outfall are made of 30 inch diameter concrete pipe with a 50-foot diffuser. The pipeline and outfall are permitted under National Pollution Discharge Elimination System (NPDES) number WA0023639.

The existing 30 inch diameter cement pipeline crossing Salmon Creek and Lake River will be included in this Agreement. The portion of the existing 30 inch diameter cement outfall, diffuser and associated anchors and pile located in the Columbia River will be removed from state-owned aquatic lands. Use Authorization 51-076959 will be terminated following the execution of this Agreement.

B. Proposed Work.

State authorizes Grantee to conduct the following Proposed Work on the Easement Property: This agreement authorizes one (1) existing 30 inch diameter pipeline crossing Salmon Creek and Lake River and one (1) 48 inch diameter HDPE and steel pipeline crossing Salmon Creek, Lake River and discharging into the Columbia River.

The existing 30 inch diameter concrete pipeline and the proposed 48 inch diameter HDPE and steel pipeline will run parallel to each other crossing Salmon Creek and Lake River, then they will connect near NW Lower River Road and the 48 inch diameter HDPE and steel pipeline line will discharge into the Columbia River via an outfall and diffuser.

The portion of the existing 30 inch diameter cement outfall, diffuser and associated anchors and pile located in the Columbia River will be removed from state-owned aquatic lands.

The proposed 48 inch diameter outfall and diffuser will be made of HDPE, steel, and rubber. The diffuser will have ten (10), twenty (20) inch risers on this section of 48 inch steel pipe that end in elastomeric (rubber) check valves. The diffuser section is not anchored or pile-supported, but is backfilled seven to ten (7-10) feet below the river bottom with spoil material, imported bedding, and Class 50 riprap. This encumbrance is permitted to only discharge treated effluent according to their NPDES permit WA0023639.

Salmon Creek

A temporary work trestle below OHWM will be installed across Salmon Creek to enable large equipment to access the West side of the BNSF Railway. A 20 feet wide

x 20 feet long x 15 feet exit pit will receive the pipeline from under the railroad. The exit pit will be in upland riparian area near the toe of the railroad embankment. The exit pit sides will be shored with sheet piles, and the exit pit dewatered during pipe work. The temporary work trestle will be constructed West to East by driving approximately 61 (24 inch diameter) steel piles to form pile bents (4 piles per bent) supporting a 32 foot wide deck of wooden timbers. Each clear span between bents will be about 28 feet long to allow fish, watercraft, and debris passage. The piles will be driven and proofed using an impact hammer with sound attenuation if the water depth is greater than 3.28 feet. (Several of the steel piles probably will be driven in-the-dry, depending on water level.) The deck will be curbed and sealed to prevent unintentional discharges to the creek. Also, the deck may have a removable section to allow occasional non-motorized vessels to pass in the channel, if required by the U.S. Coast Guard. The work trestle will be completely removed after pipeline construction is completed.

In-water construction within Salmon Creek will be performed by open trenching within sheet pile cofferdam isolation areas to manage turbidity. The first step will be to install a temporary floating silt curtain around the in-water work area. The sheet pile cofferdam will enclose roughly half the channel width at a time, maintaining free and open flow for fish passage and non-motorized vessels. Steel sheets, each approximately 2 feet wide, will be inserted into about half of the riverbed width by a vibratory hammer, and braced. The sheet piles will be driven at least 20 feet below riverbed elevation with a vibratory hammer, without proofing. Each pile will take about 30 minutes to drive, and about 15 piles will be driven per day over a one-month period. A cofferdam will be in Salmon Creek for up to four months.

The trench will be excavated within the cofferdam. The contractor will excavate approximately 2,053 cubic yards (cy) of stream bottom from the trench averaging 12 feet deep for pipe installation. The trench may need to be shored with a trench box to stabilize the trench sides for worker safety and to minimize excavation volume. A crane or trackhoe will excavate the trench, working from the shoreline, dewatered riverbed, or trestle. The contractor will store excavated native, saturated substrate in a temporarily work area for dewatering and later reuse to back fill the trenched pipeline.

The pipe segments will be welded end-to-end on land, then lowered into the trench with the open end of the pipe near the center of the stream. Excess excavated material will be disposed at an approved off-site disposal area. Upon completion of the first half of the stream undercrossing by the effluent pipeline, the half-width cofferdam will be removed. The cofferdam will be installed for the remaining half-channel and pipeline construction will proceed as in the first half-channel. After completion of the pipeline under Salmon Creek is complete and trench backfilled to streambed grade, the second half-width cofferdam will be removed from the channel.

Dewatering will be performed within the cofferdam as necessary. Dewatering pumps may need to operate during pipeline construction to keep the tie-in box dry. Water removed during dewatering process will be discharged to a Baker tank/sediment

bag/vegetative strip, or equivalent. About 600,000 gallons or more of water may be withdrawn from the work isolation areas. Most of this volume will be from groundwater, not the actively flowing stream; and clean or filtered water will return to the river or infiltrate to ground, meeting all water quality standards.

Emergent floodplain wetlands will be restored at the pipeline receiving pit and within the half-cofferdams by returning the site to pre-project grades and revegetating with native species by seeding and vegetative propagation. Outside the creek channel, the contractor will replace the salvaged topsoil over the trench.

The streambank will be restored using native restoration-sized plant materials that will be planted in streambank restoration areas within the permanent easement and temporary construction areas. After trench backfilling, the riverbanks will be reconstructed using encapsulated soil wraps, which involve wrapping a slowly biodegradable erosion blanket around stacked layers (lifts) of native soil.

Lake River

The Lake River pipeline undercrossing construction will be similar to the Salmon Creek undercrossing. Temporary work trestles will be installed at Lake River to enable large equipment to access the pipeline trench. The temporary work trestles will be constructed from each bank by driving 78 steel piles (24 inches in diameter) to form pile bents (4 piles per bent) supporting 32 foot wide timber deck. Each clear span between bents will be at least 28 feet long to allow fish, watercraft, and debris passage. The piles will be driven and proofed using an impact hammer with sound attenuation if the water depth is greater than 3.28 feet. The deck will be curbed and sealed to prevent unintentional discharges to the creek. The temporary work trestles will be in Lake River for up to four months, and will be completely removed after pipeline construction is completed.

In-water construction within Lake River will be performed by open trenching within sheet pile cofferdam isolation areas to manage turbidity. The sheet pile cofferdam will enclose roughly half the channel width at a time, maintaining free and open flow for fish passage. The cofferdam will be in Lake River for up to four months. Barge(s) may be used to carry the crane/trackhoe if river depth is sufficient; however, the river channel near Ridgefield may be too narrow for navigation. The trench will be excavated within the cofferdam, and may need to be shored with a trench box to stabilize the trench sides for worker safety and to minimize excavation volume. The contractor will excavate approximately 2,397 cy of stream bottom from a trench averaging 14 feet deep for pipe installation.

After the installation of the pipeline under Lake River is complete and trench backfilled to riverbed grade, the cofferdam will be removed from the channel.

Emergent floodplain wetlands will be revegetated with native species by seeding and vegetative propagation. The streambank will be restored using native restoration-sized plant materials that will be planted in streambank restoration areas within the permanent and temporary construction easements. The soil reinforcement method will

follow Washington Department of Fish and Wildlife Integrated Streambank Protection Guidelines. After trench backfilling, the riverbanks will be reconstructed using encapsulated soil wraps, which involve wrapping a slowly biodegradable erosion blanket around stacked layers (lifts) of native soil.

Columbia River

The in-water terminus of the 48 inch diameter HDPE and steel outfall pipeline will be an improved diffuser that will ensure adequate mixing and dilution of treated water discharged into the Columbia River for compliance with future water quality standards. The proposed 48 inch diameter HDPE and steel outfall and diffuser will be located approximately 200 feet upstream of the existing 30 inch diameter cement outfall and diffuser. The proposed 48 inch diameter HDPE and steel outfall and diffuser will replace the 30 inch diameter cement outfall and diffuser.

The construction of the 48 inch diameter HDPE and steel outfall and diffuser in the Columbia River will involve excavation by open trench proceeding from the onshore vertical angle point to the end of diffuser in the river. The contractor will conduct nearshore construction from the land or barge, unless the excavator has insufficient reach. If the excavator's reach is insufficient and the shallow water cannot be reached by barge, the contractor may need to access the shallow water via temporary work trestles/platforms extending offshore, one at the new 48 inch diameter pipeline and one where the existing 30 inch diameter pipeline will be removed.

The general construction method and materials will be similar to those used to construct the temporary work trestles at Lake River. The temporary work trestles/platforms will be constructed east to west by driving up to 142 steel piles (24 inches diameter) to form pile bents (4 piles per bent) supporting 32-foot-wide timber decks. Each clear span between bents will be about 28 feet long to allow fish and debris passage. The piles will be driven and proofed using an impact hammer with sound attenuation. The deck will be curbed and sealed to prevent unintentional discharges to the river. A temporary floating log boom, about 400 feet long, will be installed upriver of the work platforms to protect the piles from floating debris. The work trestles/platforms and log boom will be completely removed after pipeline construction is completed.

Construction in deeper water will be accessed by equipment mounted on barges. The barges will be anchored and moored using spud piles. The contractor will excavate approximately 588 cy of Columbia River stream bottom from a 13-foot-deep, on average, trench for pipe installation. The contractor will excavate the nearshore and deep water outfall trench using an excavator or clamshell dredge and an ecology bucket. A partial turbidity curtain will be placed in shallow water (up to 20 feet deep) if the current allows. All spud piles and supporting equipment will be removed once they are no longer needed for construction.

The 48 inch diameter outfall pipe will consist of steel pipe with mechanical couplings and Carnegie-style bell-and-spigot gasket joints. Using mechanical couplings will allow the pipeline to be constructed in segments that can be picked up and lowered

into place using a trestle or barge mounted crane. Where diffuser risers (ports) extend from the outfall pipe above the riverbed's surface, the divers will weld the diffuser risers to the pipe, test the weld, and apply coatings before bringing the segments to the site. The riser ports will be elevated above predicted sand waves, and strengthened to withstand exposure to river currents and large woody debris. Divers and remotely operated underwater equipment will help position each stick of pipe in the open trench, fit it up with the previously installed pipe, and tighten the mechanical couplings to seal the joint. The contractor will position the pipe segments with the attached diffuser riser using cranes and divers.

After the contractor places the new outfall pipe and diffuser in the trench, the contractor will backfill the trench with imported bedding, native spoil material, and approximately 113 cubic yards of Class 50 riprap placed to cover the top of the pipeline and above the granular backfill, but below the riverbed surface. Spoil material from the pipe trench excavation (i.e., native riverbed sand/sediment) will backfill the upper portion of the pipeline trench up to riverbed grade, covering the granular imported backfill materials and restoring the riverbed. Excess sediment from trench excavation will be sidecast to the downstream riverbed, placed at the void where the existing outfall diffuser will be removed, placed onshore for streambank restoration. The highest priority will be to backfill construction trenches to pre-construction contours.

The existing 30 inch diameter outfall pipeline, diffuser, riprap armoring and all supporting/anchoring structures will be removed from the Columbia River and the riverbed backfilled with native sediment. One option for excess dredged material is flow lane disposal. Also, bathymetry reveals two scour holes that might be suitable to receive excess sediment. The Willow Pile Dike scour hole is 400 to 650 feet downstream (north) of the existing outfall and 250 to 500 feet north of the existing Willow Pile Dike. The Willow Pile Dike scour hole is caused by water accelerating around the end of the Willow Pile Dike. As the new outfall diffuser is constructed and fine sand displaced, the Willow Pile Dike scour hole could be partially filled. This readily visible scour hole covers about 44,000 square feet, is about 10 feet deep, and will continue to scour as long as Willow Pile Dike is in place. The second, smaller scour hole is immediately downstream of the existing outfall and caused by water accelerating around the existing Private Aid to Navigation (PATON) marker dolphin and 5-port outfall diffuser, both of which will be removed. The hole will not be scoured after the marker and diffuser are removed.

After the new 48 inch diameter outfall is operational, the existing PATON, existing 30 inch diameter outfall pipe, diffuser, riprap armoring and all supporting/anchoring structures will be removed. The riprap will be removed to the best of abilities without removing native riverbed sediment. The trench void from outfall removal will be backfilled with the excavated fine sand from the trench. The balance of fill at the pipe removal trench will be generated as excess sand from the trench excavation for the new outfall, which will be longer and bigger than the existing outfall, and that will be temporarily sidecast upstream of the existing outfall. Any net excess sediment material will be placed in the flow lane, at the Willow Pile Dike scour hole, at the

Columbia River riverbank and riparian areas, or will be transported to an approved upland disposal facility.

The existing PATON will be replaced with a new marker at the end of the proposed 48 inch diameter pipe. To relocate the marker the contractor will construct the dolphin using steel pipe piles. The navigation marker will consist of three 18-inch-diameter steel piles, braced together to form a dolphin. The piles will be driven with a vibratory hammer from a barge. After completing individual pipe pile installations, the contractor will install cross bracing, a maintenance ladder, and warning marker (beacon).

The removal of the existing 30 inch diameter outfall will involve marine construction. Nearshore work will be from land. The contractor will erect a temporary work platform to access shallow water if unreachable from land or by barge. The contractor will install a partial (open-ended) floating silt curtain around the excavation area in shallow water. Removal from the riverbed will consist of excavating riprap that was placed over the pipe in 1974-76 and 2004 for scour protection. All riprap is to be removed from state owned aquatic lands. 200 feet of the 30 inch diameter outfall pipeline is covered by a minimum width of 40 feet of riprap. The riprap will be removed, and the void backfilled with native sand. The riprap will be buried onshore or placed on a barge for reuse or permanent disposal, the onshore will not be on state owned aquatic lands. Then the contractor will lift the existing sandy riverbed to expose the existing pipe and diffuser, side casting the sand downstream of the excavation.

The existing pipe is strapped to creosote-treated pile caps (saddles) on pairs of treated and untreated 12-inch diameter timber support piles driven at least 40 feet below the riverbed surface. There are 12 saddles (24 untreated support piles) under the existing outfall diffuser and 14 saddles (28 treated support piles) shoreward of the existing outfall diffuser along the Columbia River shoreline. All pile removal shall comply with Derelict Creosote Piling Removal, Best Management Practices for Pile Removal & Disposal (prepared by Washington Department of Natural Resources) and the Washington Department of Fish and Wildlife (WDFW) Hydraulic Project Approval, whichever is more restrictive. Creosote-treated timbers will be removed and properly disposed of during demolition of the PATON marker, pipe support piles and saddles at the existing 30-inch diameter outfall.

The riverbanks will be reconstructed using encapsulated soil wraps, which involve wrapping a slowly biodegradable erosion blanket around stacked layers (lifts) of native soil.

Grantee's Proposed Work is considered Work and is subject to the terms and conditions of this Easement. If the Proposed Work is not commenced within five years of the Commencement Date of the Easement, or if Grantee is required to renew, extend, modify, or obtain a new regulatory permit for the Proposed Work, Grantee shall obtain State's prior written consent before conducting the Proposed Work pursuant to Section 7.3 of the Easement.

C. Permits for Proposed Work. Grantee has secured the following permits for the Proposed Work:

- Private Aids to Navigation: CG-2554, issued by United States Coast Guard, dated November 13, 2020.
- Approval of Engineering Report for the Phase 5A Project, issued by the Department of Ecology, dated February 11, 2019.
- Construction Stormwater General Permit: WAR309715, issued by the Department of Ecology, dated December 18, 2020.
- Water Quality Certification: NWS-2017-25, issued by the Department of Ecology, dated January 21, 2021.
- Hydraulic Project Approval: 2020-5-2+01, issued by Washington Department of Fish and Wildlife, dated January 08, 2020 to January 07, 2025.
- Substantial Development and Conditional Use permit: SLR-2019-00023, FLP2018-00017, and WHR-2019-00080, issued by Clark County Community Development, dated December 27, 2019 to March 31, 2023.
- Biological Opinion: 01EWFW00-2020-F-0062, issued by United States Department of the Interior Fish and Wildlife, dated December 23, 2020.
- Nationwide Permit 12: NWS-2017-25, issued by the Department of Army Corp of Engineers, dated December 28, 2020.
- Suitability of Proposed Excavated and Dredged Material Memo, issued by Dredged Material Management Office, dated August 2, 2018.
- Endangered Species Act Biological Opinion: WCRO-2019-03126, issued by United States Department of Commerce National Oceanic and Atmospheric Administration, dated November 20, 2020.
- NPDES WA0023639 and extension Email, issued by the Department of Ecology, dated February 17, 2021.
- SEPA Notice of Mitigated Determination of Non-Significance: #92-2015-0023, issued by Discovery Clean Water Alliance, dated June 8, 2018.

2. ADDITIONAL OBLIGATIONS

Except for the Proposed Work authorized in Section 1.B. of this Exhibit B, State has not authorized Grantee to conduct any Work on the Easement Property. Where Work will need to be conducted to meet the Additional Obligations below, Grantee shall obtain State's prior written consent in accordance with Section 7.3 of this Easement and obtain all necessary regulatory permits prior to commencing such Work.

A. 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 treatment and/or 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.

B. National Pollutant Discharge Elimination System (NPDES) permit
   i. The NPDES Permit start date is April 1, 2012 and requires renewal in accordance with WAC 173-220-180.
   ii. Grantee shall notify State when they contact the Washington State 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.

C. By end of 2024 designated in-water construction window, Grantee shall remove existing 30 inch diameter outfall pipe, diffuser, riprap armoring and all supporting/anchoring structures. Additionally, Grantee shall remove all temporary work trestles/platforms and construction equipment.

EXHIBIT C
SEDIMENT SAMPLING REPORT

Before commencing sediment sampling, Grantee shall submit a Sampling and Analysis Plan ("SAP") to State for approval. State may require modifications to the SAP. If State disapproves of the SAP, Grantee shall submit a revised SAP to State for approval. Specifics of plan shall be developed by a qualified environmental consultant experienced in developing and implementing a SAP for freshwater aquatic sites following Ecology's most recent version of *Sediment Cleanup User's Manual II- Guidance for Implementing the Cleanup Provisions of the Sediment Management Standards, Chapter 173-204 WAC* and current *ASTM Phase II Standards.*

The Sampling and Analysis Plan shall at a minimum:

1) Contain a sufficient number and distribution of samples for a Phase II environmental site assessment.
2) Include analysis of the full suite of Sediment Management Standards (SMS) chemicals of concern as well as tributyltin, dioxin, and furans where appropriate to do so.
3) Focus sample collection in areas of deposition where adequate samples can be collected.
4) Include core samples to address risk posed by historical use on and adjacent to where activities have or will occur.
5) Select sampling locations from areas that have not been dredged and/or have not been previously sampled in last ten (10) years yet are otherwise closest to where industrial activities have occurred.

Grantee shall be responsible for all costs required to complete planning, sampling, analyzing and reporting associated with the Sediment Sampling and Analysis Plans.

After completion of sediment sampling and analysis, a Sediment Analysis Report must be written as outlined in Ecology's SCUM II Manual. An electronic and hardcopy version of the sediment sampling and analysis report must be submitted to DNR clearly identifying any exceedances identified. If an exceedance is identified, Grantee must notify both DNR and Ecology within thirty (30) days per WAC 173-340-300(2).

All sampling data shall be entered into Ecology's Environmental Information Management (EIM) database following Ecology's EIM database process (see link for details): https://ecology.wa.gov/Research-Data/Data-resources/Environmental-Information-Management-database/EIM-submit-data.