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

AQUATIC LANDS OUTFALL EASEMENT NO. 51-070281

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Exhibit A Easement Property

Exhibit B Plan of Operations

Exhibit C Outfall Inspection Plan

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

AQUATIC LANDS OUTFALL EASEMENT

AQUATIC LANDS EASEMENT NO. 51-070281

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

**SECTION 1 GRANT AND LOCATION OF EASEMENT**

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

**1.2 Rights of Third Parties.** This Easement is subject to all valid interests of third parties noted in the records of Snohomish County, or on file in the office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or the federal navigation servitude; and treaty rights of Indian Tribes. Not included in this Easement are any right to harvest or collect any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel or other valuable materials. State reserves the right to grant easements and other land uses on the Easement Property to others when the easement or other land uses will not unreasonably interfere with Grantee's Permitted Use.

**1.3 Inspection.** State makes no representation regarding the condition of the Easement Property, improvements located on the Easement Property, the suitability of the Easement Property for Grantee's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Easement Property or the existence of hazardous substances on the Easement Property. Grantee has inspected the Easement Property and accepts it "AS IS."

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

## SECTION 2 USE OF EASEMENT

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

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

**2.3 Conformance with Laws.** Grantee shall, at all times, keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its use or occupancy of the Easement Property. This includes, but is not limited to, all state and federal laws, regulations, order or permits governing the construction, operation, repair and maintenance of the outfall pipeline shown in Exhibit A.

**2.4 Liens and Encumbrances.** Grantee shall keep the Easement Property free and clear of any liens and encumbrances arising out of or relating to its use or occupancy of the Easement Property.

**2.5 Amendment upon Change of Permit Status.** This Easement is granted in reliance upon Grantee's agreement to operate an outfall in substantially the same manner as described in the regulatory permits it has obtained as of the date this Easement was executed, and in full compliance with those permits. State reserves the right to amend the terms and conditions of this easement in those cases where any regulatory permit (including, but not limited to, any National Pollutant Discharge Elimination Systems (NPDES) Permit, Hydraulic Project Approval, U.S. Army Corps of Engineers Section 404 Permit, or Shoreline Substantial Development Permit) is modified in any manner that

affects the performance of any obligation or covenant under this Easement. This right to amend the Easement shall expressly include those circumstances where the permit is modified to allow for a change in the manner in which the outfall is operated, or a change in the type, quality, or quantity of effluent being discharged. State similarly reserves the right to amend this Easement where Grantee fails to operate in conformance with its permits and where such failure could affect the lands and natural resources associated with the Easement area and any adjacent state lands or natural resources. This right to amend the Easement shall operate independent of any right to terminate the Easement pursuant to Section 12 or any other provision of this Easement. In the event that Grantee disagrees with any amendments that are required by State under this Subsection, Grantee's sole option shall be to request that the Easement be terminated upon sixty days written notice. In the event that the Easement is terminated under these circumstances, Grantee shall be allowed a pro rata reduction in any fees paid under Subsection 4.1 for the remaining unused Term, with the exception that no refund of any fees shall be provided if the outfall is allowed to remain in place pursuant to the provisions of Subsection 13.4.

### SECTION 3 TERM

**3.1 Term Defined.** The term of this Easement is Thirty (30) years (the "Term"), beginning on the 1st day of October, 2004 (the "Commencement Date"), and ending on the 30th day of September, 2034, (the "Termination Date"), unless renewed pursuant to subsection 3.2 or terminated sooner under the terms of this Easement.

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

**3.3 Development of Disposal Alternatives.** Grantee acknowledges that it is State's goal to reduce the reliance on the receiving waters of Washington State for the disposal of waste effluent, stormwater and other discharges, and to promote water re-use. Any renewal of this easement shall be dependent upon Grantee's satisfactory progress towards the implementation of reasonably practical disposal alternatives that abate the effect of the pollution constituents on state-owned aquatic lands and their associated biological communities. To assure that such progress is made during the Term of this Easement, Grantee shall submit a written report at the time of application to renew the NPDES Permit, or every five (5) years, whichever is sooner. The report will identify: (1) activities undertaken since the previous report to reduce discharges as well as efforts to decrease chemical, biological and physical impacts to state-owned aquatic lands and their associated biological communities; and (2) current and future plans, including funding, for reducing discharges and decreasing chemical, biological and physical impacts to state-owned aquatic lands and their associated biological communities. In any request for renewal, if Grantee has not provided evidence satisfactory to State, that it is making progress towards disposal alternatives that abate pollution impacts, the State may require

Grantee to undertake a thorough investigation and analysis of reasonably practical disposal alternatives to the Permitted Use. If such review is required, it shall be completed prior to any renewal of this Easement. In the alternative, State may rely on its own alternatives analysis in accordance with WAC 332-30-122 and such other regulations as State has or may promulgate. Grantee acknowledges that the processing of any renewal application is contingent upon compliance with this Subsection 3.3, and that State is under no obligation to issue a new Easement. Grantee further acknowledges that a failure to anticipate and conduct the disposal alternatives investigation and analysis may delay or prevent renewal of this Easement.

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

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

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

#### SECTION 4 USE FEE

**4.1 Fee.** Pursuant to RCW 79.90.470 and RCW 79.90.575, so long as the Permitted Use is consistent with the purposes of RCW 79.90.450 through RCW 79.90.460 and does not obstruct navigation or other public uses of Stillaguamish River and its surrounding waters, this use is Granted to government owned public utilities for the cost of administrative fees associated with the processing of the application and document, plus the cost of administrative fees associated with the processing of any future application made with respect to this easement for the term specified in Section 3.1 (Term Defined). The use fee specified pursuant to RCW 79.90.575 shall be paid upon execution of this easement. Any administrative fees shall be paid within thirty (30) days after a bill is submitted to Grantee. Nothing in this subsection shall preclude State's ability to charge Grantee a fee for any impacts to natural resources on or adjacent to the Easement Property that are directly or indirectly associated with the Permitted Use or Grantee's use or occupation of the Easement Property.

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

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

**4.3 Late Charges and Interest.** If any Use Fee or sum payable to State under the terms of this Easement is not received by State within ten (10) days of the date due, Grantee shall pay to State a late charge equal to four percent (4%) of the amount of the payment or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State as a result of the delay. If any Use Fee is not paid within thirty (30) days of the date due, then Grantee shall, in addition to paying the late charges established above, pay interest on the amount outstanding at the rate of one percent (1%) per month until paid.

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

**4.5 No Counterclaim, Setoff, or Abatement of Use Fee.** Except as expressly set forth elsewhere in this Easement, the Use Fee and all other sums payable by Grantee pursuant to this Easement shall be paid without the requirement that State provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement.

## SECTION 5 COORDINATION OF ACTIVITIES

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

## SECTION 6 MAINTENANCE AND REPAIR OF EASEMENT AND IMPROVEMENTS

During the term of this Easement, Grantee shall maintain the outfall pipeline, and any other Improvements on the Easement Property, in good condition and working order. Subject to the limitations in Section 13, Grantee shall promptly repair, at its sole cost, all

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

## **SECTION 7 INTERFERENCE WITH OTHER USES OF EASEMENT PROPERTY**

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

## **SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION**

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

**8.2 Use of Hazardous Substances.** Grantee covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released,



or disposed of on, in, under, or above the Easement Property, except in accordance and compliance with all applicable laws, permits or licenses.

**8.3 Current Conditions, Duty of Utmost Care, and Duty to Investigate.**

- (a) With regard to any Hazardous Substances that may exist in, on, under, or above the Easement Property, State disclaims any and all responsibility to conduct investigations, to review any State records, documents or files, or to obtain or supply any information to Grantee.
- (b) Grantee shall exercise the utmost care with respect to both Hazardous Substances in, on, under, or above the Easement Property as of the Commencement Date, and any Hazardous Substances that come to be located in, on, under, or above the Easement Property during the Term of this agreement, along with the foreseeable acts or omissions of third parties affecting those Hazardous Substances, and the foreseeable consequences of those acts or omissions. The obligation to exercise utmost care under this Subsection 8.3 includes, but is not limited to, the following requirements:
  - (1) Grantee shall not undertake activities that will cause, contribute to, or exacerbate contamination of the Easement Property;
  - (2) Grantee shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Easement Property or undertake activities that result in human or environmental exposure to contaminated sediments on the Easement Property;
  - (3) Grantee shall not undertake any activities that result in the mechanical or chemical disturbance of on-site habitat mitigation;
  - (4) If requested, Grantee shall allow reasonable access to the Easement Property by employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, or other similar environmental agencies; and
  - (5) If requested, Grantee shall allow reasonable access to potentially liable or responsible parties who are the subject of an order or consent decree which requires access to the Easement Property. Grantee's obligation to provide access to potentially liable or responsible parties may be conditioned upon the negotiation of an access agreement with such parties, provided that such agreement shall not be unreasonably withheld.

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

**8.4 Notification and Reporting.**

- (a) Grantee shall immediately notify State if Grantee becomes aware of any of the following:
  - (1) A release or threatened release of Hazardous Substances in, on, under, or above the Easement Property, any adjoining property, or any other property subject to use by Grantee in conjunction with its use of the Easement Property;
  - (2) Any problem or liability related to, or derived from, the presence of any Hazardous Substance in, on, under, or above the Easement Property, any adjoining property, or any other property subject to use by Tenant in conjunction with its use of the Easement Property;
  - (3) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Easement Property, any adjoining property, or any other property subject to use by Grantee in conjunction with its use of the Easement Property;
  - (4) Any lien or action with respect to any of the foregoing; or,
  - (5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Easement Property.

**8.5 Indemnification and Burden of Proof.**

- (a) Notwithstanding any NPDES permit or other permit or license that authorizes the discharge or release of Hazardous Substances or other deleterious substances, Grantee shall fully indemnify, defend, and hold State harmless from and against any and all claims, demands, damages, natural resource damages, response costs, remedial costs, cleanup costs, losses, liens, liabilities, penalties, fines, lawsuits, other proceedings, costs,

and expenses (including attorneys' fees and disbursements), that arise out of or are in any way related to:

- (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Grantee, its subgrantees, contractors, agents, employees, guests, invitees, or affiliates in, on, under, or above the Easement Property or any adjoining property during the term of this Easement or during any time when Grantee occupies or occupied the Easement Property or any adjoining property;
  - (2) The release or threatened release of any Hazardous Substance in, on, under, or above the Easement Property or any adjoining property, which release or threatened release occurs or occurred during the term of this Easement or during any time when Grantee occupies or occupied the Easement Property or adjoining property and as a result of:
    - (i) Any act or omission of Grantee, its subgrantees, contractors, agents, employees, guests, invitees, or affiliates; or,
    - (ii) Any foreseeable act or omission of a third party unless Grantee exercised the utmost care with respect to the foreseeable acts or omissions of the third party and the foreseeable consequences of those acts or omissions.
  - (3) A breach of the obligations of Subsection 8.3, above, by Grantee, its subgrantees, contractors, agents, employees, guests, invitees, or affiliates.
- (b) Grantee will have use of and access to the Easement Property. Accordingly, if State seeks to impose liability under Subsection 8.5(a), State will have the initial burden of proving by a preponderance of the evidence the existence, release, or threatened release of Hazardous Substances in, on, under, or above the Easement Property or any adjoining property. Grantee shall then have the burden of proving by a preponderance of the evidence that none of the indemnification provisions apply.

**8.6 Cleanup.** If a release of Hazardous Substances occurs on, in, under, or above the Easement Property or other State-owned property arising out of any action or inaction described or referred to in Subsection 8.5 above, Grantee shall, at its sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances. These actions shall include, without limitation, removal, containment and remedial actions and shall be performed in accordance with all applicable laws, rules, ordinances,

and permits. Grantee shall also be solely responsible for all cleanup, administrative, and enforcement costs of governmental agencies, including natural resource damage claims. Any cleanup shall be performed in a manner approved in advance in writing by State, except that in emergency situations Grantee may take reasonable and appropriate actions without advance approval.

#### **8.7 Sampling.**

- (a) As a condition of State entering into this Easement, Grantee agrees to promptly conduct the environmental investigation specified in Exhibit B (Section 8) of this document. The investigation specified in Exhibit B will be conducted in accordance with generally accepted scientific methods and principles. State shall be provided the opportunity to review and approve the sampling and analysis plan.
- (b) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Easement Property at any time to determine the existence, scope, or effects of Hazardous Substances on the Easement Property, any adjoining property, any other property subject to use by Grantee in conjunction with its use of the Easement Property, or any natural resources. If such Tests, along with any other information, demonstrates the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 8.5, above, Grantee shall promptly reimburse State for all costs associated with such Tests.
- (c) State's ability to seek reimbursement for any Tests under this Subsection shall be conditioned upon State providing Grantee written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, unless such Tests are performed in response to an emergency situation in which case State shall only be required to give such notice as is reasonably practical.
- (d) Grantee shall be entitled to obtain split samples of any Test samples obtained by State, but only if Grantee provides State with written notice requesting such samples within twenty (20) calendar days of the date Grantee is deemed to have received notice of State's intent to conduct any non-emergency Tests. The additional cost, if any, of split samples shall be borne solely by Grantee. Any additional costs State incurs by virtue of Grantee's split sampling shall be reimbursed to State within thirty (30) calendar days after a bill with documentation for such costs is sent to Grantee.
- (e) Within thirty (30) calendar days of a written request (unless otherwise required pursuant to Subsection 8.4(b), above), either party to this

Easement shall provide the other party with validated final data, quality assurance/quality control information, and chain of custody information, associated with any Tests of the Easement Property performed by or on behalf of State or Grantee. There is no obligation to provide any analytical summaries or expert opinion work product.

#### **8.8 Sediment Investigation.**

- (a) If State has reason to believe that a release or threatened release of Hazardous Substances has occurred on the Easement Property during Grantee's occupancy, State may require Grantee to conduct a Closeout Environmental Assessment (Closeout Assessment) by providing Grantee with written notice of this requirement no later than one hundred eighty (180) calendar days prior to the Termination Date, or within ninety (90) days of any valid notice to terminate the easement earlier than originally agreed. The purpose of the Closeout Assessment shall be to determine the existence, scope, or effects of any Hazardous Substances on the Easement Property and any associated natural resources. If the initial results of the Closeout Assessment disclose the existence of Hazardous Substances that may have migrated to other property, State may require additional Closeout Assessment work to determine the existence, scope, and effect of any Hazardous Substances on adjoining property, any other property subject to use by Grantee in conjunction with its use of the Easement Property, or on any associated natural resources. The Closeout Assessment may include Sediment Sampling. Any Sediment Sampling must include those sample locations and parameters reported in Grantee's Sediment Investigation Report completed at the initiation of this Easement as well as any additional testing requirements State may require based on changes in scientific, statutory, or regulatory standards for information concerning the activities of Grantee, its subgrantees, contractors, agents, employees, guests, invitees, or affiliates.
- (b) Prior to undertaking the Closeout Assessment, Grantee shall submit a proposed plan in writing for State's approval. The plan shall be provided to State within sixty (60) days of the State's notice requiring the Closeout Assessment. If State fails to respond in writing, either approving or disapproving of the proposed plan, within sixty (60) days of its receipt, the proposed plan shall be deemed approved. Grantee shall be responsible for all costs required to complete planning, sampling, analyzing, and reporting associated with the Closeout Assessment.

**8.9 Reservation of Rights.** The parties have agreed to allocate certain environmental risks, liabilities, and responsibilities by the terms of Section 8. With respect to those environmental liabilities covered by the indemnification provisions of Subsection 8.5, that subsection shall exclusively govern the allocation of those liabilities. With respect to any environmental risks, liabilities, or responsibilities not covered by Subsection 8.5, the

parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the presence, release, or threatened release of Hazardous Substances in, on, under, or above the Easement Property, any adjoining property, or any other property subject to use by Grantee in conjunction with its use of the Easement Property, that either party may have against the other under federal, state, or local laws, including but not limited to, CERCLA, MTCA, and the common law. No right, claim, immunity, or defense either party may have against third parties is affected by this Easement and the parties expressly reserve all such rights, claims, immunities, and defenses. The allocations of risks, liabilities, and responsibilities set forth above do not release either party from, or affect either party's liability for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

## SECTION 9 NATURAL RESOURCE DAMAGES

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

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

- (a) Grantee shall be required to prepare and implement a written plan for eliminating or minimizing any future impacts that is satisfactory to State;
- (b) To the extent that it is not possible to avoid impacts, Grantee shall be required to prepare and implement a plan for the replacement of any lost or damaged natural resource values that is satisfactory to the State;
- (c) Grantee shall be required to prepare and implement a written plan for monitoring and reporting on the implementation of all actions required under Subsections 9.2 (a) and (b) that is satisfactory to State.
- (d) To the extent that lost resource values cannot be replaced, or continue to be damaged, Grantee shall pay State for the value of the lost or damaged resource values. In the event the parties to this Agreement cannot agree upon any measure of damages, a three-member panel of appraisers shall be appointed, consisting of natural resource economists. One member shall be appointed by and at the cost of State, one member by and at the cost of Grantee, and the third member by mutual agreement of the first

two panel members with the cost to be borne equally by State and Grantee. The decision of a majority of the members of the panel shall be made based upon generally accepted valuation principles utilized by natural resource damage trustees in Comprehensive Environmental Response, Compensation, and Liability Act and Model Toxic Control Act proceedings. The decision shall be binding on the parties to this Agreement.

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

## **SECTION 10 REPORTING**

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

## **SECTION 11 PRESERVATION OF SURVEY CORNERS**

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

## **SECTION 12 TERMINATION OF EASEMENT**

This Easement shall terminate if Grantee receives notice from State that Grantee is in breach of this Easement and Grantee fails to cure that breach within sixty (60) days of

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

### **SECTION 13 OWNERSHIP AND REMOVAL OF IMPROVEMENTS AND EQUIPMENT**

**13.1 Existing Improvements.** On the Commencement Date, the following improvements are located on the Easement Property: A 24 inch iron pipe with a single port diffuser at the end. These improvements are not owned by State "Existing Improvements".

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

**13.3 Construction.** Prior to any construction, alteration, replacement, removal or major repair of any improvements (whether State-Owned or Grantee-Owned), Grantee shall submit to State plans and specifications which describe the proposed activity. A "major repair" or an "alteration" shall be defined as any work performed within the Easement Property that substantially changes the configuration or location of any Improvement or that may result in substantial adverse impacts to the environment. State shall have sixty (60) days in which to review the proposed plans and specifications. The plans and specifications shall be deemed approved unless State notifies Grantee otherwise within the sixty (60) days. Upon completion of construction, Grantee shall promptly provide State with as-built plans and specifications. Routine maintenance and emergency maintenance activities shall be undertaken in accordance with the provisions of Section 6.

**13.4 Removal.** Upon the termination of this Easement without any renewal, Grantee shall remove or retire any improvements located upon the Easement Property in accordance with the provisions of this Subsection and shall restore the Easement Property



to a condition substantially similar to its natural state prior to the construction and operation of the outfall.

- (a) Notification. Prior to, or within one hundred eighty (180) days after, the Termination Date, State shall notify Grantee in writing whether it intends to require the removal of the improvements or whether the improvements shall be abandoned in place. In the event State fails to provide any notice of its intent, Grantee shall remove the improvements in accordance with the provisions of this Subsection.
- (b) Removal. In those cases where the improvements shall be removed, Grantee agrees to provide a written plan, to be approved in writing by State, for the removal of the improvements and for the restoration of the Easement Property. The plan shall identify a timeline for removal and restoration, shall identify any impacts to the Easement Property, associated natural resources, or surrounding lands and resources, and shall identify any measures needed to restore the Easement Property. In those cases where State determines that the proposed removal would disrupt existing state lands or natural resources and would be detrimental to the long term use and management of the state's lands and resources, State may notify Grantee that the improvements must be abandoned in place in accordance with the provisions of this Subsection.
- (c) Abandonment. In those cases where the improvements shall be abandoned in place, Grantee agrees to provide a written plan, to be approved in writing by State, for abandonment and restoration. The plan shall identify a timeline for abandonment and restoration, shall identify the location of the improvements, shall propose a suitable means for plugging any abandoned pipelines, shall identify the means for notifying the public of the existence of any abandoned improvements, and shall identify any measures needed to restore the Easement Property. In those cases where State determines that the proposed abandonment would be detrimental to the long-term use and management of the state's lands and resources, State may notify Grantee that the improvements must be removed in accordance with the provisions of this Subsection.
- (d) Plans for Removal or Abandonment. Grantee shall provide the plan for removal or abandonment within ninety (90) days after the actual or deemed notification of state's removal or abandonment requirement is provided. State shall then have ninety (90) days in which to approve or reject the plan. State's failure to respond within the time allowed shall be deemed an approval of the plan.
- (e) Costs to Remove or Abandon, and to Restore. Grantee agrees to undertake the removal and disposal of the improvements, or the abandonment of the improvements, and the restoration of the Easement

Property, at its sole cost and expense. Grantee agrees to perform any removal and restoration activities in a prompt and expeditious manner upon approval of any plans. If Grantee fails to timely meet its obligations under this Subsection State may perform Grantee's obligations and seek reimbursement.

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

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

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

## **SECTION 14 INDEMNITY**

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

## **SECTION 15 INSURANCE**

### **15.1 Financial Security.**

- (a) At its own expense, Grantee shall procure and maintain a corporate surety bond or provide other financial security satisfactory to State (the "Bond")

in an amount equal to Zero Dollars (\$ 0.00) , which shall secure Grantee's full performance of its obligations under this Easement, with the exception of the obligations under Section 8 (Environmental Liability/Risk Allocation) above. The Bond shall be in a form and issued by a surety company acceptable to State. State may require an adjustment in the amount of the Bond.

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

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

- (a) Types of Required Insurance.

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

<u>Description</u>	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000

State may impose changes in the limits of liability:

- (i) As a condition of approval of assignment of this Easement;
- (ii) Upon any breach of Section 8, above;
- (iii) Upon a material change in the condition of the Property or any improvements; or,
- (v) Upon a change in the Permitted Use.

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

- (2) **Property Insurance.** Grantee shall procure and maintain property insurance covering all real property located on or constituting a part of the Easement Property in an amount equal to the replacement value of all improvements on the Easement Property. Such insurance may have commercially reasonable deductibles.
- (3) **Worker's Compensation/Employer's Liability Insurance.** Grantee shall procure and maintain:
  - (i) State of Washington Worker's Compensation coverage, as applicable, with respect to any work by Grantee's employees on or about the Easement Property and on any improvements;
  - (ii) Employers Liability or "Stop Gap" insurance coverage with limits not less than those specified below. Insurance must include bodily injury coverage with limits not less than those specified below:
 

<u>By Accident</u>	<u>Each Employee By Disease</u>	<u>Policy Limit By Disease</u>
\$1,000,000	\$1,000,000	\$2,000,000
  - (iii) Longshore and Harbor Worker's Act and Jones Act coverage, as applicable, with respect to any work by Grantee's employees on or about the Easement Property and on any improvements.
- (4) **Builder's Risk Insurance.** As applicable, Grantee shall procure and maintain builder's risk insurance in an amount reasonably satisfactory to State during construction, replacement, or material alteration of the Property or improvements on the Easement Property. Coverage shall be in place until such work is completed and evidence of completion is provided to State.
- (5) **Business Auto Policy Insurance.** As applicable, Grantee shall procure and maintain a business auto policy. The insurance must include liability coverage with limits not less than those specified below:

<u>Description</u>	<u>Each Accident</u>
Bodily Injury and Property Damage	\$1,000,000

(6) Contractor's Pollution Liability. Grantee shall obtain procure and maintain contractor's pollution legal liability, including investigation and defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has been physically damaged or destroyed. Such coverage must provide for both on-site and off-site clean-up costs, cover gradual and sudden pollution, and includes in its scope of coverage natural resource damage claims. Coverage shall be maintained in an amount of at least:

1. \$1,000,000 each occurrence for contractor's operations at the site(s) identified above; and
2. If the policy contains a general aggregate limit or policy limit, it shall be at least \$5,000,000.

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

- (i) The Insurance Certificate must state that the insurer is covering hazardous substance removal.
  - (ii) The policy must contain no retroactive date, or the retroactive date must precede abatement services.
  - (iii) Coverage must be continuously maintained with the same insurance carrier through the official completion of any work on the Easement Property.
  - (iv) The extended reporting period (tail) must be purchased to cover a minimum of thirty six (36) months beyond completion of work.
- (b) Terms of Insurance. The policies required under Subsection 15.2 shall name the State of Washington, Department of Natural Resources as an additional insured (except for State of Washington Worker's Compensation coverage, and Federal Jones' Act and Longshore and Harbor Worker's Act coverages). Furthermore, all policies of insurance described in Subsection 15.2 shall meet the following requirements:
- (1) Policies shall be written as primary policies not contributing with and not in excess of coverage that State may carry;
  - (2) Policies shall expressly provide that such insurance may not be canceled or nonrenewed with respect to State except upon forty-

five (45) days prior written notice from the insurance company to State;

- (3) To the extent of State's insurable interest, property coverage shall expressly provide that all proceeds shall be paid jointly to State and Grantee;
  - (4) With the exception of Contractor's Pollution Liability (governed by the provisions of Subsection 15.2(a)(6)), all liability policies must provide coverage on an occurrence basis; and,
  - (5) Liability policies shall not include exclusions for cross liability.
- (c) **Proof of Insurance.** Grantee shall furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to the State accompanied by a checklist of coverages provided by State, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements described in Section 15, and, if requested, copies of policies to State. The Certificate of Insurance shall reference the State of Washington, Department of Natural Resources and the easement number. Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies. Grantee acknowledges that the coverage requirements set forth herein are the minimum limits of insurance the Grantee must purchase to enter into this agreement. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these limits of coverage does not relieve the Grantee from liability for losses and settlement expenses greater than these amounts.

**15.3 State's Acquisition of Insurance.** If Grantee fails to procure and maintain the insurance described above within fifteen (15) days after Grantee receives a notice to comply from State, State shall have the right to procure and maintain comparable substitute insurance and to pay the premiums. Grantee shall pay to State upon demand the full amount paid by State, together with interest at the rate provided in Subsection 4.3 from the date of State's notice of the expenditure until Grantee's repayment.

**15.4 Self-Insurance.** Grantee warrants that it has the capacity to self insure for the risks and coverages specified in Subsection 15.2. Grantee's obligations under Subsection 15.2 may be met by providing evidence of self-insurance that is acceptable to the State. Any evidence of Grantee's proof of self insurance by State must be obtained in writing. The decision to accept, or reject, Grantee's proof of self-insurance is within the sole discretion of State. Grantee must provide State with proof of continuing ability to provide self-insurance within thirty (30) days of any written request by State for such proof. Grantee shall also provide State with written notice within seven (7) days of any material change in it ability to self insure, or to its program of self-insurance. If Grantee elects to discontinue its program of self-insurance, or if State provides written notice withdrawing

its acceptance of Grantee's proof of self-insurance, Grantee shall be subject to the requirements of Subsections 15.2 and 15.3. Grantee shall be in compliance with the requirements of Subsection 15.2 prior to exercising an election to terminate self-insurance coverage and shall comply with those requirements within thirty (30) days of receipt of any notice from State withdrawing its consent to self-insurance.

### **SECTION 16 TAXES AND ASSESSMENTS**

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

### **SECTION 17 ADVANCE BY STATE**

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

### **SECTION 18 NOTICE**

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

To State:           DEPARTMENT OF NATURAL RESOURCES  
Northwest Region  
919 North Township St  
Sedro-Woolley, WA 98284

To Grantee:        CITY OF ARLINGTON  
154 W Cox Ave  
Arlington, WA 98223

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

### **SECTION 19 ASSIGNMENT**

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

## SECTION 20 SUCCESSORS AND ASSIGNS

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

## SECTION 21 TIME IS OF THE ESSENCE

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

## SECTION 22 APPLICABLE LAW AND VENUE

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

## SECTION 23 RECORDATION

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

## SECTION 24 MODIFICATION

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

## SECTION 25 MISCELLANEOUS

**25.1 Authority.** Grantee and the person or persons executing this Easement on behalf of Grantee represent that Grantee is qualified to do business in the State of Washington, that Grantee has full right and authority to enter into this Easement, and that each and every person signing on behalf of Grantee is authorized to do so. Upon State's request, Grantee will provide evidence satisfactory to State confirming these representations. This Easement is entered into by State pursuant to the authority granted it in Chapters 79.90 to 79.96 RCW and the Constitution of the State of Washington.

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

**25.3 Entire Agreement.** This Easement, including the exhibits and addenda, if any, contains the entire agreement of the parties. All prior and contemporaneous agreements,



promises, representations, and statements relating to this transaction or to the Easement Property, if any, are merged into this Easement.

**25.4 Waiver.** The waiver by State of any breach or default of any term, covenant, or condition of this Easement shall not be deemed to be a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Easement.

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

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

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

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

CITY OF ARLINGTON,  
a government entity

Dated: September 29, 2015

By: Margaret Larson  
Margaret Larson

Title: Mayor of Arlington  
Address: 154 W Cox Ave  
Arlington, WA 98223

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL  
RESOURCES

Dated: \_\_\_\_\_, 20\_\_\_\_

By: \_\_\_\_\_  
DOUG SUTHERLAND

Title: Commissioner of Public Lands  
Address: PO Box 47027  
Olympia, WA 98504-7027

Approved as to form  
this 14<sup>th</sup> day of October, 2002  
Michael S. Grossmann  
Assistant Attorney General  
State of Washington

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF Washington )  
 ) ss.  
COUNTY OF Snohomish )

I certify that I know or have satisfactory evidence that Margaret Larson, 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 Mayor of Arlington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 9/29/05

Tanaa Guyer  
Tanaa Guyer  
(Type/Print Name)

Notary Public in and for the State of Washington,  
residing at: Everett, WA  
My Commission Expires: July 20, 2008



STATE ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 )ss  
County of )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally appeared before me DOUG SUTHERLAND, to me known to be the Commissioner of Public Lands of the Department of Natural Resources, State of Washington, who executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Dated: \_\_\_\_\_

\_\_\_\_\_

(Type/Print Name)

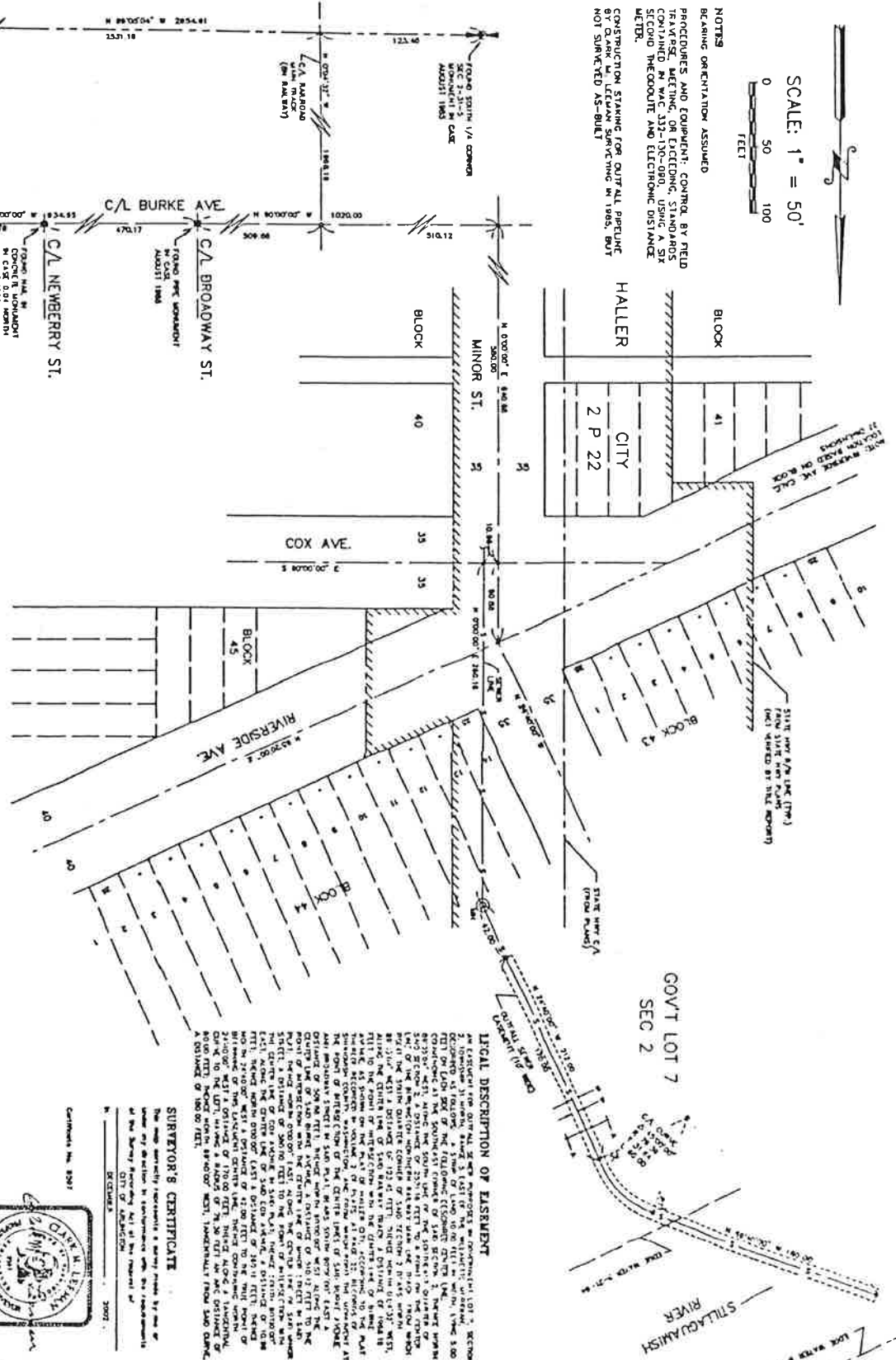
Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_



SCALE: 1" = 50'



**NOTES**  
BEARING ORIENTATION ASSUMED  
PROCEDURES AND EQUIPMENT CONTROL BY FIELD  
PERSONNEL. ALL MEASUREMENTS, DISTANCES,  
CORRECTIONS, AND ELEVATIONS, SHALL BE IN  
SECOND DECADIC AND ELECTRONIC DISTANCE  
METERS.  
CONSTRUCTION STAKING FOR OUTFALL PERFORMED  
AS SHOWN ON THIS PLAN AT 100% SLOPE  
NOT SURVEYED AS-BUILT



**LEGAL DESCRIPTION OF EASEMENT**  
A portion of the outfall sewer easement for Governmental Lot 7, Section 2, Township 36N, Range 4E, District of Columbia, is shown in red on this plan. The easement is 150 feet wide and is located along the east side of the Stillgumish River. The easement is bounded on the north by the centerline of the Stillgumish River, on the south by the centerline of the river, on the west by the centerline of the river, and on the east by the centerline of the river. The easement is shown in red on this plan and is to be used for the purpose of carrying the outfall sewer.

**SURVEYOR'S CERTIFICATE**  
I, the undersigned, certify that I am a duly licensed surveyor in the State of Virginia and that I have personally supervised the survey shown on this plan and that the same is a true and correct representation of the actual survey made by me or under my direction. Witness my hand and the seal of my office this 1st day of October, 2002.



**CLARK M. LEEMAN LAND SURVEYING**  
3210 Melmore Ave, Everett, WA 98201 (425) 259-8072

EASEMENT NO. 51-070281

**RECORDING CERTIFICATE**  
BOOK 20216409-57623  
PAGE 22  
FILED AT REC'D AT 10:51 AM OCT 21 2002  
COUNTY OF ARLINGTON  
VA

**CITY OF ARLINGTON**  
OUTFALL SEWER EASEMENT SURVEY  
PTN. SE 1 NW 1 SEC 2, T 31 N, R 5 E, WM  
ARLINGTON, WASHINGTON

DATE: OCTOBER 2002  
APPROVED BY: [Signature]

**City of Arlington**  
Aquatic Land Outfall Easement  
Exhibit B-Plan of Operations

**SITE DESCRIPTION AND PRESENT USE**

Water Body I.D. No.: WA-05-1010

Receiving Water: Stillaguamish River

Discharge Location: See exhibit A

Land Ownership: The State of Washington Department of Natural Resources

Existing Use of Site: City of Arlington Wastewater Effluent Outfall

**FUTURE USE AND CONDITIONS**

(Site-specific information to be filled in by WA DNR)

The City of Arlington will use this easement for the purpose of discharging treated effluent from the City of Arlington Wastewater Treatment Plant as permitted by Washington State Department of Ecology. Treated effluent is conveyed through the City of Arlington outfall line as described in exhibit A.

**EASEMENT TERMS AND CONDITIONS**

**SECTION 2 USE OF EASEMENT**

2.1 Permitted Use - Discharge of the City of Arlington's POTW Effluent as permitted by Washington State Department of Ecology.

2.3 Conformance with Laws - The City of Arlington will provide Washington DNR with copies of all renewals, modifications, or appeals of any regulatory permits, approvals, or authorizations relating to the City's activities on the Property.

2.5 Amendment Upon Change of Permit Status - This Easement is issued based on the assumption that the City of Arlington's activities are not likely to jeopardize the continued existence of listed species, and /or that the City of Arlington has consulted with the relevant agencies and is mitigating the impacts of its activities in accordance with recommendations from those relevant agencies. If it is shown that the City of Arlington's activities on the Property have an unmitigated negative impact on those species, the City of Arlington and Washington DNR will utilize the adaptive Management Section of this document to remedy the harm. Washington DNR reserves the right to amend the terms and conditions of this easement to reflect remedies so identified.

**SECTION 3 TERM**

3.3 Development of Disposal Alternatives - The City of Arlington will provide updated reports to Washington DNR at each renewal of its NPDES permit for the project addressing the progress made toward reducing the reliance on the receiving waters of Washington State for the disposal of the City of Arlington's POTW Effluent and to promote water re-use. Progress includes, but is not limited to:

- Reduction of inflow and infiltration;
- Groundwater recharge;

- The use of discharge water for stream augmentation, as an industrial process supply, and agricultural application;
- All other efforts related to water re-use and recycling.

## **SECTION 6 MAINTENANCE AND REPAIR OF EASEMENT AND IMPROVEMENTS**

### Maintenance Schedule, Methods and Remedies

- Outfall Inspection- See Exhibit C
- Emergency Maintenance-Emergency Maintenance shall be handled on a case-by-case basis depending on the severity and season. All permits and approvals required at the time of the emergency shall be obtained prior to maintenance operation.

## **SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION**

### 8.7 Sampling

- Biological Monitoring Plan - Biological monitoring is performed as specified in the City of Arlington NPDES Wastewater Discharge Permit No. WA-002256-0. All samples are collected at the wastewater Treatment Plant prior to entering the outfall line. For detailed sampling and tests see Department of Ecology permit No. WA-002256-0.
- Sediment Monitoring Plan - At this time there is no requirement for the City of Arlington to perform sediment monitoring in the area of the outfall. The City of Arlington is aware that in the future the State of Washington and or Federal Government may require monitoring. At the time of new regulations for monitoring sediments the City of Arlington will comply as directed.

## **SECTION 10 REPORTING**

### Permits

In addition to providing current copies of all regulatory permits, the City of Arlington agrees to notify Washington State DNR in writing of the renewal, modification, rescission, or appeal of any regulatory permits relating to the City of Arlington's activities on the Easement Property.

### General Reporting

In addition to being obligated to provide Washington State DNR with copies of all reporting documents supplied to Washington State Department of Ecology, the City of Arlington agrees to notify Washington State Department of Natural Resources Northwest Regional Land Manager within 24 hours of any of the following occurrences by phone at the emergency notification number given by Washington DNR. If not given an emergency contact number the City of Arlington will notify the listed contact in this document for Washington DNR no later than the following business day.

- Effluent Exceedances- All discharges that exceed National Pollutant Discharge Elimination System (NPDES) Permit No. WA-002256-0, or otherwise violate the NPDES permit.
- Outfall Malfunctions-Any and all malfunctions in the authorized structure such as breaks in the pipe.

Formal written notification must also be provided within two weeks for Effluent Exceedances and Outfall Malfunctions, as well as for all Sediment Criteria Exceedances (levels of contamination above those defined in Washington's Sediment Quality Standards, WAC 173-204-320). Notification shall include documentation of both the exceedance/malfunction and the steps taken to remedy the situation.

### **SECTION 13 OWNERSHIP AND REMOVAL OF IMPROVEMENTS AND EQUIPMENT**

**13.3 Construction** – All construction permits shall be in place before construction commences, with construction contingent upon continued compliance with required permits.

- Construction Schedule – Operator/proponent defines and LM writes site-specific synopsis, complete plan referred to as an Exhibit.
- Construction Plan and Profile – Operator/proponent defines and LM writes site-specific synopsis, complete plan referred to as an Exhibit.
- Construction Methods and Sequence - Operator/proponent defines and LM writes site-specific synopsis, complete plan referred to as an Exhibit.
- Construction Mitigation Methods – Operator/proponent defines and LM writes site-specific synopsis, complete plan referred to as an Exhibit.

### **SECTION 18 NOTICE**

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

#### Operations Contact

Name: Karen Latimer  
Title: Utilities Division Manager  
Address: 154 W. Cox Avenue  
Arlington, WA 98223  
Phone: (360) 403-3505  
E-mail: [klatimer@ci.arlington.wa.us](mailto:klatimer@ci.arlington.wa.us)

#### WA DNR Contact

Name: Chad Unland  
Title: NW Region Land Manager  
Address: 919 Township St  
Sedro-Woolley, WA 98284  
Phone: (800) 527-3305  
E-mail:

### **MITIGATION REQUIREMENTS**

In the event that any regulatory permit requires the Grantee to provide mitigation on state-owned aquatic lands, Grantee shall complete an authorization to use such state owned aquatic lands prior to implementation of any required mitigation.



## Exhibit C - Outfall Inspection

1. An annual outfall inspection will be done every year in late August or early September. The inspection shall be automatically generated by the City of Arlington's Wastewater Treatment Plant Maintenance Database. The inspection shall be done when the river is at its approximate lowest level and the water quality is at its best.

### Procedure:

- 1) Add dye to manhole in effluent line just before the river.
- 2) Have employees on bank of river and on northeast side of bridge above outfall to watch for location of dye as it leaves the effluent pipe.
- 3) Once dye has been spotted record where dye was observed and attempt to take photos for record.
- 4) If dye is only present at the end of the outfall record inspection in the maintenance database.
- 5) If dye is seen in any other area of the effluent line corrective actions shall be taken.

2. Inspections shall be performed after any flood conditions of the Stillaguamish River.

### Procedure:

- 1) After the river has returned to normal conditions for the season, inspect the last manhole before the river. The wastewater flow should be within the channeled portion of the manhole. If the flow is going through the emergency bypass approximately three feet off the bottom of the manhole, take corrective actions. If flow is normal, fill out an after-the-fact work order for entry into the maintenance database.