

When recorded, return to:
City Clerk
City of Tukwila
6200 Southcenter Blvd
Tukwila, WA 98188



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

15-088
Council Approval N/A

AQUATIC LANDS EASEMENT FOR CONSERVATION USES

Easement No. 51-090870

Grantor: Washington State Department of Natural Resources
Grantee(s): City of Tukwila
Legal Description: Section 10 Township 23 North, Range 04 East, W.M.
Assessor's Property Tax Parcel or Account Number: Not Applicable
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this Easement: 1023049071 and 1023049059

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and the CITY OF TUKWILA, a Government 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 the aquatic lands commonly known as the Duwamish River, which are bedlands and shorelands, located in King County, Washington, from State for conservation activities intended to preserve and enhance aquatic ecosystems. State is willing to grant an easement for this purpose pursuant to the terms and conditions of this Agreement.

THEREFORE, the Parties agree as follows:

2nd of 2 ORIGINALS

SECTION 1 GRANT OF EASEMENT

1.1 Easement Defined.

- (a) State grants and conveys to Grantee a nonexclusive easement, subject to the terms and conditions of this agreement, over, upon, and under the real property at the Duwamish River: described in Exhibit A. In this agreement, the term "Easement" means this agreement and the rights granted; the term "Easement Property" means the real property subject to the easement.
- (b) This Easement is subject to all valid interests of third parties noted in the records of King County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.
- (c) This Easement does not include any right to harvest, collect or damage any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable materials.
- (d) This Easement does not include the right to grant easements and franchises to third parties.

1.2 Survey and Easement Property Descriptions.

- (a) Grantee prepared Exhibit A, which describes the Easement Property. Grantee represents that Exhibit A is a true and accurate description of the Easement boundaries and the improvements to be constructed or already existing in the Easement area. Grantee's obligation to provide a true and accurate description of the Easement Property boundaries is a material term of this Easement.
- (b) State's acceptance of Exhibit A does not constitute agreement that Grantee's property description accurately reflects the actual amount of land used by Grantee. State reserves the right to retroactively adjust fees if at any time during the Term State discovers a discrepancy between Grantee's property description and the area actually used by Grantee.

1.3 Condition of Easement Property. State makes no representation regarding the condition of the Easement Property, improvements located on the Easement Property, the suitability of the Easement Property for Grantee's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Easement Property, or the existence of hazardous substances on the Easement Property.

SECTION 2 USE

2.1 Permitted Use.

- (a) Grantee shall use the Property for conducting the conservation activities described in Exhibit B (the "Permitted Use"), and for no other purpose.
- (b) Warranties on Permitted Use.

- (1) Grantee warrants that no permit, law, or regulatory authority obligates Grantee to undertake the Permitted Use.
- (2) Grantee warrants that Grantee will not receive or gain compensatory mitigation or natural resource damage credits because of the Permitted Use.
- (3) Grantee warrants that Property will be available for public recreation purposes in accordance with RCW 79.105.230.
- (c) Grantee shall conduct the Permitted Use in accordance with Grantee's obligations under the Recreation and Conservation Office (RCO) Project Number 06-2199A.
- (d) Grantee's breach of any warranty under Paragraph 2.1(b) is default subject to Section 14.
- (e) If during or after the term of this Easement, the Permitted Use damages the Easement Property or natural resources on the Property, in a manner not expressly permitted in Exhibit B, or creates conditions that pose a threat to human health or safety, Grantee shall restore the Easement Property to the condition prior to commencement of Permitted Use.

2.2 Restrictions on Use.

- (a) The limitations in this Paragraph 2.2 apply to the Property and adjacent state-owned aquatic land. Grantee's compliance with this Paragraph 2.2 does not limit Grantee's liability under any other provision of this Easement.
- (b) Grantee shall not cause or permit:
 - (1) Damage to natural resources, except to the extent expressly permitted in Exhibit B,
 - (2) Waste, or
 - (3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.
- (c) State shall not allow other uses on the Easement Property that will interfere with the Permitted Use.

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

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

2.5 Interference with Other Uses.

- (a) Grantee shall exercise Grantee's rights under this Easement in a manner that minimizes or avoids interference with the rights of State, the public or others with valid right to use or occupy the Easement Property or surrounding lands and water.
- (b) To the fullest extent reasonably possible, Grantee shall place and construct Improvements in a manner that allows unobstructed movement in and on the waters above and around the Easement Property.

- (c) Except in an emergency, Grantee shall provide State with written notice of construction or other significant activity on Easement Property at least thirty (30) days in advance. "Significant Activity" means any activity that may affect use or enjoyment by the State, public, or others with valid rights to use or occupy the Easement Property or surrounding lands and water.
- (d) Grantee shall mark the location of any hazards associated with the Permitted Use and any Improvements in a manner that ensures reasonable notice to the public.

SECTION 3 TERM

3.1 Term Defined. The term of this easement is for so long as Grantee has obligations as described in Paragraph 2.1.

3.2 End of Term.

- (a) 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 and except for alterations necessary under the Permitted Use or otherwise authorized by State.
- (b) If Easement Property is in worse condition on the surrender date than on the Commencement Date, the following provisions apply.
 - (1) State shall provide Grantee a reasonable time to take all steps necessary to remedy the condition of the Easement Property. State may require Grantee to enter into a right-of-entry or other use authorization prior to the Grantee entering the Easement Property if Easement has terminated.
 - (2) If Grantee fails to remedy the condition of the Easement Property in a timely manner, State may take any steps reasonably necessary to remedy Grantee's failure. Upon demand by State, Grantee shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of any material deposited improperly on the Easement Property, lost revenue resulting from the condition of the Easement Property, and any administrative costs associated with State's remedy.

SECTION 4 FEES

4.1 Fee. Grantee is not obligated to pay fees unless Grantee breaches warranties under Paragraph 2.1(b). 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, if any, to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

SECTION 5 OTHER EXPENSES

- 5.1 Utilities.** Grantee shall pay all fees charged for utilities required or needed by the Permitted Use.
- 5.2 Taxes and Assessments.** Grantee shall pay all taxes, assessments, and other governmental charges, of any kind whatsoever, applicable or attributable to the Easement and the Permitted Use.
- 5.3 Failure to Pay.** If Grantee fails to pay any of the amounts due under this Easement, State may pay the amount due, and recover its cost in accordance with Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

- 6.1 Failure to Pay.** Failure to pay any fees or other expenses is a default by Grantee; State may seek remedies in Section 14 as well as late charges and interest as provided in this Section 6.
- 6.2 Late Charge.** If State does not receive any payment within ten (10) days of the date due, Grantee shall pay to State a late charge equal to four percent (4%) of the unpaid 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 fee 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 day on the due date will begin accruing interest the day after the due date.
 - (b) If State pays or advances any amounts for or on behalf of Grantee, Grantee shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Grantee of the payment or advance. This includes, but is not limited to taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Paragraph 2.2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due.
- 6.4 Referral to Collection Agency and Collection Agency Fees.** If State does not receive payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Grantee shall pay collection agency fees in addition to the unpaid amount.
- 6.5 No Accord and Satisfaction.** If Grantee pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

SECTION 7 IMPROVEMENTS

7.1 Improvements Defined.

- (a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, structures and fixtures.
- (b) "Personal Property" means items that can be removed from the Easement Property without (1) injury to the Easement Property, adjacent state-owned lands or Improvements or (2) diminishing the value or utility of the Easement Property, adjacent state-owned lands or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Grantee.
- (d) "Unauthorized Improvements" are Improvements made on the Easement Property by the Grantee without State's prior consent or Improvements made by Grantee that do not conform with plans submitted to and approved by the State.
- (e) "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, no Improvements are located on the Easement Property.

7.3 Construction, Major Repair, Modification, and Demolition.

- (a) Grantee shall construct no Improvements and make no modification of the Property ("Work") except as described in Exhibit B.
- (b) Grantee shall preserve and protect State-Owned Improvements, if any, and Improvements Owned by Others, if any.
- (c) Before completing Work, Grantee shall remove all debris and restore the Property, as nearly as possible, to a substantially natural state, except for alterations necessary under the Permitted Use or otherwise authorized by State.
- (d) Upon completing Work, Grantee shall promptly provide State with as-built plans and specifications.

7.4 Standards for Work.

- (a) Grantee shall not use or install treated wood at any location above or below water.
- (b) Grantee shall not use or install tires at any location above or below water.
- (c) Grantee shall not conduct in-water Work during time periods prohibited for such work under WAC 220-110-271, Prohibited Work Times in Saltwater, as amended, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW).

7.5 Improvements at End of Term. Improvements installed by Grantee with State's approval merge with the Property upon termination of the Easement, unless the Parties agree otherwise.

7.6 Disposition of Unauthorized Improvements.

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

- (b) State may either:
 - (1) Consent to Grantee ownership of the Improvements, or
 - (2) Charge use and occupancy fee in accordance with RCW 79.105.200 for the Improvements from the time of installation or construction and
 - (i) Require Grantee to remove the Improvements in accordance with Paragraph 7.3, in which case Grantee shall pay use and occupancy fee for the Improvements until removal,
 - (ii) Consent to Improvements remaining and Grantee shall pay use and occupancy fee for the use of the Improvements, or
 - (iii) Remove Improvements and Grantee shall pay for the cost of removal and disposal, in which case Grantee shall pay use and occupancy fee for use of the Improvements until removal and disposal.

7.7 Disposition of Personal Property.

- (a) Grantee retains ownership of Personal Property unless Grantee and State agree otherwise in writing.
- (b) Grantee shall remove Personal Property from the Easement Property by the Termination Date. Grantee is liable for any damage to the Easement Property and to any Improvements that may result from removal of Personal Property.
- (c) State may sell or dispose of all Personal Property left on the Easement Property after the Termination Date.
 - (1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Grantee to the State, and State shall pay the remainder, if any, to the Grantee.
 - (2) If State disposes of Personal Property, Grantee shall pay for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
- (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 applicable under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW, as amended.
- (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. Grantee shall exercise the utmost care with respect to Hazardous Substances.

8.3 Current Conditions and Duty to Investigate.

- (a) State makes no representation about the condition of the Easement Property. Hazardous Substances may exist in, on, under, or above the Easement Property.
- (b) Grantee is responsible for conducting all appropriate inquiry and gathering sufficient information about the existence, scope, and location of Hazardous Substances on or near the Property necessary for Grantee to meet Grantee's obligations under this Easement and utilize the 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.

8.5 In the Event of a Release or Threatened Release.

- (a) Grantee shall immediately notify State if the Grantee become aware of any release or threatened release of Hazardous Substance on the Property.
- (b) If a Grantee's act or omission results in a release of Hazardous Substances, Grantee, at its sole expense, shall promptly take all actions necessary or advisable to clean up, contain, and remove the Hazardous Substances in accordance with applicable laws.

SECTION 9 ASSIGNMENT

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

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity.

- (a) Grantee shall indemnify, defend, and hold State, its employees, officers, and agents harmless from any Claims arising out of the Permitted Use or activities

- related to the Permitted Use by Grantee, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.
- (b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Easement Property and damages resulting from loss of use of the Easement Property.
 - (c) State shall not require Grantee to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.
 - (d) Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.
 - (e) Section 8, Environmental Liability/Risk Allocation, exclusively governs Grantee's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.

10.2 Insurance Terms.

- (a) **Insurance Required.**
 - (1) Grantee certifies that it is self-insured for all the liability exposures, its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 10.2 and by Paragraph 10.3, Insurance Types and Limits. Grantee shall provide to State evidence of its status as a self-insured entity. Upon request by State, Grantee shall provide a written description of its financial condition and/or the self-insured funding mechanism. Grantee shall provide State with at least thirty (30) days' written notice prior to any material changes to Grantee's self-insured funding mechanism.
 - (2) Unless State agrees to an exception, Grantee shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of Best's Reports. Grantee may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.
 - (3) All general liability, excess, umbrella, property, builder's risk, and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees as an additional insured.
 - (4) All insurance provided in compliance with this Easement must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

- (b) Waiver.
 - (1) Grantee waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Easement covers these damages.
 - (2) Except as prohibited by law, Grantee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this Easement.
- (c) Proof of Insurance.
 - (1) Grantee shall provide State with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Easement and, if requested, copies of policies to State.
 - (2) The certificate(s) of insurance must reference additional insureds and the Easement number.
 - (3) Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Easement, 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 thirty (30) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
 - (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
 - (2) Grantee shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Grantee fails to procure and maintain the insurance described above within fifteen (15) days after Grantee receives a notice to comply from State, State may either:
 - (1) Deem the failure an Event of Default under Section 14, or
 - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Grantee shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.2 from the date of State's notice of the expenditure until Grantee's repayment.
- (g) General Terms.
 - (1) State does not represent that coverage and limits required under this Easement are adequate to protect Grantee.
 - (2) Coverage and limits do not limit Grantee's liability for indemnification and reimbursements granted to State under this Easement.
 - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to Easement Property first to restore the Easement Property, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Grantee.

10.3 Insurance Types and Limits.

- (a) General Liability Insurance.
 - (1) Grantee shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Easement Property and/or arising out of the Permitted Use and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
 - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
 - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
 - (1) State of Washington Workers' Compensation.
 - (i) Grantee shall comply with all State of Washington workers' compensation statutes and regulations. Grantee shall provide workers' compensation coverage for all employees of Grantee. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with the Permitted Use or related activities.
 - (ii) If Grantee fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Grantee shall indemnify State. Indemnity includes all fines; payment of benefits to Grantee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
 - (2) Longshore and Harbor Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Grantee to provide insurance coverage in some circumstances. Grantee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Grantee is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employers' Liability Insurance. Grantee shall 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 or One Million Dollars (\$1,000,000) each employee for bodily injury by disease.

SECTION 11 ROUTINE MAINTENANCE AND REPAIR

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

11.2 Grantee's Repairs and Maintenance.

- (a) Routine maintenance and repair are acts intended to prevent a decline, lapse, or cessation of the Permitted Use and associated Improvements.
- (b) At Grantee's sole expense, Grantee shall keep and maintain all Improvements installed by Grantee and the Easement Property as it relates to the Permitted Use in good order and repair, in a safe condition, and in accordance with Paragraph 7.4 Standards for Work. State's consent is not required for routine maintenance or repair.
- (c) At Grantee's own expense, Grantee shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Easement Property or to any Improvements on the Easement Property that any public authority requires because of the Permitted Use.
- (d) Upon completion of maintenance activities, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to the condition prior to the commencement of work.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

- (a) In the event of any known damage to or destruction of the Easement Property or any Improvements, Grantee shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction of the Easement Property or any Improvements without Grantee's written notice.
- (b) Unless otherwise agreed in writing, Grantee shall promptly reconstruct or repair the Property and Improvements as nearly as possible to its condition immediately prior to the damage or destruction in accordance with Section 7 and Grantee's additional obligations in Exhibit B, if any.

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

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

SECTION 13 CONDEMNATION

In the event of condemnation, the Parties shall allocate the award between State and Grantee based upon the ratio of the fair market value of (1) Grantee's rights in the Easement Property and (2) State's interest in the Easement Property 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 Breach.

- (a) State may terminate this Easement upon Grantee's failure to cure a breach of its terms within sixty (60) days of State's written notice of breach.
- (b) For nonmonetary breach not capable of cure within sixty (60) days, State will not unreasonably withhold approval of a reasonable alternative cure schedule. Grantee must submit a cure schedule within thirty (30) days of a notice of breach. State shall not terminate if State approves the schedule and Grantee works diligently and in good faith to execute the cure. State may terminate if Grantee fails to timely submit a schedule or fails to cure in accordance with an approved schedule.
- (c) If breach arises from Grantee's failure to comply with restrictions on Permitted use under Paragraph 2.2 or failure to restore the Property as required under Section 2.1(e), State may, without terminating this Easement, restore the natural resources or Property and charge Grantee restoration costs and/or charge Grantee damages. On demand by State, Grantee shall pay all costs and/or damages.

14.2 Termination by Nonuse. If Grantee does not execute the Permitted Use on the Easement Property in the three (3) successive years following the Commencement Date, this Easement terminates without further action by State. Grantee's rights revert to State upon Termination by Nonuse.

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

SECTION 15 NOTICE AND SUBMITTALS

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

State: DEPARTMENT OF NATURAL RESOURCES
Shoreline District Aquatics
950 Farman Avenue North
Enumclaw, WA 98022-9282

Grantee: CITY OF TUKWILA
6300 Southcenter Boulevard, Suite 100
Tukwila, WA 98188

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

SECTION 16 MISCELLANEOUS

16.1 Authority. Grantee and the person or persons executing this Easement on behalf of Grantee represent that Grantee is qualified to do business in the State of Washington, that Grantee has full right and authority to enter into this Easement, and that each and every person signing on behalf of Grantee is authorized to do so. Upon State's request, Grantee shall provide evidence satisfactory to State confirming these representations.

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

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

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

16.5 Waiver.

- (a) The waiver of any breach or default of any term, covenant, or condition of this Easement is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Easement. State's acceptance of payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.
- (b) The renewal of the Easement, extension of the Easement, or the issuance of a new Easement to Grantee, does not waive State's ability to pursue any rights or remedies under the Easement.

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

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

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

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

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

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

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

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

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

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

Dated: April 23, 2015

CITY OF TUKWILA

JH Jim Haggerton
By: JIM HAGGERTON

Title: Mayor

Address: Tukwila City Hall
6200 Southcenter Boulevard
Tukwila, WA 98188-2544

APPROVED AS TO FORM:
Office of the City Attorney

BY: RBT Rachel B. Turpin

Rachel B. Turpin

Date: 4/21/15

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: May 5, 2015

Peter Goldmark
By: PETER GOLDMARK

Title: Commissioner of Public Lands

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



Approved as to form this
2nd day of December 2014
Terry Pruitt, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON)
COUNTY OF King) ss

I certify that I know or have satisfactory evidence that JIM HAGGERTON 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 MAYOR of the CITY OF TUKWILA to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 4-23-15

(Seal or stamp)

Christy O'Flaherty
(Signature)

Christy O'Flaherty
(Print Name)



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

Edgewood, WA

My appointment expires 3-9-16

STATE ACKNOWLEDGMENT

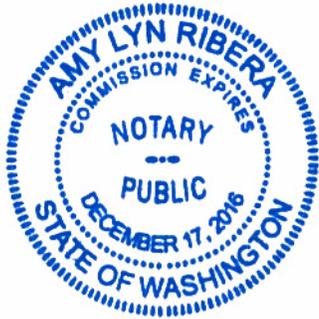
STATE OF WASHINGTON)
) SS
COUNTY OF Thurston

I certify that I know or have satisfactory evidence that PETER GOLDMARK is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the COMMISSIONER OF PUBLIC LANDS, and ex officio administrator of the DEPARTMENT OF NATURAL RESOURCES OF THE STATE OF WASHINGTON to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 5.5.15

(Seal or stamp)

[Signature]
(Signature)



Amylyn Ribera
(Print Name)

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

Olympic

My appointment expires 12.17.16

EXHIBIT A

AGREEMENT NUMBER: 51-090870

STATE APPROVED RECORD OF SURVEY: King County Recording Number
20141010900005

LEGAL DESCRIPTION OF THE PROPERTY: THAT PORTION OF GOVERNMENT LOT 1, SECTION 10, TOWNSHIP 23 NORTH, RANGE 4 EAST, W. M. IN KING COUNTY, WASHINGTON, LYING WESTERLY OF EAST MARGINAL WAY SOUTH, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1, SECTION 10, TOWNSHIP 23 NORTH, RANGE 4 EAST;
THENCE SOUTH 01°44'33" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 636.35 FEET;
THENCE SOUTH 87°38'20" EAST PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 208.79 FEET;
THENCE SOUTH 18°59'50" EAST A DISTANCE OF 120.13 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF SAID GOVERNMENT LOT 1, BEING THE LINE OF VEGETATION ALONG THE RIGHT BANK OF THE DUWAMISH RIVER, AND TO THE POINT OF BEGINNING;
THENCE EASTERLY ALONG SAID SOUTHERLY LINE THE FOLLOWING COURSES:
SOUTH 85°24'33" EAST A DISTANCE OF 57.43 FEET;
NORTH 86°46'50" EAST A DISTANCE OF 60.06 FEET;
NORTH 80°29'00" EAST A DISTANCE OF 53.71 FEET;
NORTH 85°05'27" EAST A DISTANCE OF 43.42 FEET;
NORTH 84°48'05" EAST A DISTANCE OF 13.22 FEET;
NORTH 84°30'47" EAST A DISTANCE OF 43.20 FEET;
SOUTH 89°10'01" EAST A DISTANCE OF 42.15 FEET;
NORTH 77°45'45" EAST A DISTANCE OF 27.26 FEET;
NORTH 89°09'35" EAST A DISTANCE OF 26.23 FEET;
SOUTH 79°44'56" EAST A DISTANCE OF 19.26 FEET;
SOUTH 84°56'28" EAST A DISTANCE OF 36.59 FEET;
SOUTH 83°02'03" EAST A DISTANCE OF 23.92 FEET;
SOUTH 84°21'22" EAST A DISTANCE OF 11.67 FEET;
SOUTH 78°36'31" EAST A DISTANCE OF 15.22 FEET
SOUTH 75°29'41" EAST A DISTANCE OF 36.06 FEET TO THE WESTERLY LINE OF EAST MARGINAL WAY SOUTH;
THENCE SOUTH 11°19'21" EAST ALONG SAID WESTERLY LINE, A DISTANCE OF 5.55 FEET;
THENCE WESTERLY THE FOLLOWING COURSES:
NORTH 75°29'41" WEST A DISTANCE OF 38.35 FEET;
NORTH 78°36'31" WEST A DISTANCE OF 14.83 FEET;
NORTH 84°21'22" WEST A DISTANCE OF 11.47 FEET;

NORTH 83°02'03" WEST A DISTANCE OF 23.90 FEET;
NORTH 84°56'28" WEST A DISTANCE OF 36.73 FEET;
NORTH 79°44'56" WEST A DISTANCE OF 19.00 FEET;
SOUTH 89°09'35" WEST A DISTANCE OF 24.95 FEET;
SOUTH 71°09'12" WEST A DISTANCE OF 27.92 FEET;
SOUTH 82°15'49" WEST A DISTANCE OF 129.15 FEET;
SOUTH 85°23'03" WEST A DISTANCE OF 90.29 FEET;
SOUTH 89°28'12" WEST A DISTANCE OF 48.45 FEET;
NORTH 72°45'39" WEST A DISTANCE OF 46.49 FEET;
NORTH 18°59'50" WEST A DISTANCE OF 6.20 FEET TO THE POINT OF BEGINNING;

SAID EASEMENT CONTAINS 5,899 SQUARE FEET (0.1354 ACRES), MORE OR LESS;

SITUATE IN THE CITY OF TUKWILA, KING COUNTY, WASHINGTON.

SQUARE FOOTAGE OF EACH USE CLASSIFICATION:

Water-dependent:	N/A
Nonwater-dependent:	N/A
Public Access:	N/A
Total easement area:	5,899 Square Feet

**EXHIBIT B
PLAN OF OPERATIONS**

1. DESCRIPTION OF PERMITTED USE

A. Existing Conditions.

The City of Tukwila purchased a portion of a 2 acre farm belonging to the Carosino Family adjacent to State Owned Aquatic Shoreland along the Duwamish River. Currently, several buildings including a house are located on the upland property adjacent to the DNR easement area. These buildings will be demolished as the conservation area is developed. The State Owned Aquatic Shorelands consist of an existing river bank.

- B. Proposed Conditions.** Adjacent to State Owned Aquatic Lands (SOAL) estuarine off channel habitat, as well as riparian and upland terrestrial habitat will be created. A park and pedestrian trail will be developed in the upland portion of the site, and a river access trail will be developed along the edge of the restored off channel area. The project requires that approximately 26,256 cubic yards of upland material be excavated to create the off channel, which will be graded, and the soil amended and planted to create shallow water mudflat and high and low marsh habitat. The upland trail will include overlooks to view the river and restoration site. Interpretive information will be displayed throughout the park and along the trail.

A temporary berm will be left in place (a remnant of the existing bank) partially on SOAL to protect interior habitat until off channel restoration is complete and plantings are firmly established. The temporary berm will then be removed and breaching will occur allowing the new channel to flush with water from the Duwamish River.

Upon completion the Conservation Easement on the State shoreland will protect the adjacent off channel habitat from future leasing and development.

Grantee is obligated to protect the property in perpetuity under the Recreation and Conservation Office Grant (RCO) Project Number 06-2199A.

Grantee has secured and will comply with the following permits:

Washington Department of Fish and Wildlife, Hydraulic Project Approval, No. 131349-1, May 28, 2014

City of Tukwila MDNS, File Number E13-015, April 16, 2014

2. ADDITIONAL OBLIGATIONS - None