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Skagit County Auditor

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Return to:

Seattle City Light  
Real Estate Services SMT 3338  
P.O. Box 34023  
Seattle, WA 98124-4023

AGREEMENT- (Consent Agreement for Use of City of Seattle Transmission Line Easement Area)

Reference #: PM No. 351034-4-102

Grantor: City of Seattle

Grantee: Skagit River System Cooperative

Short Legal:

Tax Parcel #: P45708, Skagit County

GUARDIAN NORTHWEST TITLE CO.

ASSOCIATION RECORDS ONLY

M10115

This Consent Agreement, is entered into by and between the City of Seattle ("City"), a municipal corporation of the State of Washington ("City") acting by and through its City Light Department ("SCL") and the Skagit River System Cooperative ("SRSC"), a tribal organization of the Sauk-Suiattle Indian Tribe and the Swinomish Indian Tribal Community, effective on the date assigned by one of the parties hereto.

WHEREAS, the Sauk-Suiattle Indian Tribe, the Swinomish Indian Tribal Community, and SCL are parties to the Skagit Fisheries Settlement Agreement, a negotiated settlement entered into as part of the Federal Energy Regulatory Commission (FERC) relicensing of SCL's Skagit River Hydroelectric Project; and

WHEREAS, SCL owns, operates and maintains municipal electric transmission facilities on a 300-foot-wide transmission line easement lying over, across, and through Sections 33 and 34, Township 35 Range 10 East, W, M.; said easement being acquired from Sound Timber Company (now held by Sierra Pacific Holding Company) on September 18, 1930 and recorded in Volume 157, Page 603 Records of Skagit County Washington ("Transmission Easement Area"); and

WHEREAS, the Chum Habitat Development Program is an element of the Skagit Fisheries Settlement Agreement and the SRSC proposes to place fill removed from Phase 2 of a habitat and riparian relocation project along Illabot Creek within City Light's Transmission Easement Area, as part of this program; and

WHEREAS, SRSC proposes to construct Phase 2 of Illabot Creek Alluvial Fan Restoration, a habitat and riparian restoration project along Illabot Creek. Fill material will be placed within City Light's transmission corridor. The project is described in a set of 20 drawings titled "Illabot Creek Alluvial Fan Restoration, Phase 2" prepared by R2 Resource Consultants, Inc., for SRSC and dated December 13, 2017 ("Project").

WHEREAS, SRSC desires the consent of SCL to take soil and rocks removed from Illabot Creek riparian area and move within, under, and across, and subsequently occupy a portion of said Transmission Easement Area, according to the plans prepared by R2 Resource Consultants, Inc. and submitted on behalf of SRSC ("Plans") bearing SRSC project named "Illabot Creek Alluvial Fan Restoration Phase 2"; and

WHEREAS, SRSC has obtained the permission of Sierra Pacific Holding Company, the owner of the underlying fee title to place fill within the Transmission Easement Area; and

WHEREAS, a resolution by the SRSC Board of Directors has authorized Jason Joseph, Chair, to enter into agreements between SRSC and the City of Seattle for the Project;

**Now, therefore,** the parties mutually agree to the following:

SCL hereby consents to the SRSC's use of the Transmission Easement Area for the sole purpose of the construction and maintenance of its Project, subject to the following terms and conditions:

1. SRSC will not construct, install, place or allow any building, structure or improvement within the Transmission Easement Area except the Project as depicted in the Plans provided by SRSC that have been reviewed and accepted by SCL. SCL's acceptance of the Plans has been granted as of the date of this Agreement. If for any reason, the Plans undergo a significant change in design prior to or during initial construction, SRSC shall submit the new plans to SCL for its review and approval. SRSC agrees to submit to SCL a copy of as-built plans for the Project upon completion of construction.
2. SRSC, its agents, employees, contractors, subcontractors and assigns must observe and maintain minimum working clearance of 20 feet from transmission lines at all times for personnel, vehicle equipment, and machinery. SRSC, its agents, employees, contractors, subcontractors and assigns must comply with all code requirements of the National Electrical Safety Code (NESC), and all laws and regulations promulgated under the Washington Industrial Safety and Health Act (WISHA), and the Occupational Safety and Health Act (OSHA) while engaging in any activity with the Transmission Easement Area.
3. Transmission lines can produce significant amounts of induced current. Any conductive materials used, stored, or installed by SRSC, its agents, employees, contractors,

subcontractors and assigns in the Transmission Easement Area shall be properly grounded to prevent injury or damage from induced current.

4. No grading, cutting or filling is allowed within the Transmission Easement Area other than is authorized in the approved plans for the Project without prior written consent from the City.
5. SRSC covenants and agrees that it will not store, dump, bury or transfer any hazardous substances, inoperable vehicles, chemicals, oils, fuels, or containers for said substances, chemicals, oils, fuels, flammable materials, etc., on the premises; and further agrees to observe all environmental laws of the State of Washington or any other governmental subdivision having regulatory authority over such activities on the premises.
6. SRSC agrees that it will not construct any ponds, "V" ditches, or open water retention facilities in the Transmission Easement Area, other than those authorized in the approved plans for the Project.
7. SRSC shall provide to SCL surveys of the fill areas before and after completion of the Project. The surveys shall include horizontal distance between the ground and lowest point of sag of the power lines. The before survey shall mark the extent of fill and no-fill zones and maximum elevations.
8. Finished elevation shall maintain a minimum 32-foot vertical distance from lowest potential sag of power lines to ground.
9. There shall be a minimum 100-foot horizontal buffer from transmission towers.
10. There shall be a minimum 20-foot horizontal buffer from the west power line.
11. SRSC shall not at any time interfere with the City's access to, through, across, or over the Transmission Easement Area. Good driving surfaces shall be maintained.
12. SCL shall have the right at all reasonable times to inspect the Transmission Easement Area for the purpose of observing the conditions thereof, and the manner of compliance by SRSC with the terms and conditions of this Agreement.
13. SCL reserves the right to locate a transmission line support structure and any other necessary appurtenances within the Transmission Easement Area, if necessary, in the future.
14. SRSC assumes all risk of loss, damage or injury to its agents, employees, contractors, subcontractors, and assigns, or to the City, which may result from SRSC's use of the Transmission Easement Area. It is understood and agreed that any damage to the City's

property, caused by or resulting from the SRSC's use of the Transmission Easement Area, may be repaired by the City and the actual cost of such repair shall be reimbursed to the City by SRSC.

15. The primary purpose of the Seattle City Light's transmission right of way is transmission of electricity to serve its customers. However, SCL agrees to minimize actions that will damage the Project or interfere with the intended habitat function of the Project to the extent practicable which does not diminish or constrain SCL's facilities and operations. SRSC agrees that the City shall not be liable for any damage to SRSC's Project resulting from any construction, alterations, or maintenance performed in the Transmission Easement Area by the City.
16. SRSC agrees to protect and save harmless the City from all claims, actions or damages of every kind and description, which may accrue from or be suffered by reason of SRSC's use of the Transmission Easement Area or the performance of any work in connection with its use; and in case of any such suit or action being brought against the City, or damages arising out of or by reason of any of the above causes, SRSC shall, upon notice to SRSC of commencement of such action, defend the same at SRSC's sole cost and expense and willfully satisfy any judgment after the said suit shall have been finally determined, if adversely, to The City of Seattle.
17. SRSC agrees not to use the Transmission Easement Area herein described for any other purpose whatsoever than as set forth above, and agrees that the General Manager and Chief Executive Officer of City Light shall be the sole judge of any conflict or violation of such use as above stated. The General Manager and Chief Executive Officer of City Light shall have the right at all times to suspend any or all operations on the Transmission Easement Area, not expressly permitted or allowed by this Agreement, which he deems to be detrimental to the best interests of the City.
18. This Agreement is for the use of the Transmission Easement Area only, and shall not be construed to replace or to be used in lieu of any easements or permits from the underlying property owners, or permits or licenses which may be required, granted or supervised by any other subdivision of government charged with licensing, policing and supervising the operations of SRSC hereunder. It is understood that any rights granted hereunder are subject to existing rights, if any, of other parties. In consenting to the use of the Transmission Easement Area for this purpose, the City does not waive or subordinate any of the rights and privileges granted to the City by easements for transmission line purposes.

19. SRSC shall provide, a policy of Commercial General Liability Insurance, with a minimum limit of limit of liability of One Million Dollars (\$1,000,000.00) each occurrence, with the City of Seattle as an additional insured for primary limits of liability including products additionally insured status for five years following completion of work. In addition, SRSC shall maintain Commercial Umbrella Excess coverage for an additional Four Million Dollars (\$4,000,000).

20. This agreement and all its covenants, terms and conditions shall be binding on the parties, their successors and assigns.

GRANTED this 7<sup>th</sup> day of February 2018.

APPROVED:

SEATTLE CITY LIGHT

REAL ESTATE SERVICES

  
Maureen Barnes, Manager

ACCEPTED:

SKAGIT RIVER SYSTEM  
COOPERATIVE

By:   
Jason Joseph, Chair, Board of Director

STATE OF WASHINGTON )

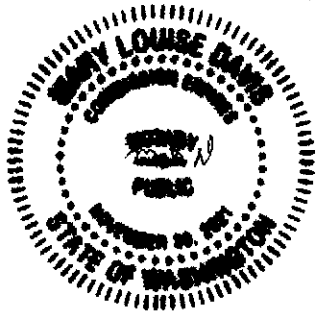
) ss.

COUNTY OF KING )

On this 12<sup>th</sup> day of January, 2018, before me personally appeared Maureen Barnes, to me known to be the Manager of Real Estate of Seattle City Light, a department of the City of Seattle, the Washington municipal corporation that executed the within and foregoing instrument, and acknowledged that said instrument was the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of the City of Seattle.

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

(notary seal)



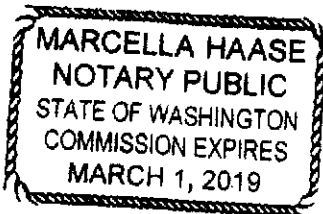
Signature: Mary Louise Davis  
Print name: Mary Louise Davis  
Notary Public in and for the State of Washington  
Residing at: Edmonds WA  
My commission expires: Nov 30, 2021

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Skagit )

On this 22 day of February, 2018, before me personally appeared Jason Joseph, to me known to be the Chair, Board of Directors of SKAGIT RIVER SYSTEM COOPERATIVE, a tribal organization of the Sauk-Suiattle Indian Tribe and the Swinomish Tribal Community, that executed the within and foregoing instrument, and acknowledged that said instrument was the free and voluntary act and deed of said tribal organization for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of SKAGIT RIVER SYSTEM COOPERATIVE.

GIVEN UNDER my hand and official seal the day and year in this certificate above written.

(notary seal)



Marcella Haase  
(Signature of Notary)

marcella Haase  
(Print or stamp name)

Notary Public in and for the State of Washington

Residing at: La Conner WA

My commission expires: March 1 2019