

After Recording Return to:
Jan Ruiz NCS# 988973
First American Title Ins. Co.
601 Travis Street, Suite 1875
Houston, TX 77002

When recorded, return to:
HollyFrontier Puget Sound Refining LLC
2828 N. Harwood, Ste. 1300
Dallas, TX 75201
Attention: General Counsel



202111120127

11/12/2021 01:54 PM Pages: 1 of 64 Fees: \$673.50
Skagit County Auditor



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

AMENDMENT AND NOTICE OF AND CONSENT TO ASSIGNMENT OF EASEMENT

Easement No. 51-076264

Grantor: Washington State Department of Natural Resources
Grantee(s): HollyFrontier Puget Sound Refining LLC; Equilon Enterprises LLC
Legal Description: Section 20 and Section 29, Township 35 North, Range 2 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: P33022

This Amendment and Notice of and Consent to Assignment of Easement ("Agreement") is made by and between STATE OF WASHINGTON acting through the Department of Natural Resources ("State"), EQUILON ENTERPRISES LLC, a Delaware limited liability company registered to do business in the State of Washington, whose address is 150 N. Dairy Ashford Ave., Houston, TX, 77079, United States ("Assignor") and HOLLYFRONTIER PUGET SOUND REFINING LLC, a Delaware limited liability company registered to do business in the State of Washington, whose address is 2828 N. Harwood St., Dallas, TX 75201-1518, United States ("Assignee").

BACKGROUND

- A. Easement No. 51-076264 was entered into on the 21st day of September, 2004, by and between Assignor and State, and recorded with the Skagit County Auditor's office under recording number 202110200100 (the "Easement").
- B. The Easement is for the Easement Property legally described in Exhibit A to the Easement.
- C. Section 4 of this Agreement includes amendments to the Easement.
- D. The term "Easement" in this Agreement includes all amendments to the Easement entered into previous to the date of this Agreement and all amendments within Section 4 of this Agreement.
- E. A copy of the Easement is attached as Exhibit 1.
- F. Capitalized terms in this Agreement that are not expressly defined herein have the meaning assigned to them in the Easement.
- G. Assignor now possesses the rights, duties, and liabilities under the Easement.
- H. Assignor desires to assign and Assignee desires to assume the rights, duties, and liabilities of Grantee under the Easement. The Easement prohibits an assignment without State's consent. State is willing to give its consent based upon the assurances and agreements made in this Agreement.

THEREFORE, Assignor and Assignee agree as follows:

SECTION 1 NOTICE OF INTENT TO ASSIGN

Assignor gives notice of its intent to assign the Easement to Assignee. Assignor warrants to State and Assignee that Assignor will assign all of its rights, title, and interest as Grantee under the Easement to Assignee effective the 1st day of November, 2021, for the balance of the term as provided in the Easement upon State's consent to the assignment.

SECTION 2 NOTICE OF INTENT TO ASSUME

Assignee gives notice of its intent to assume all the duties and liabilities of Grantee under the Easement for the balance of the Easement term as provided in the Easement effective the 1st day of November, 2021. By signing this Agreement, Assignee guarantees faithful performance and discharge of the duties and liabilities of Grantee according to the terms of the Easement.

SECTION 3 NO RELEASE

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

SECTION 4 AMENDMENTS

Paragraph 2.1, Paragraph 2.2, Paragraph 3.1, Paragraph 3.3, Paragraph 3.5, Section 5, Section 6, Section 8, Section 13, Section 14, Section 15, and Exhibit B of the Easement are amended to read as specified in Exhibit 2, attached hereto. All other terms of the Easement not inconsistent with these amendments or this Agreement are hereby affirmed and ratified.

SECTION 5 FURTHER ASSIGNMENTS

Further assignments may be made, without notice to or consent of Assignor, and without in any manner releasing or relieving Assignor from liability under the Easement. Assignor shall remain liable under all the terms, covenants, and conditions of the Easement until the end of the term of the Easement. Further assignment shall not be made without prior written consent of State.

SECTION 6 WARRANTIES

Assignor represents and warrants to State and to Assignee that:

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

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

SECTION 7 NOTICE

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

The parties shall direct notices required or permitted under this Consent to the following addresses:

State: DEPARTMENT OF NATURAL RESOURCES
Orca-Straits District
919 North Township Street
Sedro-Woolley, WA 98284
Ross Zimmerman
360-707-1355
ross.zimmerman@dnr.wa.gov

Assignor: EQUILON ENTERPRISES LLC
150 N. Dairy Ashford Ave.
Houston, TX 77079

Assignee: HOLLYFRONTIER PUGET SOUND REFINING LLC
2828 N. Harwood Street, Suite 1300
Dallas, TX 75201-1518
Attention: General Counsel

Any Party may change the place of delivery upon ten (10) days' written notice to the others. Notice is effective upon personal delivery or three (3) days after mailing.

SECTION 8 RECORDATION OF AGREEMENT AND ASSIGNMENT AND NOTICE TO STATE

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

SECTION 9 CONSTRUCTION

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

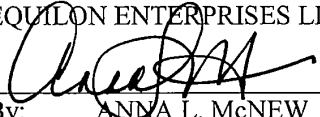
SECTION 10 CONSENT BY STATE

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

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

ASSIGNOR:
EQUILON ENTERPRISES LLC

Dated: OCTOBER 28, 2021


By: ANNA L. McNEW
Title: Attorney-in-Fact
Address: 150 N. Dairy Ashford Ave.
Houston, TX 77079
Phone: 832-762-2514

ASSIGNEE:
HOLLYFRONTIER PUGET SOUND REFINING
LLC

Dated: _____, 20____

By: VALERIE POMPA
Title: Senior Vice President Refining Operations
Address: 2828 N. Harwood St. Suite 1300
Dallas, TX 75201-1518
Attention: General Counsel
Phone: 214-871-3555

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20____

By: KATRINA LASSITER
Title: Interim Deputy Supervisor for Aquatics
Address: 1111 Washington St. SE
Olympia, WA 98504:

Approved as to form this
27th day of October 2021
Jennifer Clements, Assistant Attorney General

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


ASSIGNOR:
EQUILON ENTERPRISES LLC

Dated: _____, 20____

By: ANNA L. McNEW
Title: Attorney-in-Fact
Address: 150 N. Dairy Ashford Ave.
Houston, TX 77079
Phone: 832-762-2514

ASSIGNEE:
HOLLYFRONTIER PUGET SOUND REFINING
LLC

Dated: October 27, 2021

By: 
Title: VALERIE POMPA
Title: Senior Vice President Refining Operations
Address: 2828 N. Harwood St. Suite 1300
Dallas, TX 75201-1518
Attention: General Counsel
Phone: 214-871-3555

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20____

By: KATRINA LASSITER
Title: Interim Deputy Supervisor for Aquatics
Address: 1111 Washington St. SE
Olympia, WA 98504:

Approved as to form this
27th day of October 2021
Jennifer Clements, Assistant Attorney General

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EQUILON ENTERPRISES LLC

Dated: _____, 20____

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Title: Attorney-in-Fact
Address: 150 N. Dairy Ashford Ave.
Houston, TX 77079
Phone: 832-762-2514


ASSIGNEE:
HOLLYFRONTIER PUGET SOUND REFINING
LLC

Dated: _____, 20____

By: VALERIE POMPA
Title: Senior Vice President Refining Operations
Address: 2828 N. Harwood St. Suite 1300
Dallas, TX 75201-1518
Attention: General Counsel
Phone: 214-871-3555

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: October 28, 2021

By: 
KATRINA LASSITER
Title: Interim Deputy Supervisor for Aquatics
Address: 1111 Washington St. SE
Olympia, WA 98504:

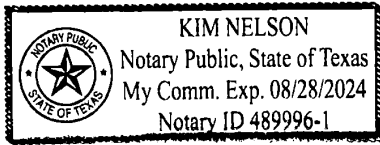
Approved as to form this
27th day of October 2021
Jennifer Clements, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF Texas)
COUNTY OF Harris) ss.

I certify that I know or have satisfactory evidence that ANNA L. McNEW 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 Attorney-in-Fact of EQUILON ENTERPRISES LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: October 28, 2021



Kim Nelson
(Signature)

Kim Nelson
(Print Name)

Notary Public in and for the State of Tx,
residing at Galveston County

My appointment expires 8/28/2024

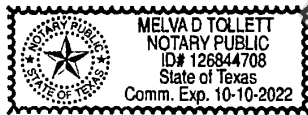
REPRESENTATIVE ACKNOWLEDGMENT

STATE OF Texas)
COUNTY OF Dallas) ss.

I certify that I know or have satisfactory evidence that VALERIE POMPA 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 Senior Vice President Refining Operations of HOLLYFRONTIER PUGET SOUND REFINING LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 10/27/21

Melva D. Tollett
(Signature)



Melva D. Tollett
(Print Name)

Notary Public in and for the State of Texas
residing at 2828 N. Harwood, Ste 1300
Dallas TX 75201
My appointment expires 10/10/22

STATE OF WASHINGTON)
) ss.
County of Thurston)

Dated: October 28, 2021

Dana M. Dorn
(Signature)

Dana M. Howe
(Print Name)

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

My appointment expires 9-2-25

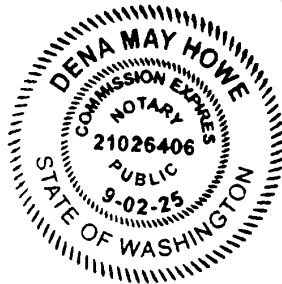


EXHIBIT 1**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
DOUG SUTHERLAND, Commissioner of Public Lands****AQUATIC LANDS OUTFALL EASEMENT****AQUATIC LANDS EASEMENT NO. 51-076264**

THIS EASEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources (State), and EQUILON ENTERPRISES, L.L.C. (registered in the state of Delaware), d.b.a, SHELL OIL PRODUCTS US, a limited liability Company ("Tenant").

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 Skagit 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 September, 2004 (the "Commencement Date"), and ending on the 31st day of August, 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.

SECTION 4 USE FEE

4.1 Fee. Grantee shall pay a single use fee in the amount of Thirty Two Thousand Eight Hundred Sixty One Dollars and 66/100 cents (\$32,861.66) for the term specified in Section 3.1 (Term Defined), which shall be due and payable on or before the Commencement Date. 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 Fidalgo Bay 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: An outfall pipe that parallels the wharf to a diffuser discharge. These improvements are not owned by State "Existing Improvements".

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

13.3 Construction. Prior to any construction, alteration, replacement, removal or major repair of any improvements (whether State-Owned or Grantee-Owned), Grantee shall submit to State plans and specifications which describe the proposed activity. A "major repair" or an "alteration" shall be defined as any work performed within the Easement Property that substantially changes the configuration or location of any Improvement or that may result in substantial adverse impacts to the environment. Construction shall not commence until State has approved those plans and specifications and Grantee has obtained a performance and payment bond in an amount equal to 125% of the estimated cost of construction. The performance and payment bond shall be maintained until the costs of construction, including all laborers and material persons, have been paid in full. State shall have sixty (60) days in which to review the proposed plans and specifications. The plans and specifications shall be deemed approved unless State notifies Grantee otherwise within the sixty (60) days. Upon completion of construction, Grantee shall promptly provide State with as-built plans and specifications. Routine maintenance and emergency maintenance activities shall be undertaken in accordance with the provisions of Section 6.

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

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

- (b) **Removal.** In those cases where the improvements shall be removed, Grantee agrees to provide a written plan, to be approved in writing by State, for the removal of the improvements and for the restoration of the Easement Property. The plan shall identify a timeline for removal and restoration, shall identify any impacts to the Easement Property, associated natural resources, or surrounding lands and resources, and shall identify any measures needed to restore the Easement Property. In those cases where State determines that the proposed removal would disrupt existing state lands or natural resources and would be detrimental to the long term use and management of the state's lands and resources, State may notify Grantee that the improvements must be abandoned in place in accordance with the provisions of this Subsection.
- (c) **Abandonment.** In those cases where the improvements shall be abandoned in place, Grantee agrees to provide a written plan, to be approved in writing by State, for abandonment and restoration. The plan shall identify a timeline for abandonment and restoration, shall identify the location of the improvements, shall propose a suitable means for plugging any abandoned pipelines, shall identify the means for notifying the public of the existence of any abandoned improvements, and shall identify any measures needed to restore the Easement Property. In those cases where State determines that the proposed abandonment would be detrimental to the long-term use and management of the state's lands and resources, State may notify Grantee that the improvements must be removed in accordance with the provisions of this Subsection.
- (d) **Plans for Removal or Abandonment.** Grantee shall provide the plan for removal or abandonment within ninety (90) days after the actual or deemed notification of state's removal or abandonment requirement is provided. State shall then have ninety (90) days in which to approve or reject the plan. State's failure to respond within the time allowed shall be deemed an approval of the plan.
- (e) **Costs to Remove or Abandon, and to Restore.** Grantee agrees to undertake the removal and disposal of the improvements, or the abandonment of the improvements, and the restoration of the Easement Property, at its sole cost and expense. Grantee agrees to perform any removal and restoration activities in a prompt and expeditious manner upon approval of any plans. If Grantee fails to timely meet its obligations under this Subsection State may perform Grantee's obligations and seek reimbursement.
- (f) **Ownership of Abandoned Improvements.** Any improvements that are allowed to be abandoned in place shall become the property of State without any payment by State.

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

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

SECTION 14 INDEMNITY

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

SECTION 15 INSURANCE

15.1 Financial Security.

- (a) At its own expense, Grantee shall procure and maintain a corporate surety bond or provide other financial security satisfactory to State (the "Bond") in an amount equal to Zero Dollars (\$ 0.00), which shall secure Grantee's full performance of its obligations under this Easement, with the exception of the obligations under Section 8 (Environmental Liability/Risk Allocation) above. The Bond shall be in a form and issued by a surety company acceptable to State. State may require an adjustment in the amount of the Bond.
- (b) Upon any default by Grantee in its obligations under this Easement, State may collect on the Bond to offset the liability of Grantee to State. Collection on the Bond shall not relieve Grantee of liability, shall not limit

any of State's other remedies, and shall not reinstate or cure the default or prevent termination of the Easement because of the default.

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

(a) **Types of Required Insurance.**

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

Description

Each Occurrence	\$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.

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:

Form Date 10/2002

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Agreement No. 51-076264

To State: DEPARTMENT OF NATURAL RESOURCES
Northwest Region
919 North Township Street
Sedro-Woolley, WA 98234

To Grantee: EQUILON ENTERPRISES, L.L.C. d.b.a, SHELL OIL PRODUCTS US
PO Box 622
Anacortes, WA 98221-0622

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, 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 the last signature below.

EQUILON ENTERPRISES, L.L.C., a limited liability company,
SHELL OIL PRODUCTS US,
A limited liability company

Dated: August 24, 2004

By: Thomas N. Smith
THOMAS N. SMITH

Title: Refinery Manager

Address: PO Box 622
Anacortes, WA 98221-0622

STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES

Dated: 9/21/04, 2004

By: Doug Sutherland
DOUG SUTHERLAND

Title: Commissioner of Public Lands

Address: 1111 Washington St SE
Olympia, WA 98504-7027



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

Form Date 10/2002

23

Agreement No. 51-076264

CORPORATE ACKNOWLEDGMENT

STATE OF Washington)
) ss
 COUNTY OF Skyway)

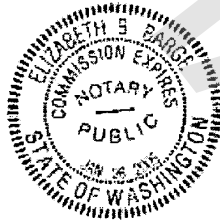
On this 24th day of August, 2004, before me personally appeared THOMAS N. SMITH to me known to be the SHELL OIL PRODUCTS US of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

DATED: Aug 24, 2004

Elizabeth Bang
 Elizabeth Bang
 (Type/Print Name)

Notary Public in and for the State of Washington
 residing at: Island County
 My Commission Expires: JAN 26, 06



STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss
 COUNTY OF Thurston)

On this 21st day of September, 2021, 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: 9/21/21

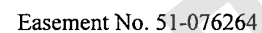
Donita R. Hill

Donita R. Hill

(Type/Print Name)

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

My appointment expires 5/19/25



**Aquatic Lands Outfall Easement
Exhibit B – Plan of Operations
Shell NPDES Outfall
Use Authorization No. 51-076264**

SITE DESCRIPTION AND PRESENT USE

The Shell Puget Sound Refinery is located in Skagit County on Marches Point near the City of Anacortes, Washington. The Shell Puget Sound Refinery (PSR) was originally constructed in 1958. The facility is a fuels refinery that processes approximately 140,000 barrels per of day crude oil into gasoline, diesel, jet fuel and other related hydrocarbon products. The refinery operates an NPDES permitted wastewater treatment plant with an outfall line that extends into Puget Sound from the Northwest end of Marches Point in an unincorporated area of Skagit County.. The outfall line is located adjacent to Sections 20 and 29, Township 35 North, Range 2 East.

This easement authorizes the continued use of state aquatic lands associated with the existing NPDES permitted outfall from the Shell Puget Sound Refinery onto state-owned aquatic land (SOAL). The outfall associated with this easement was originally constructed in 1958 along with the rest of the refinery and no additional modifications are proposed at the time of this submittal.

FUTURE USE AND CONDITIONS

The uses proposed under this easement are unchanged from existing uses. At this time, Puget Sound Refinery (PSR) has no plans to change the existing use or related facilities. PSR will conduct periodic maintenance activities as necessary to maintain the functionality of the existing improvements on the site.

TERMS AND CONDITIONS

SECTION 1 – GRANT AND LOCATION OF THE EASEMENT

1.4 Surveys, Maps, and Plans

The easement area (as shown on Exhibit A) is further described in the legal record of survey for this easement .

SECTION 2 - USE OF EASEMENTPermitted Use -

Operation and maintenance of an industrial wastewater treatment outfall for the discharge of treated effluent from the Shell Puget Sound Refinery. The permanent easement is a strip of land with a width of five feet on either side of the centerline of the outfall pipeline and the diffuser.

Permits - Grantee will provide State, upon request, with copies of all current renewals, modifications, or appeals of any regulatory permits, approvals, or authorizations relating to Grantee's activities on the easement Property. Operation of this outfall is contingent on Grantee holding a valid NPDES permit. PSR shall remain in compliance with the sediment sampling requirements outlined in the varying NPDES permits, which are typically issued by the State Department of Ecology every five years. In the event that no such requirements exist within a given NPDES permit, this condition will not be enforced.

Amendment upon Change of Permit Status

This Easement is issued based on the assumption that Grantee's activities on the Property are not likely to jeopardize the continued existence of species listed as threatened or endangered under the federal Endangered Species Act (ESA), and/or that the federal agencies responsible for administering the ESA have been consulted pursuant to Section 7(a)(2) and Grantee's activities on the Property will comply with any terms or conditions lawfully imposed by those agencies through that ESA Section 7 consultation, where applicable to the easement.

SECTION 3 - TERM

Development of Disposal Alternatives - In conjunction with the requirements outlined in Subsection 3.3., grantee will provide, at the request of the State, any current NPDES permit reports that address progress toward reducing the reliance on the receiving waters of Washington State for the disposal of wastewater and to promote water re-use as outlined in the facility NPDES permit. Progress may include, but is not limited to:

- The beneficial reuse of reclaimed water as authorized by RCW 90.46 (ie stream augmentation, industrial process supply, agricultural application);
- Pollution prevention activities specified in the NPDES permit; and
- All other efforts related to water re-use and recycling.

SECTION 6 - MAINTENANCE AND REPAIR OF EASEMENT AND IMPROVEMENTS

Maintenance defined - Washington DNR defines maintenance as those usual acts designed to prevent a decline, lapse, or cessation of the approved use and associated improvements. Maintenance does not include any expansion of the permitted use nor does it result in any substantive change from the granted use and associated improvements.

Maintenance Schedule, Methods and Remedies -

The facility NPDES permit periodically requires inspection of the submersed outfall pipe to ensure that the system is in good working order. Maintenance would be performed to address any condition identified in the inspection. Allowable routine maintenance may include, but not be limited to, repairing or replacing section of the discharge pipe or diffusers.

SECTION 8 - ENVIRONMENTAL LIABILITY/RISK ALLOCATION**Sampling -**

In compliance with the requirements of the Federal Clean Water Act, the Washington State Dept. of Ecology issued NPDES permit number WA-000294-1 to the Shell Puget Sound Refinery in February 2001. The facility includes a permitted wastewater treatment facility and outfall. In 1997, PSR completed an \$10.8 million upgrade of the wastewater treatment facilities that included a new biological section and clarifiers. Since the installation of the new equipment, PSR has not had any violations of our permit requirements that were the result of activities controllable by the facility. PSR's NPDES permit requires numerous studies and limits designed to be fully protective of human health and the environment including:

- Monthly discharge monitoring reports
- Toxicity Compliance Testing
- Sediment Sampling and Analysis
- Treatment Efficiency Study
- Effluent Recharacterization for Human Health
- Pollution Prevention Plans
- Effluent Discharge Outfall Evaluation

These or other pertinent environmental reports will be submitted to the State upon request.

[SECTION 9 - NATURAL RESOURCE DAMAGES]

Numerous independent ecological studies have been completed in the immediate vicinity of the outfall associated with this easement. As indicated in the studies referenced below, the overall health of the sediments, shellfish and marine environment appears to be good.

- Ecology Publication No. 79-338, November 1997, entitled "Survey for Petroleum and Other Chemical Contaminants in the Sediments of Fidalgo Bay". The findings and conclusions of the study include the following:
 1. "Results of this survey show the chemical quality of the sediments in Fidalgo Bay to be generally good."

2. "The survey did not clearly identify any chemical contamination that could be linked to adverse effects of herring."

- **Ecology Publication No. 00-03-008**, May 2000, entitled "Results of a Screening Analysis for Metals and Organic Compounds in Shellfish from Padilla Bay and Vicinity." (Includes Fidalgo Bay). The study concludes: "Results of this study show that shellfish in the Padilla/Fidalgo Bay area have a very low level of chemical contamination. In most instances, the concentrations detected appear to be at background level for Puget Sound."
- **National Toxics Rule 303d List** - State and Federal Officials are required to establish water quality standards that are protective of human health and the environment. Should a water body contain levels of pollution that exceed these standards, the water body must be included on the National Toxics Rule 303d list. Water in Fidalgo Bay and Guemes Channel has been extensively tested and no chemical contamination has been found in excess of acceptable water quality standards. Thus, Fidalgo Bay and Guemes Channel are *NOT* listed on the National Toxics Rules 303d list.

In summary, the department of Ecology has strict discharge monitoring requirements and has completed substantial ecological and environmental studies in Fidalgo Bay over a number of years. According to the Washington Dept. of Fisheries, the local herring population in Fidalgo Bay more than doubled during the 10-year window between 1983 and 1992. In conclusion, various ecological studies and environmental indicators show the overall health in the marine environment in Fidalgo Bay to be generally good.

SECTION 10 - REPORTING

Permits - In addition to providing current copies of all regulatory permits that are requested by the State, Grantee agrees to notify State in writing of the renewal, modification, rescission, or appeal of any regulatory permits specifically relating to the Grantee's activities on the Easement Property.

General Reporting - In addition to providing all regulatory permits that are requested by the State, Grantee agrees to make notifications to the State as specified in the facility NPDES permit in the event of the following occurrences:

- **Effluent Exceedances** - All discharges that exceed the National Pollutant Discharge Elimination System (NPDES) permit, or otherwise violate the NPDES permit.
- **Outfall Malfunctions** - Any and all malfunctions in the authorized structure (i.e. - breaks in the pipe).

Formal written notification must also be provided for Effluent Exceedances and Outfall Malfunctions, as well as for all Sediment Criteria Exceedances (levels of

contamination above those defined in Washington's Sediment Management Standards) to the State as specified in the facility NPDES permit.

SECTION 13 - OWNERSHIP AND REMOVAL OF IMPROVEMENTS AND EQUIPMENT

As stated in Section 13 of the easement, PSR owns and operates the outfall authorized under this easement. It is the intent of PSR to maintain this outfall during the course of this easement and in the event the parties to this easement agree that the outfall is no longer required, PSR shall remove the structure under terms agreed upon at the termination of this easement.

SECTION 18 - NOTICE

Organizational Position changes related to the easement shall be conveyed to State at the time they occur. Upon joint agreement by the grantor and grantee, the change may lead to a meeting whereby the terms and conditions of this contract may be discussed.

Operations Contact/Plant Manager

Name: HSE Manager

Title: HSE Manager

Address: PO Box 622, Anacortes, 98221-0622

Phone: (360) 293-0800

WA DNR Contact

Name: Skagit County Aquatic Land Manager

Title: Aquatic Resources

Address: 919 N. Township St.
Sedro Woolley, WA 98284

Phone: (360) 856-3500

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 2

Paragraph 2.1, Paragraph 2.2, Paragraph 3.1, Paragraph 3.3, Paragraph 3.5, Section 5, Section 6, Section 8, Section 13, Section 14, Section 15, and Exhibit B are deleted in their entirety and replaced with the following:

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

Constructing, installing, operating, maintaining, and repairing an outfall pipe (the "Permitted Use").

Exhibit B includes additional details about the Permitted Use, the Easement Property, and the Improvements. Exhibit B also includes additional obligations on Grantee. The Permitted Use is subject to the restrictions and additional obligations set forth in this Easement. The Permitted Use of this Easement shall not be changed or modified without the written consent of State, which shall be at State's sole discretion.

2.2 Restrictions on Permitted Use and Operations.

- (a) Grantee shall not cause or permit:
 - (1) Damage to land or natural resources on the Easement Property or adjacent state-owned aquatic lands, regardless of whether the damages are a direct or indirect result of the Permitted Use;
 - (2) Waste on the Easement Property or adjacent state-owned aquatic lands; or
 - (3) Deposit of material or filling activity on the Easement Property or adjacent state-owned aquatic lands, unless approved by State. This prohibition includes, without limitation, any deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter (including, but not limited to, chemical, biological, or toxic wastes), hydrocarbons, pollutants, or other matter.
- (b) Nothing in this Easement shall be interpreted as an authorization to dredge the Easement Property.
- (c) Grantee shall immediately notify State if Grantee breaches any of the terms and conditions of this Easement.
- (d) State's failure to notify Grantee of Grantee's failure to comply with all or any of the restrictions set out in this Paragraph 2.2 does not constitute a waiver of any remedies available to State.
- (e) Grantee's compliance with the restrictions in this Paragraph 2.2 does not limit Grantee's liability under any other provision of this Easement or the law.

3.1 Term Defined. The term of this Easement is Thirty (30) years (the “Term”), beginning on the 1st day of September, 2004 (the “Commencement Date”), and ending on the 31st day of August, 2034 (the “Termination Date”), unless terminated sooner under the terms of this Easement. Whenever the phrase “termination of this Easement” or “termination of the Easement” is used in this Easement, it shall refer to the ending, termination, cancellation, or expiration of the Easement.

3.3 Development of Disposal Alternatives.

- (a) Reduction of Discharge on State-Owned Aquatic Lands
 - (1) Grantee warrants that Grantee considered alternatives to discharging to receiving water bodies and methods to avoid and minimize impacts to state-owned aquatic lands as summarized in Exhibit B 2.A.
 - (2) State will consider discharge reduction reports submitted under Exhibit B in evaluation of Grantee’s application to renew this Easement. If reports demonstrate insufficient progress toward disposal alternatives and methods that abate impacts to state-owned aquatic land and associated biological communities, State may:
 - (i) Require Grantee to undertake investigation and analysis of reasonably practical disposal alternatives to the Permitted Use, and/or
 - (ii) Rely on the alternatives analysis developed in accordance with the NPDES permit applicable to Grantee’s activities, if required by the Washington Department of Ecology, and applicable regulations.

3.5 End of Term

- (a) Removal of Improvements: Prior to the termination of this Easement, Grantee shall remove Improvements in accordance with Section 13.
- (b) Restoration of the Easement Property:
 - (1) Prior to the termination of this Easement, Grantee shall restore the Easement Property to its condition before the installation of any Improvements on the Easement Property.
 - (2) Restoration of the Easement Property is to be done at Grantee’s expense and to the satisfaction of State. Restoration of the Easement Property is considered to be Work, as described in Section 13 of the Easement. Grantee’s plans for restoring the Easement Property shall be submitted to State for prior approval in accordance with Section 13 of this Easement.
 - (3) If Permittee fails to restore the condition of the Easement Property as required by this Paragraph, State may take steps reasonably necessary to remedy Permittee’s failure. Upon demand by State, Permittee shall pay all costs of State’s remedy, lost revenue resulting from the condition of the Easement Property, and administrative costs associated with State’s remedy.
- (c) Vacation of Property: Upon the termination of this Easement, Grantee shall cease all operations on and use of the Easement Property.

SECTION 5 NOTICE OF SIGNIFICANT ACTIVITY

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

SECTION 6 MAINTENANCE AND REPAIR

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

6.2 Grantee's Repairs and Maintenance.

- (a) Grantee shall, at its sole cost and expense, keep and maintain the Easement Property and all Grantee-Owned Improvements in good order and repair, in a clean, attractive, and safe condition. Grantee shall repair all damage caused or permitted by Grantee to Improvements Owned by Others on the Easement Property.
- (b) Grantee shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Easement Property or to any Grantee-Owned Improvements on the Easement Property that may be required by any public authority having jurisdiction over the Easement Property and requiring it for public health, safety, and welfare purposes.
- (c) Except as provided in Paragraph 6.2(d), all additions, repairs, alterations, maintenance, replacements, or changes to the Easement Property and to any Grantee-Owned Improvements on the Easement Property shall be made in accordance with, and ownership shall be governed by, Section 13.
- (d) Routine maintenance and repair are acts intended to prevent a decline, lapse, or cessation of the Permitted Use and associated Grantee-Owned Improvements. Routine maintenance or repair that does not require regulatory permits does not require authorization from State pursuant to Section 13.
- (e) Upon completion of maintenance activities, Grantee shall remove all debris and restore the Easement Property to the condition prior to the commencement of Work.

SECTION 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 utmost care required under RCW 70A.305.040(3)(a)(iii) of the Washington State Model Toxics Control Act.
- (d) "Grantee and affiliates" when used in this Section 8 means Grantee or Grantee's subgrantees, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Easement Property with the Grantee's permission.
- (e) "Liabilities" as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.

8.2 General Conditions.

- (a) Grantee's obligations under this Section 8 extend to the area in, on, under, or above:
 - (1) The Easement Property and
 - (2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.
 - (1) Grantee shall exercise the utmost care with respect to Hazardous Substances.
 - (2) As relates to the Permitted Use, Grantee shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

8.3 Current Conditions and Duty to Investigate.

- (a) State makes no representation about the condition of the Easement Property or adjacent state-owned aquatic lands. Hazardous Substances may exist in, on, under, or above the Easement Property or adjacent state-owned aquatic lands.
- (b) This Easement does not impose a duty on State to conduct investigations or supply information to Grantee about Hazardous Substances.
- (c) Grantee is responsible for conducting all appropriate inquiry and gathering sufficient information concerning the Easement Property and the existence, scope, and location of Hazardous Substances on or near the Easement Property necessary

for Grantee to meet Grantee's obligations under this Easement and utilize the Easement Property for the Permitted Use.

8.4 Use of Hazardous Substances.

- (a) Grantee and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Grantee shall not undertake, or allow others to undertake by Grantee's permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.
- (c) If use of Hazardous Substances related to the Permitted Use results in a violation of law:
 - (1) Grantee shall submit to State any plans for remedying the violation, and
 - (2) Grantee shall implement any measures to restore the Easement Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.

8.5 Management of Contamination.

- (a) Grantee and affiliates shall not undertake activities that:
 - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
 - (2) Result in human or environmental exposure to contaminated sediments, if any;
 - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Grantee shall allow reasonable access to:
 - (1) Employees and authorized agents of the United States Environmental Protection Agency (EPA), the Washington State Department of Ecology, health department, or other similar environmental agencies; and
 - (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Easement Property. Grantee may negotiate an access agreement with such parties, but Grantee may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

- (a) Grantee shall immediately notify State if Grantee becomes aware of any of the following:
 - (1) A release or threatened release of Hazardous Substances;
 - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances;
 - (3) Any lien or action arising from Hazardous Substances;
 - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;

- (5) Any notification from the EPA or the Washington State Department of Ecology that remediation or removal of Hazardous Substances is or may be required at the Easement Property.
- (b) Grantee's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a), and to any other property used by Grantee in conjunction with the Easement Property if a release of Hazardous Substances on the other property could affect the Easement Property.
- (c) Grantee shall provide State with copies of all documents Grantee submits to any federal, state, or local authorities concerning environmental impacts or proposals relative to the Easement Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollutant Discharge Elimination System permits (NPDES); U.S. Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality Certifications; Substantial Shoreline Development permits; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Easement Property.

8.7 Indemnification.

- (a) Grantee shall fully indemnify, defend, and hold harmless State from and against any Liabilities that arise out of, or relate to:
 - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Grantee and affiliates occurring whenever Grantee uses or has used the Easement Property;
 - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Grantee and affiliates occurring whenever Grantee uses or has used the Easement Property.
- (b) Grantee shall fully indemnify, defend, and hold harmless State for any Liabilities that arise out of or relate to Grantee's breach of obligations under Paragraph 8.5.
- (c) Grantee is obligated to indemnify under this Paragraph 8.7 regardless of whether a NPDES or other permit or license authorizes the discharge or release of Hazardous Substances.
- (d) If Grantee fails to exercise care as described in Paragraph 8.2(b)(2), Grantee shall fully indemnify, defend, and hold harmless State from and against Liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances.

8.8 Reservation of Rights.

- (a) For Liabilities not covered by the indemnification provisions of Paragraph 8.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.
- (b) The Parties expressly reserve all such rights, claims, immunities, and defenses that either Party may have against third parties. Nothing in this Section 8 benefits or creates rights for third parties.

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

8.9 Cleanup.

- (a) If Grantee's act, omission, or breach of obligation under Paragraph 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standards, Grantee shall, at Grantee's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.
- (b) If a cleanup is eligible for the Washington State Department of Ecology's Voluntary Cleanup Program, Grantee may undertake a cleanup of the Easement Property pursuant to the Voluntary Cleanup Program, provided that Grantee cooperates with the Department of Natural Resources in development of cleanup plans. Grantee shall not proceed with the Voluntary Cleanup without the Department of Natural Resources' approval of final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Easement. Grantee's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Easement.

8.10 Sampling by State, Reimbursement, and Split Samples.

- (a) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Easement Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (b) If such Tests, along with any other information, demonstrate a breach of Grantee's obligations regarding Hazardous Substances under this Easement, Grantee shall promptly reimburse State for all costs associated with such Tests, provided State gave Grantee thirty (30) days' advance notice in nonemergencies, and reasonably practical notice in emergencies.
- (c) In nonemergencies, Grantee is entitled to obtain split samples of Test samples, provided Grantee gives State written notice requesting split samples at least ten (10) days before State conducts Tests. Upon demand, Grantee shall promptly reimburse State for additional cost, if any, of split samples.
- (d) If either Party conducts Tests on the Easement Property, the conducting Party shall provide the other Party with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) days of a written request by the other party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Grantee shall submit data and information to State without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

8.11 Closeout Assessment.

- (a) State may require Grantee to conduct a Closeout Environmental Assessment ("Closeout Assessment") prior to Termination of the Easement or after a valid notice of early termination according to the procedures set forth in (b)-(j) below.
- (b) The purpose of the Closeout Assessment is to determine the existence, scope, or effects of any Hazardous Substances or wood debris on the Easement Property and any associated natural resources. The Closeout Assessment may include sediment sampling.
- (c) No later than one hundred eighty (180) days prior to the Termination Date, or within ninety (90) days of any valid notice of early termination, State shall provide Grantee with written notice that State requires a Closeout Assessment.
- (d) Within sixty (60) days of State's notice that Closeout Assessment is required and before commencing assessment activities, Grantee shall submit a proposed plan for conducting the Closeout Assessment in writing for State's approval.
- (e) If State fails to approve or disapprove of the plan in writing within sixty (60) days of its receipt, State waives requirement for approval.
- (f) Grantee shall be responsible for all costs required to complete planning, sampling, analyzing, and reporting associated with the Closeout Assessment.
- (g) State may require Grantee to enter into a right-of-entry or other use authorization prior to the Grantee entering the Easement Property for any Closeout Assessment work required by this Paragraph 8.11 if the Easement has terminated.
- (h) Grantee shall submit Closeout Assessment to State upon completion.
- (i) As required by law, Grantee shall report to the appropriate regulatory authorities if the Closeout Assessment discloses a release or threatened release of Hazardous Substances.
- (j) If the initial results of the Closeout Assessment disclose that Hazardous Substances may have migrated to other property, State may require additional Closeout Assessment work to determine the existence, scope, and effect of any Hazardous Substances on adjacent property, any other property subject to use by Grantee in conjunction with its use of the Easement Property, or on any associated natural resources. Grantee shall submit additional assessment work to State upon completion. As required by law, Grantee shall report to the appropriate regulatory authorities if the additional assessment discloses a release or threatened release of Hazardous Substances

SECTION 13 IMPROVEMENTS, PERSONAL PROPERTY, AND WORK**13.1 Improvements and Personal Property Defined.**

- (a) "Improvements" or "improvements," consistent with RCW 79.105 through 79.140, are additions within, upon, or attached to the Easement Property. Improvements include, but are not limited to, fill, structures, and fixtures.
- (b) "Personal Property" means items that can be removed from the Easement Property without (1) injury to the Easement Property, adjacent state-owned lands

or Improvements; or (2) diminishing the value or utility of the Easement Property, adjacent state-owned lands, or Improvements.

- (c) "State-Owned Improvements" are Improvements made or owned by the State of Washington. State-Owned Improvements include any construction, alteration, or addition to State-Owned Improvements made by Grantee.
- (d) "Grantee-Owned Improvements" are (1) Improvements owned by Grantee that are existing on the Easement Property on the Commencement Date or (2) Improvements made by Grantee with State's consent.
- (e) "Unauthorized Improvements" are Improvements made on the Easement Property during the Term of the Easement without State's prior consent or Improvements made by Grantee that do not conform with plans submitted to and approved by State.
- (f) "Improvements Owned by Others" are Improvements made by others with a right to occupy or use the Easement Property or adjacent state-owned lands.

13.2 Existing Improvements. On November 1, 2021, the following Grantee-Owned Improvements are located on the Easement Property: 4,300 lineal feet of wastewater outfall pipeline and diffuser port. Also located on the Property is a portion of a dock that is authorized under Aquatic Lands Lease 20-A12561.

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

- (a) This Paragraph 13.3 governs construction, alteration, replacement, major repair, modification, and removal of Improvements (collectively "Work").
- (b) Except in an emergency, Grantee shall not conduct any Work without State's prior written consent. Grantee shall obtain State's prior written consent as follows:
 - (1) Grantee shall submit to State plans and specifications describing the proposed Work and any design plans and specifications developed pursuant to Washington Department of Ecology laws and rules for discharges at least sixty (60) days before submitting permit applications to regulatory authorities, unless Grantee and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Grantee shall submit plans and specifications to State at least ninety (90) days before commencement of Work.
 - (2) State may deny consent if State determines that denial is in the best interests of the State of Washington, or if the proposed Work does not comply with Paragraph 13.4. State may impose additional conditions intended to protect and preserve the Easement Property or adjacent state-owned aquatic lands.
- (c) Grantee shall immediately notify State of emergency Work. Upon State's request, Grantee shall provide State with as built plans and specifications of emergency Work.
- (d) Grantee shall not commence Work until Grantee or Grantee's contractor has:
 - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction.

Grantee or Grantee's contractor shall maintain the performance and payment bond until the costs of the Work, including all laborers and material persons, are paid in full.

- (2) Obtained all required permits.
- (3) Provided notice of Significant Activity in accordance with Section 5.
- (e) Grantee shall preserve and protect Improvements Owned by Others, if any.
- (f) Grantee shall preserve all legal land subdivision survey markers and witness objects ("Markers"). If disturbance of a Marker will be a necessary consequence of Grantee's construction, Grantee shall reference and/or replace the Marker in accordance with all applicable laws and regulations current at the time, including, but not limited to Chapter 58.24 RCW. At Grantee's expense, Grantee shall retain a registered professional engineer or licensed land surveyor to reestablish destroyed or disturbed Markers in accordance with U.S. General Land Office standards.
- (g) Before completing Work, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to its natural condition before the Work began. If Work is intended for removal of Improvements at End of Term, Grantee shall restore the Easement Property in accordance with Paragraph 3.5, End of Term.
- (h) Upon completing Work, Grantee shall promptly provide State with as-built plans and specifications. State may also require Grantee to obtain an updated record of survey showing the Easement Property boundaries and the as-built location of all Improvements on the Easement Property.
- (i) State shall not charge additional fees for authorized Improvements installed by Grantee on the Easement Property during this Term of this Easement, but State may charge additional fees for such Improvements if and when the Grantee or successor obtains a subsequent use authorization for the Easement Property and State has waived the requirement for removal of Improvements as provided in Paragraph 13.5.

13.4 Standards for Work. Grantee shall comply with State's standards for Work current at the time Grantee submits plans and specifications for State's approval. Grantee may ascertain State's current standards for Work as follows:

- (a) Before submitting plans and specifications for State's approval as required by Paragraph 13.3 of the Easement, Grantee shall request State to provide Grantee with State's current standards for Work on state-owned aquatic lands.
- (b) Within thirty (30) days of receiving Grantee request, State shall provide Grantee with State's current standards for Work, which will be effective for the purpose of State's approval of Grantee's proposed Work, provided Grantee submits plans and specifications for State's approval within two (2) years of Grantee's request for State's current standards for Work.
- (c) If Grantee fails to (1) make a request for State's current standards for Work or (2) timely submit plans and specifications to State after receiving State's current standards for Work, Grantee shall, at Grantee's sole expense, make changes in

plans or Work necessary to conform to State's current standards for Work upon State's demand.

13.5 Grantee-Owned Improvements at End of Easement

- (a) Disposition.
 - (1) Grantee shall remove Grantee-Owned Improvements in accordance with Paragraph 13.3 upon the termination of the Easement unless State waives the requirement for removal.
 - (2) Grantee-Owned Improvements remaining on the Easement Property on the termination of the Easement shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.
 - (3) If Grantee-Owned Improvements remain on the Easement Property after the termination of the Easement without State's consent, State may remove all Improvements and Grantee shall pay State's costs of removal and disposal.
- (b) Conditions Under Which State May Waive Removal of Grantee-Owned Improvements.
 - (1) State may waive removal of any Grantee-Owned Improvements whenever State determines that it is in the best interests of the State of Washington.
 - (2) If Grantee enters into a new Easement, State may waive requirement to remove Grantee-Owned Improvements. State also may consent to Grantee's continued ownership of Grantee-Owned Improvements. If the Grantee-Owned Improvements are no longer used as part of an operational or active outfall, State may condition its waiver of removal on Grantee entering into a new Easement for the storage of the Grantee-Owned Improvements.
 - (3) State may waive requirement to remove Grantee-Owned Improvements upon consideration of a timely request from Grantee, as follows:
 - (i) Grantee shall submit its request to leave Grantee-Owned Improvements to State at least one (1) year before the Termination Date.
 - (ii) State, within ninety (90) days of receiving Grantee's request, will notify Grantee whether State consents to any Grantee-Owned Improvements remaining. State has no obligation to grant consent.
 - (iii) State's failure to respond to Grantee's request to leave Improvements within ninety (90) days is a denial of the request
- (c) Grantee's Obligations if State Waives Removal.
 - (1) Grantee shall not remove a Grantee-Owned Improvement if State waives the requirement for removal of that Grantee-Owned Improvement.
 - (2) Grantee shall maintain such Grantee-Owned Improvements in accordance with this Easement until the termination of this Easement. State may require Grantee to take appropriate steps to decommission the structure. Grantee is liable to State for cost of repair if Grantee causes or allows damage to Grantee-Owned Improvements State has designated to remain.

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

13.6 Unauthorized Improvements

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) The placement of Unauthorized Improvements on the Easement Property is a breach of this Easement and State may require removal of any or all Unauthorized Improvements. If State requires removal of Unauthorized Improvements and if Grantee fails to remove the Unauthorized Improvements, State may remove the Unauthorized Improvements and Grantee shall pay for the cost of removal and disposal.
- (c) In addition to requiring removal of Unauthorized Improvements, State may charge Grantee a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until the time the Unauthorized Improvements are removed.
- (d) If State consents to Unauthorized Improvements remaining on the Easement Property, upon State's consent, the Unauthorized Improvements will be treated as Grantee-Owned Improvements and the removal and ownership of such Improvements shall be governed by Paragraph 13.5. If State consents to the Unauthorized Improvements remaining on the Easement Property, State may charge a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until State consents.

13.7 Personal Property

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

SECTION 14 INDEMNITY

- (a) Grantee shall indemnify, defend, and hold harmless State, its employees, officials, officers, and agents from any Claim arising out of the Permitted Use, any Claim arising out of activities related to the Permitted Use, or any Claim arising out of the use of the Easement Property by Grantee, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees to the fullest extent permitted by law and subject to the limitations provided below.
- (b) "Claim" as used in this Section 14 means any financial loss, claim, suit, action, damages, expenses, costs, fees (including attorneys' fees), fines, penalties, or judgments attributable to bodily injury; sickness; disease; death; damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources; and loss of natural resource values. "Damages to tangible property" includes, but is not limited to, physical injury to the Easement Property, diminution in value, and/or damages resulting from loss of use of the Easement Property.
- (c) Grantee is obligated to indemnify under this Section 14 regardless of whether any other provision of this Agreement or NPDES or other permit or license authorizes the discharge or release of a deleterious substance resulting in a claim.
- (d) No damages or fees paid by Grantee to State under other provisions of this Easement are an offset against Grantee's obligation to indemnify under this Section 14.
- (e) State shall not require Grantee to indemnify, defend, and hold harmless State, its employees, officials, officers, and agents for a Claim caused solely by or resulting solely from the negligence or willful act of State or State's employees, officials, officers, or agents.
- (f) Grantee specifically and expressly waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51 RCW in connection with its obligation to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents. Further, Grantee's obligation under this Easement to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents shall not be limited in any way by any limitation on amount or type of damages, compensation, or benefits payable to or for any third party under the workers' compensation acts.
- (g) Only to the extent RCW 4.24.115 applies and requires such a limitation, if a Claim is caused by or results from the concurrent negligence of (a) State or State's employees, officials, officers, or agents and (b) the Grantee or Grantee's agents or employees, these indemnity provisions shall be valid and enforceable only to the extent of the negligence of the Grantee and those acting on its behalf.
- (h) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Grantee's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold harmless State for Hazardous Substances.

SECTION 15 FINANCIAL SECURITY AND INSURANCE

15.1 Financial Security

- (a) At its own expense, Grantee shall procure and maintain during the Term of this Easement a corporate security bond or provide other financial security that State may approve ("Security"). Grantee shall provide Security in an amount equal to One Hundred Thousand Dollars (\$100,000), which secures Grantee's performance of its obligations under this Easement. Grantee's failure to maintain the Security in the required amount during the Term constitutes a breach of this Easement.
- (b) All Security must be in a form acceptable to State.
 - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports, unless State approves an exception in writing. Grantee may submit a request to the Risk Manager for the Department of Natural Resources for an exception to this requirement.
 - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
 - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
 - (1) State may require an adjustment in the Security amount:
 - (i) As a condition of approval of assignment of this Easement,
 - (ii) Upon a material change in the condition or disposition of any Improvements, or
 - (iii) Upon a change in the Permitted Use.
 - (2) Grantee shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any breach by Grantee in its obligations under this Easement, State may collect on the Security to offset the liability of Grantee to State. Collection on the Security does not (1) relieve Grantee of liability, (2) limit any of State's other remedies, (3) reinstate the Easement or cure the breach or (4) prevent termination of the Easement because of the breach.

15.2 Insurance Terms

- (a) Insurance Required.
 - (1) Grantee certifies that on the Commencement Date of this Easement 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 15.2 and by Paragraph 15.3, 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. If during the Term of this Easement Grantee's self-insurance plan fails to provide coverage equal to that required in Paragraphs 15.2 and Paragraph 15.3 of this Easement, Grantee shall procure additional commercial insurance coverage to meet the requirements of this Easement. The requirements in Paragraphs 15.2(a)(2), (3) and (4) only apply where the Grantee procures additional commercial insurance to meet the requirements of this Easement.

- (2) Unless State agrees to an exception, Grantee shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of A.M. Best's Insurance Reports. Grantee may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
- (3) All general liability, excess, umbrella, and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as an additional insured by way of endorsement.
- (4) All property, builder's risk, and equipment breakdown insurance must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as loss payees.
- (5) All insurance provided in compliance with this Easement must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
 - (1) Grantee waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Easement covers these damages.
 - (2) Except as prohibited by law, Grantee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this Easement.
- (c) Proof of Insurance.
 - (1) Grantee shall provide State with a certificate(s) and endorsement(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Easement and, if requested, copies of policies to State.
 - (2) The certificate(s) of insurance must reference the Easement number.
 - (3) Receipt of such certificates, endorsements, or policies by State does not constitute approval by State of the terms of such policies.

- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Easement, as follows:
- (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
 - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State twenty (20) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
- (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
 - (2) Grantee shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Grantee fails to procure and maintain the insurance described above within thirty (30) days after Grantee receives a notice to comply from State, State may either:
- (1) Terminate this Easement; or
 - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Grantee shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 4.3 from the date of State's notice of the expenditure until Grantee's repayment.
- (g) General Terms.
- (1) State does not represent that coverage and limits required under this Easement are adequate to protect Grantee.
 - (2) Coverage and limits do not limit Grantee's liability for indemnification and reimbursements granted to State under this Easement.
 - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to Easement Property first to restore the Easement Property, then to pay the cost of the reconstruction, then to pay State any sums in arrears, and then to Grantee.
 - (4) Notwithstanding anything to the contrary herein, if any insurance required hereunder, with the exception of any Workers' Compensation insurance required under Paragraph 15.3(b), ceases to be generally available in the commercial insurance marketplace, Tenant shall either (a) increase the Security set forth in Paragraph 15.1 hereof by an amount equal to the amount of insurance that is unavailable or (b) provide a guaranty to State equal to the amount of the insurance that is unavailable. Tenant's failure to procure replacement Security or a guaranty as prescribed in clauses (a) and (b) of the immediately preceding sentence within thirty (30) days after receipt of notice from State of failure to procure and maintain the insurance described in this Agreement shall constitute a failure of Tenant to maintain the insurance required hereunder.

15.3 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 Five Million Dollars (\$5,000,000). If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
 - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
 - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
 - (1) State of Washington Workers' Compensation.
 - (i) Grantee shall comply with all State of Washington workers' compensation statutes and regulations. Grantee shall provide workers' compensation coverage for all employees of Grantee. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with the Permitted Use or related activities.
 - (ii) If Grantee fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Grantee shall indemnify State. Indemnity shall include all fines; payment of benefits to Grantee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
 - (2) Longshore and Harbor Workers' and Jones Acts. The Longshore and Harbor Workers' Act (33 U.S.C. Section 901 et. seq.) and/or the Jones Act (46 U.S.C. Section 30104) may require Grantee to provide insurance coverage in some circumstances. Grantee shall ascertain if such insurance is required, and if required, shall maintain insurance in compliance with the law. Grantee is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employers' Liability Insurance. Grantee shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by

accident and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.

(d) Property Insurance.

- (1) Grantee shall buy and maintain property insurance covering all real property and fixtures, equipment, Improvements and betterments (regardless of whether owned by Grantee or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived. The policy must include State as a loss payee.
- (2) Grantee shall buy and maintain equipment breakdown insurance covering all real property and fixtures, equipment, Improvements and betterments (regardless of whether owned by Grantee or State) from loss or damage caused by the explosion of equipment, fired or unfired vessels, electric or steam generators, electrical arcing, or pipes.
- (3) In the event of any loss, damage, or casualty that is covered by one or more of the types of insurance described above, the Parties shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned on such proceeds, for use according to the terms of this Easement. The Parties shall use insurance proceeds in accordance with Paragraph 15.2(g)(3).
- (4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:
 - (i) Repair and restore damaged Improvements to their former condition, or
 - (ii) Replace and restore damaged Improvements with new Improvements on the Easement Property of a quality and usefulness at least equivalent to, or more suitable than, damaged Improvements.

(e) Builder's Risk Insurance.

- (1) Grantee shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance must be written on a completed form and in an amount equal to the value of the completed Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Grantee, all contractors, and subcontractors in the work as insured.
- (2) Insurance described above must cover or include the following:
 - (i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;

- (ii) The entire work on the Easement Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
 - (iii) Portions of the work located away from the Easement Property but intended for use at the Easement Property, and portions of the work in transit;
 - (iv) Scaffolding, falsework, and temporary buildings located on the Easement Property; and
 - (v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.
 - (3) Grantee or Grantee's contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.
 - (4) Grantee or Grantee's contractor(s) shall buy and maintain equipment breakdown insurance covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Grantee, all contractors, and subcontractors in the work as insured.
- (f) Pollution Legal Liability Insurance.
- (1) Grantee shall procure and maintain for the duration of this Easement pollution legal liability insurance, including investigation and defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed. Such coverage must also provide for both on-site and off-site cleanup costs, cover gradual and sudden pollution, and include in its scope of coverage natural resource damage claims. The Insurance Certificate must state that the insurer is covering Hazardous Substance removal. Grantee shall maintain coverage in an amount of at least:
 - (i) Five Million Dollars (\$5,000,000) each occurrence for Grantee's operations at the site(s) identified above, and
 - (ii) Ten Million Dollars (\$10,000,000) general aggregate or policy limit, if any.
 - (2) Such insurance may be provided on an occurrence or claims-made basis. If such coverage is obtained as an endorsement to the CGL or is provided on a claims-made basis, the following additional conditions must be met:
 - (i) The policy must contain no retroactive date, or the retroactive date must precede the effective date of the Easement.
 - (ii) Coverage must either be continuously maintained for a period of five (5) years following the Termination Date of the Easement, or an extended reporting period of five (5) years following the Termination Date of the Easement shall be purchased.

EXHIBIT B**1. DESCRIPTION OF PERMITTED USE**

- A. Existing Facilities.** As of November 1, 2021, the facilities on the Easement Property include a wastewater outfall and diffuser that discharge treated industrial process wastewater associated with an upland refinery. The outfall pipeline and diffuser are attached to the dock. The outfall was originally constructed along with the rest of the refinery in 1958. Reconstructed in 1993, the 24-inch multi-port submerged diffuser discharges treated process water, sanitary wastewater, stormwater, and ballast water.

The refinery's process wastewater outfall (001) is supported on a dock. The dock is the marine terminal for an associated upland refinery. The wharf and causeway are authorized by State under Aquatic Lands Lease 20-A12561. The outfall extends approximately 5,000 feet from the shore (of which 4,300 feet is on the Easement Property) in a north/northwesterly direction and discharges into the bottom of Fidalgo Bay through a diffuser.

The outfall was authorized to discharge wastewater effluent by Washington State Department of Ecology under NPDES Industrial Individual Permit number WA-0002941 in 2001. Grantee applied to Washington State Department of Ecology for a new NPDES Permit on June 28, 2021; the current permit expires December 31, 2021.

- B. Proposed Work.**
Grantee proposes no new facilities or Work.

2. ADDITIONAL OBLIGATIONS

State has not authorized Grantee to conduct any Work on the Easement Property. Where Work will need to be conducted to meet the Additional Obligations below, Grantee shall obtain State's prior written consent in accordance with Paragraph 13.3 of this Easement and obtain all necessary regulatory permits prior to commencing such Work.

- A. National Pollutant Discharge Elimination System (NPDES) Permit Renewal Reporting**

At the time of application to renew the NPDES Permit, or every five (5) years, whichever is first, Grantee shall submit to State a report addressing progress to reduce discharges on state-owned aquatic land and associated biological communities. "Progress" means Grantee is analyzing or developing alternative treatment and/or disposal methods including, but not limited to, (1) reduction of inflow and infiltration; (2) groundwater recharge; (3) stream augmentation, industrial process supply, and/or agricultural application; (4) water conservation

programs; (5) other water re-use projects; (6) low impact development; and (7) stormwater treatment processes.

B. National Pollutant Discharge Elimination System (NPDES) Permit

- i. The NPDES Permit effective date is January 1, 2017 and requires renewal in accordance with WAC 173-220-180.
- ii. Grantee shall notify State when they contact the Washington State Department of Ecology to apply or renew a National Pollutant Discharge Elimination System (NPDES) permit.
- iii. Grantee shall notify State of any proposed changes/additions/deletions to the NPDES permit and allow State a reasonable period to comment.
- iv. Grantee shall submit to State all NPDES Outfall Evaluation Reports.

C. Sediment Sampling.

No later than one (1) year prior to Easement expiration date, or after a valid notice of early termination of the Easement, Grantee shall conduct sediment sampling on the Easement Property and submit sampling reports to State as follows:

Grantee shall submit a Sediment Sampling and Analysis Plan (SAP) to State for approval no less than ninety (90) days before commencing sediment sampling. State may require modifications to the SAP. If State disapproves of the SAP, Grantee shall submit a revised SAP to State for approval. After State's approval of the SAP, Grantee must conduct sampling within one hundred eighty (180) days.

Specifics of the SAP shall be developed by a qualified environmental professional following the Washington State Department of Ecology's most recent version of *Sediment Cleanup User's Manual II- Guidance for Implementing the Cleanup Provisions of the Sediment Management Standards (SCUM II)*, Chapter 173-204 WAC and current *ASTM Phase II Standards*.

The SAP shall at a minimum:

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

The sediment sampling shall be conducted by a qualified environmental professional in accordance with the SAP. Grantee shall be responsible for all costs required to complete planning, regulatory permitting, sampling, analyzing, and reporting associated with the SAP.

After completion of the sediment sampling and analysis, a Sediment Analysis Report must be written as outlined in Department of Ecology's SCUM II Manual. The Sediment Analysis Report shall clearly identify all exceedances. Grantee shall submit an electronic and hardcopy version of the Sediment Sampling and Analysis Report to State. If an exceedance is identified, Grantee shall immediately notify both State and Department of Ecology.

Grantee shall ensure all sampling data is entered into Department of Ecology's Environmental Information Management (EIM) database following Department of Ecology's myEIM database process (see link for details):

<https://ecology.wa.gov/Research-Data/Data-resources/Environmental-Information-Management-database/EIM-submit-data>