CITY OF SEATTLE

ORDINANCE 126181

COUNCIL BILL 119882

AN ORDINANCE authorizing the Director of the Department of Finance and Administrative Services to execute and accept from the Washington State Department of Natural Resources, on behalf of The City of Seattle, a waterway permit and three sequential waterway permits, for the Seattle Police Department's Harbor Patrol use of Waterway 20.

WHEREAS, The Seattle Police Department's Harbor Patrol ("Harbor Patrol") is located on Lake Union and adjacent to Waterway 20, which includes land and aquatic areas; and

WHEREAS, Waterway 20 is under the jurisdiction of the Washington State Department of Natural Resources (DNR); and

WHEREAS, the Harbor Patrol has used Waterway 20 as temporary storage for navigational hazards, impounded vehicles, evidence, found property, recovered stolen vessels, and other flotsam recovered from navigable waterways in the City; and

WHEREAS, The City of Seattle ("City") is seeking use of Waterway 20 for Harbor Patrol operations through a Joint Aquatic Resources Permit Application (JARPA) to DNR; and

WHEREAS, the proposed permit from DNR to the City to use approximately 18,957 square feet of water-dependent property, and 7,467 square feet of non-water-dependent real property, exceeds the leasing authority given to the Director of Finance and Administrative Services under Chapter 3.39 of the Seattle Municipal Code; and

WHEREAS, funding for the permit is to be provided through the Seattle Police Department's operations budget; and

WHERAS, the term of the permit is two years and additional sequential permits are required to be obtained from DNR; and

WHEREAS, the need for Harbor Patrol's use of Waterway 20 for water safety and patrol purposes will continue into the foreseeable future; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Director the Department of Finance and Administrative Services ("Director") or the Director's designee is authorized on behalf of The City of Seattle ("City") to execute the permit agreement ("Permit") with the Washington State Department of Natural Resources (DNR), substantially in the form of Attachment 1 to this ordinance and identified as "Waterway Permit No. 20-0899841," allowing the City use of the property for the Harbor Patrol.

Section 2. The Director or the Director's designee is authorized on behalf of the City to execute three sequential two-year term permit agreements with DNR, substantially in the form of Attachment 1 to this ordinance and identified as "Waterway Permit No. 20-089981," allowing the City use of the property for the Harbor Patrol.

Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 29th day of September, 2020, and signed by me in open session in authentication of its passage this 29th day of September, 2020.

_____
President _____ of the City Council

Approved by me this 2nd day of October, 2020.

_____
Jenny A. Durkan, Mayor

Filed by me this 2nd day of October, 2020.

_____
Monica Martinez Simmons, City Clerk

(Seal)

Attachments:
Attachment 1 – Waterway Permit 20-089981

PENDING SEATTLE CITY COUNCIL APPROVAL

When recorded, return to:
Seattle Department of Finance and Administrative Services
Facilities Operation Division
PO Box 94689
Seattle, WA 98124-4689

HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

WATERWAY PERMIT

Permit No. 20-089981

Grantor: Washington State Department of Natural Resources
Grantee(s): Seattle Department of Finance and Administrative Services
Legal Description: Section NE 19, Township 25 North, Range 4 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 Permit: 4088801930

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting in its proprietary capacity through the Department of Natural Resources ("State"), and the SEATTLE DEPARTMENT OF FINANCE AND ADMINISTRATIVE SERVICES, a government agency/entity ("Licensee").

BACKGROUND

Licensee desires to use the aquatic lands commonly known as Waterway 20, which is a waterway located in King County, Washington, from State, and State desires to authorize the

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Licensee's use of the property pursuant to the terms and conditions of this Permit and in accordance with Chapter 79.120 of the Revised Code of Washington (RCW). The intent of the Parties to create a license to use land, for a term of time, subject to any restrictions or reservations contained in this Agreement. State has authority to enter this Agreement under Chapter 43.12, Chapter 43.30 and Title 79 RCW.

THEREFORE, the Parties agree as follows:

SECTION 1 GRANT OF PERMISSION

1.1 Permission.

(a) Subject to the terms and conditions set forth below, State hereby grants Licensee a revocable, nonpossessory license to use the real property described in Exhibit A (the "Property"). In this agreement, the term "Permit" means this agreement and the rights granted. State may revoke this permission in accordance with Paragraph 14.4.

(b) This Permit is subject to all valid interests of third parties noted in the records of King County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.

(c) This Permit does not include a right to harvest, collect or damage natural resources, including aquatic life or living plants; water rights; mineral rights; or a right to excavate or withdraw sand, gravel, or other valuable materials.

(d) State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not interfere unreasonably with the Permitted Use.

1.2 Survey and Property Descriptions.

(a) Licensee prepared Exhibit A, which describes the Property. Licensee warrants that Exhibit A is a true and accurate description of the Permit boundaries and the improvements to be constructed or already existing in the Permit area. Licensee's obligation to provide a true and accurate description of the Property boundaries is a material term of this Permit.

(b) State's acceptance of Exhibit A does not constitute agreement that Licensee's property description accurately reflects the actual amount of land used by Licensee. State reserves the right to retroactively adjust fees if at any time during the term of the Permit State discovers a discrepancy between Licensee's property description and the area actually used by Licensee.

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

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SECTION 2 USE OF PROPERTY

2.1 Permitted Use. Licensee shall use the Property for the purposes of a boat launch, moorage and storage (the "Permitted Use"), and for no other purpose. This is a mixed use, with 18,957 square feet of water-dependent use and 7,467 square feet of nonwater-dependent use. Exhibit B describes the Permitted Use in detail. The Permitted Use is subject to additional obligations in Exhibit B.

2.2 Restrictions on Permitted Use and Operations. The following limitations apply to the Property and adjacent state-owned aquatic land. Licensee's compliance with the following does not limit Licensee's liability under any other provision of this Permit.

(a) Licensee shall not cause or permit:
  (1) Damage to natural resources,
  (2) Waste, or
  (3) Deposit of material, unless approved by State in writing and except to the extent expressly permitted in Exhibit B. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.

(b) The Permitted Use and Licensee's operations are subject to Washington Administrative Code (WAC) 332-30-117, as amended.

(c) Licensee shall not construct new bulkheads or place hard bank armoring.

(d) Licensee shall not construct or install new covered moorage or boat houses.

(e) Unless approved by State in writing and except as expressly permitted in Exhibit B, Licensee shall not cause or permit dredging on the Property. State will not approve dredging unless (1) required for flood control, maintenance of existing vessel traffic lanes, or maintenance of water intakes and (2) consistent with State's management plans, if any. Licensee shall maintain authorized dredge basins in a manner that prevents internal deeper pockets.

2.3 Conformance with Laws. Licensee shall, at all times, keep current and comply with all conditions and terms of permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Licensee's use or occupancy of the Property.

2.4 Liens and Encumbrances. Unless expressly authorized by State in writing, Licensee shall keep the Property free and clear of liens or encumbrances arising from the Permitted Use or Licensee's occupancy of the Property.

SECTION 3 TERM

3.1 Term Defined. The term of this Permit is two (2) years (the "Term"), beginning on the 1st day of July**,** 2020 (the "Commencement Date"), and ending on the 30th day of June**,** 2022 (the "Termination Date"), unless revoked or terminated sooner under the terms of this Permit.

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3.2 Renewal of the Permit. This Permit does not provide a right of renewal. Licensee may apply for a new Permit, which State has discretion to grant. Licensee must apply for a new Permit at least one (1) year prior to Termination Date. State shall notify Licensee within ninety (90) days of its intent to approve or deny a new Permit.

3.3 End of Term.

(a) Upon the revocation, expiration, or termination of this Permit, Licensee shall remove Improvements in accordance with Section 7, Improvements, and surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

(b) Definition of Reasonable Wear and Tear.

(1) Reasonable wear and tear is deterioration resulting from the Permitted Use that has occurred without neglect, negligence, carelessness, accident, or abuse of the Property by Licensee or any other person on the premises with the permission of Licensee.

(2) Reasonable wear and tear does not include unauthorized deposit of material prohibited under Paragraph 2.2 and regardless of whether the deposit is incidental to or the byproduct of the Permitted Use.

(c) If Property is in worse condition, excepting for reasonable wear and tear, on the surrender date than on the Commencement Date, the following provisions apply.

(1) State shall provide Licensee a reasonable time to take all steps necessary to remedy the condition of the Property. State may require Licensee to enter into a right-of-entry or other use authorization prior to the Licensee entering the Property if the Permit has terminated.

(2) If Licensee fails to remedy the condition of the Property in a timely manner, State may take steps reasonably necessary to remedy Licensee's failure. Upon demand by State, Licensee shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of any material deposited improperly on the Property, lost revenue resulting from the condition of the Property, and administrative costs associated with State's remedy.

3.4 Remaining on the Property after the Termination Date.

(a) If Licensee remains on the Property after the Termination Date, the occupancy will not be an extension or renewal of the Permit. The occupancy will be a month-to-month occupancy, on terms identical to the terms of this Permit, which either Party may terminate on thirty (30) days' written notice.

(1) The monthly fee after the Termination Date will be the same fee that would be due if the Permit were still in effect and all adjustments in the fee were made in accordance with its terms.

(2) Payment of more than the monthly fee will not be construed to create a periodic occupancy longer than month-to-month. If Licensee pays more than the monthly fee and State provides notice to vacate the property, State shall refund the amount of excess payment remaining after the Licensee ceases occupation of the Property.

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(b) If State notifies Licensee to vacate the Property and Licensee fails to do so within the time set forth in the notice, Licensee will be a trespasser and shall owe the State all amounts due under RCW 79.02.300 or other applicable law.

SECTION 4 FEES

4.1 Fees

(a) Until adjusted as set forth below, Licensee shall pay to State an annual fee of Fifty-Eight Thousand One Hundred Thirty-Five Dollars and Ninety-Two Cents ($58,135.92), consisting of Eleven Thousand Two Hundred Seventy-One Dollars and Fifty-Eight Cents ($11,271.58) related to the water-dependent use and Forty-Six Thousand Eight Hundred Sixty-Four Dollars and Thirty-Four Cents ($46,864.34) related to the nonwater-dependent use.

(b) The annual fee, as it currently exists or as adjusted or modified (the "Annual fee"), is due and payable in full on or before the Commencement Date and on or before the same date of each year thereafter. Any payment not paid by State's close of business on the date due is past due.

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

4.3 Adjustment Based on Use. Annual Fee is based on Licensee's Permitted Use of the Property, as described in Section 2 above. If Licensee's Permitted Use changes, the Annual Fee shall be adjusted as appropriate for the changed use.

4.4 Annual Fee Adjustment Procedures.

(a) Notice of Fee Adjustment. State shall provide notice of any adjustments to the Annual Fee allowed under Paragraphs 4.5/4.6(b) to Licensee in writing no later than ninety (90) days after the anniversary date of the Permit.

(b) Procedures on Failure to make Timely Adjustment. If the State fails to provide the notice required in Paragraph 4.4(a), State shall not collect the adjustment amount for the year in which State failed to provide notice. Upon providing notice of adjustment, State may adjust and prospectively bill Annual Fee as if any missed or waived adjustments had been implemented at the proper interval. This includes the implementation of any inflation adjustment.

4.5 Fee Adjustments for Water-Dependent Uses.

(a) Inflation Adjustment. State shall adjust water-dependent fee annually for inflation, except in those years in which State revalues the fee under Paragraph 4.5(b) below. This adjustment will be effective on the anniversary of the Commencement Date.

(b) Revaluation of Fee. At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the water-dependent Annual Fee consistent with the procedure that State follows for revaluing water-dependent leases under RCW 79.105.240.

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4.6 Fee Adjustments for Nonwater-Dependent Uses.

(a) Inflation Adjustment. Except in those years in which State revalues the rent under Paragraph 4.5(b) below, State shall adjust nonwater-dependent rent annually on the Commencement Date. Adjustment is based on the percentage rate of change in the previous calendar year's Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Commerce, for the Seattle-Tacoma-Bremerton CMSA, All Urban Consumers, all items 1982-84 = 100. If publication of the Consumer Price Index is discontinued, State shall use a reliable governmental or other nonpartisan publication evaluating the information used in determining the Consumer Price Index.

(b) Revaluation of Fees.

(1) At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the nonwater-dependent Annual Fee to reflect the then-current fair market value.

(2) If State and Licensee cannot reach agreement on the fair market value, the fair market value shall be set by appraisal conducted by a qualified appraiser licensed in the State of Washington. The appraisal must comply with the Uniform Standards of Professional Appraisal Practice (USPAP), RCW 79.105.270 and WAC 332-30-125(3). No sooner than one year and no later than six months before the end of the first four-year period of the Term, and of each subsequent four-year period, State shall select an appraiser that is acceptable to both parties from State's pool of qualified expert independent appraisers, or, if no pool of qualified appraisers exists, through a request for proposal (RFP) for appraisal services consistent with State contracting requirements. Licensee will have the opportunity to review and comment on the RFP. Both State and Licensee shall be identified as co-clients and intended users and will share the costs equally for the appraisal. The Statement of Work (SOW) for the appraisal assignment shall be as set forth in Exhibit C. State shall contact Licensee to discuss appraisal bids before selecting an appraisal firm. For thirty days following the receipt of the initial appraisal report, Licensee and State will each have an opportunity to review the appraisal report and jointly submit, through State, comments to the appraiser for clarification or correction of any of the report's content or conclusions. The objective of State and Licensee is to have an acceptable appraisal report. The appraiser shall use the appraiser's independent professional judgment regarding the contents and conclusions of the final appraisal report which shall be issued no later than 30 days after State submits the joint comments of the parties on the draft appraisal report. State and Licensee will be responsible for their own review costs.

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SECTION 5 OTHER EXPENSES

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

5.2 Taxes and Assessments. Licensee shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges, applicable or attributable to the Property, the improvements, or Licensee's use and enjoyment of the Property.

5.3 Right to Contest. If in good faith, Licensee may contest any tax or assessment at its sole cost and expense. At the request of State, Licensee shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against loss or liability resulting from such contest.

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

5.5 Failure to Pay. If Licensee fails to pay amounts due under this Permit, State may pay the amount due, and recover its cost in accordance with Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Failure to Pay Fee. Failure to pay fees is a default by the Licensee. State may seek remedies under Section 14 as well as late charges and interest as provided in this Section 6.

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

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

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

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

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

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

6.6 No Counterclaim, Setoff, or Abatement of Fees. Except as expressly set forth elsewhere in this Permit, Licensee shall pay fees and all other sums payable by Licensee without the requirement that State provide prior notice or demand. Licensee's payment is not subject to counterclaim, setoff, deduction, defense or abatement.

SECTION 7 IMPROVEMENTS

7.1 Improvements Defined.

(a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, structures and fixtures.

(b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property, or Improvements or (2) diminishing the value or utility of the Property, or Improvements.

(c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Licensee.

(d) "Licensee-Owned Improvements" are Improvements authorized by State and (1) made by Licensee or (2) acquired by Licensee from a previous occupant of the Property.

(e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Licensee that do not conform to plans submitted to and approved by the State.

(f) "Improvements Owned by Others" are Improvements made by Others with a right to occupy or use the Property or adjacent state-owned lands.

7.2 Existing Improvements. On the Commencement Date, the following Improvements are located on the Property: the landward portion of the Property is filled and fenced; dock with timber pile support; ramp with concrete support; concrete float; holding pen enclosed by a log boom and a concrete boat ramp. The Improvements are Licensee-Owned Improvements.

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7.3 Construction, Major Repair, Modification, and Demolition.

(a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, demolition and deconstruction of Improvements ("Work"). Section 11 governs routine maintenance and minor repair.

(b) All Work must conform to requirements under Paragraph 7.4. Paragraph 11.3, which applies to routine maintenance and minor repair, also applies to all Work under this Paragraph 7.3.

(c) Except in an emergency, Licensee shall not conduct Work**,** without State's prior written consent, which State will not unreasonably withhold.

(1) Except in an emergency, Licensee shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Licensee and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Licensee shall submit plans and specifications at least ninety (90) days before commencement of Work.

(2) State waives the requirement for consent if State does not notify Licensee of its grant or denial of consent within sixty (60) days of submittal.

(3) In determining whether to consent State may consider, among other items, (i) whether proposed Work would change the Permitted Use, expand overwater structures, or expand non-water dependent uses; (ii) the value of the Improvements before and after the proposed Work; (iii) such other factors as may reasonably bear upon the suitability of the Improvements to provide the public benefits identified in RCW 79.105.030 in light of the proposed Work.

(4) If the proposed Work does not comply with Paragraphs 7.4 and 11.3 State may nonetheless consent to the Work in writing or deny its consent or condition its consent on changes to the Work or Permit reasonably intended to protect and preserve the Property. If Work is for removal of Improvements at End of Term, State may waive removal of some or all Improvements.

(d) Licensee shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Licensee shall provide State with plans and specifications or as-built of emergency Work.

(e) Licensee shall not commence or authorize Work until Licensee has:

(1) Obtained a performance and payment bond in an amount equal to zero percent (0 %) of the estimated cost of construction. Licensee shall maintain the performance and payment bond until Licensee pays in full the costs of the Work, including all laborers and material persons. In lieu of a performance and payment bond Licensee may provide documentation satisfactory to DNR that sufficient expenditure allowances for the Work have been (i) made in the Licensee's Capital Improvement Program and budget adopted by Licensee's City Council and (ii) allocated to the Work.

(2) Obtained all required permits.

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(f) Before completing Work, Licensee shall remove all debris and restore the Property to an orderly and safe condition. If Work is intended for removal of Improvements at End of Term, Licensee shall restore the Property in accordance with Paragraph 3.3, End of Term.

(g) Upon completing work, Licensee shall promptly provide State with as-built plans and specifications.

(h) State shall not charge rent for authorized Improvements installed by Licensee during this Term of this Permit. State may charge rent for such Improvements when and if the Licensee or successor obtains a subsequent use authorization for the Property and State has waived the requirement for Improvements to be removed as provided in Paragraph 7.5. If, however, the laws and regulations in effect at the time of such subsequent use authorization permit Licensee to use the Property without paying rent for the purposes identified in the subsequent use authorization, State will not charge rent for use of the Improvements during the term of the subsequent use authorization.

7.4 Standards for Work.

(a) Applicability of Standards for Work

(1) The standards for Work in Paragraph 7.4(b) apply to Work commenced in the five year period following the Commencement Date. Work has commenced if State has approved plans and specifications.

(2) If Licensee undertakes Work five years or more after the Commencement Date, Licensee shall comply with State's then current standards for Work.

(3) At Licensee's option, Licensee may ascertain State's current standards for Work as follows:

(i) Before submitting plans and specifications for State's approval as required by Paragraph 7.3 of the Permit, Licensee shall request State to provide Licensee with then current standards for Work on State-owned Aquatic Lands.

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

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

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

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(b) Standards for Work.

(1) Licensee shall not conduct in-water Work during time periods prohibited for such work under WAC 220-110-271, Prohibited Work Times in Saltwater, as amended, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW).

(2) Licensee shall use embedded anchors and midline floats on all anchored structures and buoys.

(3) Licensee shall install unobstructed grating over at least 50 percent of the surface area of all new floats, piers, fingers, docks, and gangways; grating material must have at least 60 percent unobstructed open space.

(4) Regardless of new construction or rebuilding an existing ramp, Licensee shall construct boat ramps and launches to minimize:

(i) Interruption of longshore current,

(ii) Alteration of existing sediment transport mechanisms (wave energy, longshore current, or other), and

7.5 Licensee-Owned Improvements at Termination of Permit.

(a) Disposition

(1) Licensee shall remove Licensee-Owned Improvements in accordance with Paragraph 7.3 upon the expiration, termination, or cancellation of the Permit unless State waives the requirement for removal.

(2) Licensee-Owned Improvements remaining on the Property on the expiration, termination or cancellation date become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.

(3) If Licensee-Owned Improvements remain on the Property after the expiration, termination, or cancellation date without State's consent, State may remove all Improvements and Licensee shall pay State's costs of removal and disposal.

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

(1) State may waive removal of some or all Licensee-Owned Improvements whenever State determines that it is in the best interests of the State and regardless of whether Licensee renews the Permit or enters into a new Permit.

(2) If Licensee renews the Permit or enters into a new Permit, State may waive requirement to remove Licensee-Owned Improvements. State also may consent to Licensee's continued ownership of Licensee-Owned Improvements.

(3) If Licensee does not renew the Permit or enter into a new Permit, State may waive requirement to remove Licensee-Owned Improvements upon consideration of a timely request from Licensee, as follows:

(i) Licensee must notify State at least one (1) year or other before the Termination Date of its request to leave Licensee-Owned Improvements.

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(ii) State, within ninety (90) days of receiving Licensee's notification, will notify Licensee whether State consents to some or all Licensee-Owned Improvements remaining. State has no obligation to grant consent.

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

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

(1) Licensee shall not remove Improvements if State waives the requirement for removal of some or all Licensee-Owned Improvements.

(2) Licensee shall maintain such Improvements in accordance with this Permit until the expiration, termination, or cancellation date. Licensee is liable to State for cost of repair if Licensee causes or allows damage to Improvements State has designated to remain.

7.6 Disposition of Unauthorized Improvements.

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

(b) State may either:

(1) Consent to Licensee ownership of the Improvements, or

(2) Charge use and occupancy fee in accordance with RCW 79.105.200 for the Improvements from the time of installation or construction and

(i) Require Licensee to remove the Improvements in accordance with Paragraph 7.3, in which case Licensee shall pay use and occupancy fee for the Improvements until removal,

(ii) Consent to Improvements remaining and Licensee shall pay use and occupancy fee for the use of the Improvements, or

(iii) Remove Improvements and Licensee shall pay for the cost of removal and disposal, in which case Licensee shall pay use and occupancy fee for use of the Improvements until removal and disposal.

7.7 Disposition of Personal Property.

(a) Licensee retains ownership of Personal Property unless Licensee and State agree otherwise in writing.

(b) Licensee shall remove Personal Property from the Property by the Termination Date. Licensee is liable for damage to the Property and to any Improvements resulting from removal of Personal Property.

(c) State may sell or dispose of all Personal Property left on the Property after the Termination Date.

(1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Licensee to the State, and State shall pay the remainder, if any, to the Licensee.

(2) If State disposes of Personal Property, Licensee shall pay for the cost of removal and disposal.

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SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

(a) "Hazardous Substance" means any substance that is now regulated or in the future becomes regulated under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*; Washington's Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW ; Washington's Sediment Management Standards, WAC Chapter 173-204; the Washington Clean Water Act, RCW 90.48, and associated regulations; and the federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and associated regulations, including future amendments to those laws and regulations.

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

(c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care established under MTCA, RCW 70.105D.040.

8.2 General Conditions.

(a) Licensee's obligations under this Section 8 extend to the area in, on, under, or above:

(1) The Property and

(2) Adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances may arise from Licensee's use of the Property.

(b) Standard of Care.

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

(2) In relation to the Permitted Use, Licensee 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, including – but not limited to – RCW 70.105D.040.

8.3 Current Conditions and Duty to Investigate.

(a) State makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under, or above the Property or adjacent state-owned lands.

(b) This Permit does not impose a duty on State to conduct investigations or supply information to Licensee about Hazardous Substances, provided, however, this Permit does not alter State's obligations to respond to requests for public documents under the Public Records Act, RCW 42.56. State will cooperate with Licensee's requests for public records and endeavor to provide the requested records promptly.

(c) Licensee is responsible for conducting sufficient inquiries and gathering sufficient information concerning the Property and the existence, scope, and location of any Hazardous Substances on the Property or on adjacent lands to allow Licensee to meet Licensee's obligations under this Permit.

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8.4 Use of Hazardous Substances.

(a) Licensee, its contractors, agents, employees, guests, invitees, or affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.

(b) Licensee shall not undertake, or allow others to undertake by Licensee's permission, acquiescence, or failure to act, activities that:

(1) Result in a release or threatened release of Hazardous Substances, or

(2) Cause, contribute to, or exacerbate any contamination exceeding regulatory cleanup standards whether the regulatory authority requires cleanup before, during, or after Licensee's use of the Property.

(c) If use of Hazardous Substance related to the Permitted Use results in a violation of an applicable law Licensee shall submit to State any plans for remedying the violation and cleanup any contamination as required under Section 8.9.

8.5 Management of Contamination.

(a) Licensee, its contractors, agents, employees, guests, invitees, or affiliates shall not undertake activities that damage or interfere with the operation of remedial or restoration activities on the Property.

(b) Licensee shall take reasonable steps to avoid or reduce: human or environmental exposure to contaminated sediments and mechanical or chemical disturbance of on-site habitat mitigation. For purposes of this Subsection 8.5(b) reasonable steps may include access restrictions, fish consumption advisories, and use restrictions and advisories for water bodies.

(c) Licensee, its contractors, agents, employees, guests, invitees, or affiliates shall not interfere with access by:

(1) Employees and authorized agents of the Environmental Protection Agency, 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 Property. Licensee may negotiate an access agreement with such parties, but Licensee may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

(a) Licensee shall immediately notify State if Licensee becomes aware of any of the following:

(1) A release or threatened release of Hazardous Substances that Licensee reports or is required to report to the Washington Department of Ecology;

(2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence or release of any Hazardous Substance;

(3) Any lien or regulatory action arising from the foregoing;

(4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;

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(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 Property.

(b) Licensee's duty to report under Paragraph 8.6(a) extends to the Property, adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances arises from the Licensee's use of the Property, and any other property used by Licensee in conjunction with Licensee's use of the Property where a release or the presence of Hazardous Substances on the other property would affect the Property.

(c) Licensee shall provide State with copies of all documents concerning environmental issues associated with the Property, and submitted by Licensee to any federal, state or local authorities. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollution Discharge and Elimination System Permits (NPDES); Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality certification; Substantial Development permit; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

8.7 Indemnification.

(a) "Liabilities" as used in this Subsection 8.7 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments that are asserted by third parties against Grantor or that are incurred by Grantor in order to comply with applicable laws and regulations.

(b) Licensee shall fully indemnify, defend, and hold State harmless 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 Licensee, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees occurring anytime Licensee uses or has used the Property;

(2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination resulting from any act or omission of Licensee, its contractors, agents, employees, guests, invitees, or affiliates occurring anytime Licensee uses or has used the Property.

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

(d) Third Parties.

(1) Licensee has no duty to indemnify State for acts or omissions of third parties unless Licensee fails to exercise the standard of care required by Paragraph 8.2(b)(2). Licensee's third-party indemnification duty arises under the conditions described in Subparagraph 8.7(d)(2).

(2) If an administrative or legal proceeding arising from a release or threatened release of Hazardous Substances finds or holds that Licensee failed to exercise care as described in Subparagraph 8.7(d)(1), Licensee shall fully indemnify, defend, and hold State harmless from and against

any liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances. This includes any liabilities arising before the finding or holding in the proceeding.

(e) Licensee is obligated to indemnify under the Subsection 8.7 regardless of whether a permit or license authorizes the discharge or release of Hazardous Substances.

(f) Licensee's obligations under this indemnity provision shall not exceed the appropriation authorized at the time Licensee must fulfill its indemnity obligations and nothing in this Permit may be considered as insuring that Licensee will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the Licensee's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

8.8 Reservation of Rights.

(a) For any environmental liabilities not covered by the indemnification provisions of Subsection 8.7 or the cleanup provisions of Section 8.9, 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 that either Party may have against the other under law.

(b) This Permit affects no right, claim, immunity, or defense either Party may have against third parties, and the Parties expressly reserve all such rights, claims, immunities, and defenses.

(c) The provisions under this Section 8 do not benefit, or create rights for, third parties.

(d) The allocations of risks, liabilities, and responsibilities set forth above do not release either Party from, or affect the liability of either Party for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

8.9 Cleanup.

(a) If Licensee's Permitted Use, or Licensee's breach of its obligations under this Permit, results in contamination of the Property with Hazardous Substances, Licensee shall, at Licensee's sole expense, promptly take all actions necessary to report, investigate and remediate the Hazardous Substances in accordance with applicable law. Remedial actions may include, without limitation, treatment, removal, and containment.

(b) Licensee's obligation to undertake a cleanup under Section 8 is limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards under Environmental Laws.

(c) Licensee shall cooperate with the Department of Natural Resources in development of plans for remedial actions and Licensee shall not proceed with remedial actions without Department of Natural Resources approval of final

plans, which shall not be unreasonably withheld, unless Licensee is ordered to proceed by a court or a regulatory agency with jurisdiction. Licensee's completion of remedial actions is not an implied release from or waiver of any obligation for Hazardous Substances under this Permit.

8.10 Sampling by State, Reimbursement, and Split Samples.

(a) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.

(b) If such Tests, along with any other information, demonstrate the existence, release, or threatened release of Hazardous Substances arising out of Licensee's Permitted Use or any violation of Licensee's obligations under this Lease, Licensee shall promptly reimburse State for all costs associated with such Tests.

(c) State shall not seek reimbursement for any Tests under this Subsection 8.10 unless State provides Licensee written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, except when such Tests are in response to an emergency. Licensee shall reimburse State for Tests performed in response to an emergency if State has provided such notice as is reasonably practical and Licensee would be required to reimburse State under section (b).

(d) Licensee is entitled to observe State's collection of samples and obtain split samples of any Test samples obtained by State, but only if Licensee provides State with written notice requesting such samples within twenty (20) calendar days of the date of Licensee's receipt of notice of State's intent to conduct any non-emergency Tests. Licensee solely shall bear the additional cost, if any, of split samples. Licensee shall reimburse State for any additional costs caused by split sampling within thirty (30) calendar days after State sends Licensee a bill with documentation for such costs.

(e) Within sixty (60) calendar days of a written request (unless otherwise required pursuant to Paragraph 8.6(c), above), either Party to this Permit 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 Property performed by or on behalf of State or Licensee . There is no obligation to provide any analytical summaries or the work product of experts.

SECTION 9 ASSIGNMENT

9.1 State Consent Required. Licensee shall not assign, convey, or transfer any right granted under this Agreement without State's prior written consent, which State shall not unreasonably condition or withhold.

(a) Licensee shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.

(b) State reserves the right to condition its consent upon:

(1) Changes in the terms and conditions of this Agreement, including, but not limited to, the Annual Fees; and/or

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(2) The agreement of Licensee or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Licensee or the transferee.

(c) Each permitted transferee shall assume all obligations under this Permit, including the payment of fees. No assignment, sublicense, or transfer shall release, discharge, or otherwise affect the liability of Licensee.

(d) State's consent under this Paragraph 9.1 does not constitute a waiver of any claims against Licensee for the violation of any term of this Permit.

9.2 Payments Following Assignment. The acceptance by State of the payment of fees following an assignment or other transfer does not constitute consent to any assignment or transfer.

9.3 Terms of Sublicenses.

(a) Licensee shall submit the terms of all sublicenses to State for approval.

(b) Licensee shall incorporate the following requirements in all sublicenses:

(1) The sublicense must be consistent with and subject to all the terms and conditions of this Permit;

(2) The sublicense must provide that this Permit controls if the terms of the sublicense conflict with the terms of this Permit;

(3) The term of the sublicense (including any period of time covered by a renewal option) must end before the Termination Date of the initial Term or any renewal term;

(4) The sublicense must terminate if this Permit terminates for any reason;

(5) The Sublicensee must receive and acknowledge receipt of a copy of this Permit;

(6) The sublicense must prohibit the prepayment to Licensee by the Sublicensee of more than the annual fees;

(7) The sublicense must identify the fee amount Sublicensee is to pay to Licensee;

(8) The sublicense must provide that there is no privity of contract between the Sublicensee and State;

(9) The sublicense must require removal of the Sublicensee's Improvements and trade fixtures upon termination of the sublicense;

(10) The Sublicensee's permitted use must be within the scope of the Permitted Use; and

(11) The sublicense must require the Sublicensee to meet all obligations of Licensee under Section 10, Indemnification, Financial Security, and Insurance.

9.4 Short-Term Sublicenses of Moorage Slips. Short-term sublicensing of moorage slips for a term of less than one year does not require State's written consent or approval pursuant to Paragraphs 9.1 or 9.3. Licensee shall conform moorage sublicense agreements to the sublicense requirements in Paragraph 9.3.

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SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity.

(a) Licensee shall indemnify, defend, and hold State, its employees, officers, and agents harmless from any and all Claims arising out of the use, occupation, or control of the Property by Licensee, its Sublicensee, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.

(b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Property and damages resulting from loss of use of the Property.

(c) State shall not require Licensee to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.

(d) Licensee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.

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

(f) Licensee's obligations under this indemnity provision shall not exceed the appropriation authorized at the time Licensee must fulfill its indemnity obligations and nothing in this Permit may be considered as insuring that Licensee will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the Licensee's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

10.2 Insurance Terms.

(a) Insurance Required.

(1) Licensee certifies that it is self-insured for all the liability exposures, including but not limited to employers' liability and business auto liability, and its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 10.2 and by Paragraph 10.3, Insurance Types and Limits. Licensee shall provide to State evidence of its status as a self-insured entity. Upon request by State, Licensee shall provide a written description of its financial condition and/or the self-insured funding mechanism. Licensee shall provide State with at least thirty (30) days' written notice prior to any material changes to Licensee's self-insured funding mechanism.

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(2) All self-insurance provided in compliance with this Permit must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

(b) Waiver.

(1) Licensee waives all rights against State for recovery of damages to the extent self-insurance maintained pursuant to this Permit covers these damages.

(2) Except as prohibited by law, Licensee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by self-insurance maintained pursuant to this Permit.

(c) Proof of Insurance.

(1) Licensee shall provide State with a certification of self-insurance executed by a duly authorized representative of Licensee, showing compliance with insurance requirements specified in this Permit.

(2) The certification of self-insurance must reference the Permit number.

(3) Receipt of such certification of self-insurance or policies by State does not constitute approval by State of the terms of such self-insurance or policies.

(d) Licensee must provide State no less than 30 days' notice if Licensee's self-insurance program is cancelled or materially reduced.

(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) Licensee shall provide a certification that meets the requirements of Section 10.2(c)(1) and demonstrates coverage in compliance with the Permit within thirty (30) days after State requires changes in the limits of liability.

(f) If Licensee fails to provide the certification described above within fifteen (15) days after Licensee receives a notice to comply from State, State may either:

(1) Deem the failure an Event of Default under Section 14, or

(2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Licensee shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.2 from the date of State's notice of the expenditure until Licensee's repayment.

(g) General Terms.

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

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

(3) The Parties shall use any insurance funds available by reason of damage or destruction to property first to restore the real property covered by this Permit, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Licensee.

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10.3 Insurance Types and Limits.

(a) General Liability Insurance.

(1) Licensee shall maintain self-insurance that is equivalent to commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Licensee's use, occupation, or control of the Property with a limit of not less than Two Million Dollars ($2,000,000) per each occurrence and an aggregate limit of not less than twice the limit established for each occurrence. Self-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).

(b) Workers' Compensation.

(1) State of Washington Workers' Compensation.

(i) Licensee shall comply with all State of Washington workers' compensation statutes and regulations. Licensee shall provide workers' compensation coverage for all employees of Licensee. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Licensee's use, occupation, and control of the Property.

(ii) If Licensee 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, Licensee shall indemnify State. Indemnity shall include all fines; payment of benefits to Licensee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.

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

(c) Employers' Liability Insurance. Licensee shall maintain self-insurance that is equivalent to employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than Two Million Dollars ($2,000,000) each accident for bodily injury by accident or Two Million Dollars ($2,000,000) each employee for bodily injury by disease.

(d) Property Insurance.

(1) Licensee shall maintain insurance or self-insurance that is equivalent to property insurance covering all real property and fixtures, equipment, improvements and betterments (regardless of whether owned by Licensee or State). Such insurance or self-insurance must cover the perils that

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would be insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured.

(2) Licensee shall maintain insurance or self-insurance that is equivalent to boiler and machinery insurance required by contract documents or by law, covering all real property and fixtures, equipment, improvements and betterments (regardless of whether owned by Licensee or State) from loss or damage caused by the explosion of boilers, fired or unfired vessels, electric or steam generators, or pipes.

(3) In the event of any loss, damage, or casualty covered by one or more of the types of insurance described above, the Parties to this Permit shall cooperate to settle the loss and apply insurance funds according to the terms of this Permit. The Parties shall use insurance funds in accordance with Paragraph 10.2(g)(3).

(4) Unless the parties agree otherwise in writing, 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 building(s) and/or Improvements to their former condition, or

(ii) Replace and restore damaged building(s) and/or Improvements with a new building(s) and/or Improvements on the Property of a quality and usefulness at least equivalent to or more suitable than, damaged building(s) and/or Improvements.

(e) Builder's Risk Insurance.

(1) Licensee 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 building and/or Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Licensee, all contractors, and subcontractors in the work as loss payees. State also must be named an additional loss payee.

(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 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 Property but intended for use at the Property, and portions of the work in transit;

(iv) Scaffolding, falsework, and temporary buildings located on the Property; and

(v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.

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(3) Licensee or Licensee'(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) Licensee or Licensee'(s) contractor shall buy and maintain boiler and machinery insurance required by contract documents or by law, 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 Licensee, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Paragraph 10.2(a)(3).

(f) Business Auto Policy Insurance.

(1) Licensee shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance with a limit not less than Two Million Dollars ($2,000,000) per accident, or self-insurance with equivalent coverage. Such insurance or self-insurance must cover liability arising out of "Any Auto" and be equivalent to coverage written on ISO Form CA 00 01, and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

(g) Protection and Indemnity Insurance (P&I). Licensee shall maintain self-insurance that is equivalent to P&I insurance including hull coverage. This self-insurance must cover all claims with respect to injuries or damages to persons or property, including nets and fishing lines, sustained in, on, or about the Property, including while at a marina and in transit, with limits of liability not less than Two Million Dollars ($2,000,000). If necessary, Licensee shall maintain self-insurance that is equivalent to commercial umbrella liability insurance covering claims for these risks.

10.4 Financial Security.

(a) At its own expense, Licensee shall procure and maintain during the Term of this Permit a corporate security bond or provide other financial security that State, at its option, may approve ("Security"). Licensee shall provide Security in an amount equal to Zero Dollars ($0), which is consistent with RCW 79.105.330, and secures Licensee's performance of its obligations under this Permit, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Licensee's failure to maintain the Security in the required amount during the Term constitutes a breach of this Permit.

(b) All Security must be in a form acceptable to the 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 Best's Reports, unless State approves an exception. Licensee 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.*

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(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) At the same time as revaluation of the Annual Fees,

(ii) As a condition of assignment of this Agreement,

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

(iv) Upon a change in the Permitted Use.

(2) Licensee 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 default by Licensee in its obligations under this Permit, State may collect on the Security to offset the liability of Licensee to State. Collection on the Security does not (1) relieve Licensee of liability, (2) limit any of State's other remedies, (3) reinstate or cure the default or (4) prevent termination of the Permit because of the default.

SECTION 11 ROUTINE MAINTENANCE AND REPAIR

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

11.2 Licensee's Repairs and Maintenance.

(a) Routine maintenance and repair are acts intended to prevent a decline, lapse or, cessation of the Permitted Use and associated Improvements. Routine maintenance or repair is the type of work that does not require regulatory permits.

(b) At Licensee's own expense, Licensee shall keep and maintain the Property and all Improvements in good order and repair and in a safe condition. State's consent is not required for routine maintenance or repair.

(c) At Licensee's own expense, Licensee shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any Improvements on the Property that any public authority may require. If a public authority requires work beyond the scope of routine maintenance and repair, Licensee shall comply with Section 7 of this Permit.

11.3 Limitations. The following limitations apply whenever Licensee conducts maintenance, repair or replacement.

(a) Licensee shall not use or install treated wood at any location above or below water, except that Licensee may use treated wood for above water structural framing.

(b) Licensee shall not use or install tires (for example, floatation or fenders) at any location above or below water.

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(c) Licensee shall install only floatation material encapsulated in a shell resistant to ultraviolet radiation and abrasion. The shell must be capable of preventing breakup and loss of flotation material into the water.

(d) Licensee shall orient night lighting to minimize the amount of light shining directly on the water.

(e) Licensee shall not allow new floating structures to come in contact with underlying tidelands ("ground out"). Licensee must either (1) locate all new floating structures in water too deep to permit grounding out or (2) install stoppers sufficient to maintain a distance of at least 1.5 feet (0.5 meters) between the bottom of the floats and the substrate.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

(a) In the event of damage to or destruction of the Property or Improvements, Licensee shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction without Licensee's written notice.

(b) Unless otherwise agreed in writing, Licensee shall promptly reconstruct, repair, or replace the Property and any Improvements as nearly as possible to its condition immediately prior to the damage or destruction in accordance with Paragraph 7.3, Construction, Major Repair, Modification, and Demolition and Licensee's additional obligations in Exhibit B, if any.

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

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

12.4 Fees in the Event of Damage or Destruction. Unless the Parties agree to adjust or abate the fees, there is no abatement or reduction in fees during reconstruction, repair, or replacement of Improvements.

12.5 Default at the Time of Damage or Destruction. If Licensee is in default under the terms of this Permit at the time damage or destruction occurs, State may elect to terminate the Permit and State then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

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SECTION 13 CONDEMNATION

In the event of condemnation, the Parties shall allocate the award between State and Licensee based upon the ratio of the fair market value of (1) Licensee's right to use the Property and Licensee-Owned Improvements and (2) State's interest in the Property; the reversionary interest in Licensee-Owned Improvements, if any; and State-Owned Improvements. In the event of a partial taking, the Parties shall compute the ratio based on the portion of Property or Improvements taken. If Licensee and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 DEFAULT, REMEDIES, AND TERMINATION

14.1 Default Defined. Licensee is in default of this Permit on the occurrence of any of the following:

(a) Failure to pay Annual Fee or other expenses when due;
(b) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
(c) Failure to comply with any other provision of this Permit;
(d) Commencement of bankruptcy proceedings by or against Licensee or the appointment of a trustee or receiver of Licensee's property.

14.2 Licensee's Right to Cure.

(a) A default becomes an "Event of Default" if Licensee fails to cure the default within the applicable cure period following State's written notice of default. Upon an Event of Default, State may seek remedies under Paragraph 14.3.
(b) Unless expressly provided elsewhere in this Permit, the cure period is ten (10) days for failure to pay fees or other monetary defaults; for other defaults, the cure period is thirty (30) days. State may extend the cure period for nonmonetary defaults if the default is not reasonably capable of cure within sixty (60) days.

14.3 Remedies.

(a) Upon an Event of Default, State may revoke or cancel this Permit. State shall provide Licensee sixty (60) days' notice of cancellation.
(b) If the Event of Default (1) arises from Licensee's failure to comply with restrictions on Permitted Use and operations under Paragraph 2.2 or (2) results in damage to natural resources or the Property, State may enter the Property without terminating this Permit to (1) restore the natural resources or Property and charge Licensee restoration costs and/or (2) charge Licensee for damages. On demand by State, Licensee shall pay all costs and/or damages.
(c) State's reentry or repossession of the Property under Paragraph 14.3 is not an election to terminate this Permit or cause a forfeiture of fees or other charges Licensee is obligated to pay during the balance of the Term, unless (1) State gives Licensee written notice of termination or (2) a legal proceeding decrees termination.

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(d) The remedies specified under this Paragraph 14.3 are not exclusive of any other remedies or means of redress to which the State is lawfully entitled for Licensee's breach or threatened breach of any provision of this Permit.

14.4 Termination without Default

(a) State may revoke or cancel this Permit without cause upon at least ninety (90) days' notice if State determines cancellation is necessary and in the best interests of State or a court of competent jurisdiction determines that Licensee's occupation of the area is contrary to law.

(b) If State cancels Permit without default, Licensee is entitled to refund of fee paid for any period beyond the Termination Date.

(c) If the State revokes or cancels the Permit, the date of revocation or cancellation is the Termination Date.

SECTION 15 ENTRY BY STATE

State retains full possessory rights, including the right of access to the Property for all purposes. State will exercise its right of access in a manner that will not unreasonably interfere with Licensee's Permitted Use of the Property. Licensee grants State permission to cross Licensee's upland property to access the Property.

SECTION 16 DISCLAIMER

16.1 No Guaranty or Warranty.

(a) State believes that this Permit is consistent with the Public Trust Doctrine and that none of the third-party interests identified in Paragraph 1.1(b) will materially or adversely affect Licensee's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.

(b) State disclaims and Licensee releases State from any claim against State for any interference by others. This disclaimer and release includes, but is not limited to, interference arising from exercise of rights under the Public Trust Doctrine; Treaty rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands and navigable waters.

(c) Licensee is responsible for determining the extent of Licensee's right to possession and for defending Licensee's occupancy of the Property.

16.2 Eviction by Third-Party. If a third-party evicts Licensee, this Permit terminates as of the date of the eviction. In the event of a partial eviction, Licensee's payment obligations abate as of the date of the partial eviction, in direct proportion to the extent of the eviction; this Permit shall remain in full force and effect in all other respects.

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SECTION 17 NOTICE AND SUBMITTALS

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

STATE: DEPARTMENT OF NATURAL RESOURCES
Aquatic Resources Division, Shoreline District
950 Farman Ave N
Enumclaw, WA 98022-9282

CONTACT: Vivian Roach, Aquatic Land Manager
(253) 341-7564
vivian.roach@dnr.wa.gov

LICENSEE: CITY OF SEATTLE DEPARTMENT OF
FINANCE AND ADMINISTRATIVE SERVICES
Facilities Operations Division
PO Box 94689
Seattle, WA 98124-4689

CONTACT: Nancy Stachey, Manager of Property Management
(206) 684-0690
nancy.stachey@seattle.gov

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

SECTION 18 MISCELLANEOUS

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

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

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

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

18.5 Waiver.

(a) The waiver of any breach or default of any term, covenant, or condition of this Permit is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Permit. State's acceptance of a payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.

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

18.6 Cumulative Remedies. The rights and remedies under this Permit are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

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

18.8 Language. The word "Licensee" as used in this Permit applies to one or more persons and regardless of gender, as the case may be. If there is more than one Licensee, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Licensee in the collective. The word "Party" means either or both State and Licensee, depending on the context.

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

18.10 Applicable Law and Venue. This Permit is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Permit is in the Superior Court for Thurston County, Washington.

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

18.12 Recordation. At Licensee's expense and no later than thirty (30) days after receiving the fully-effective Permit, Licensee shall record this Permit in the county in which the Property is located. Licensee shall include the parcel number of the upland property used in conjunction with the Property, if any. Licensee shall provide State with recording information, including the date of recordation and file number.

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

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18.14 Survival. Any obligations of Licensee not fully performed upon termination of this Permit do not cease, but continue as obligations of the Licensee until fully performed.

18.15 Exhibits. All referenced exhibits are incorporated in the Permit unless expressly identified as unincorporated.

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

CITY OF SEATTLE
DEPARTMENT OF FINANCE AND
ADMINISTRATIVE SERVICES (FAS)

Dated: _____, 2020

_____

By: CALVIN W. GOINGS
Title: Department Director
Address: PO Box 94689
Seattle, WA 98124-4689
Phone: (206) 684-2489

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 2020

_____

By: THOMAS GORMAN
Title: Interim Division Manager,
Aquatic Resources Division
Address: 1111 Washington Street SE
Olympia, WA 98501-2283

Approved as to form this
31 day of March, 2017
Terry Pruit, Assistant Attorney General

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EXHIBIT A
THE PROPERTY

Agreement Number 20-089981

Legal description of the Property:
That real property legally described and shown as DNR AQUATIC WATERWAY USE PERMIT NO. 20-089981 in that Record of Survey recorded in King County, Washington on November 30th, 2018 under Auditor's File Number 20181130900030 and Volume 395 of Surveys at Page 27.

Square footage of each of these Use classifications:

Water-dependent	18,957
Nonwater-dependent	7,467
Public Access	N/A
Total square feet	26,424

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EXHIBIT B
PLAN OF OPERATIONS

1. DESCRIPTION OF PERMITTED USE

A. **Existing Facilities.** The landward portion of the waterway is filled and fenced off from adjacent properties. The waterward portion of the waterway is not filled. The property contains a dock, ramp, concrete float with foam floatation, holding pen enclosed by a log boom and a concrete boat ramp.

B. **Proposed Facilities.** Although Licensee proposes no new facilities, the site is part of the Gas Works Park sediment cleanup. All cleanup activities approved in the Department of Ecology's cleanup plan are authorized to occur on this property, provided that nothing in this Exhibit B, Section 1.B. or a Department of Ecology cleanup plan shall be construed to alter or amend Licensee's obligations under Section 8 of this Permit with respect to such activities.

2. ADDITIONAL OBLIGATIONS

A. Licensee shall, within 90 days of Commencement Date, submit to State for approval an interim stormwater management plan that addresses any potential sources of stormwater contaminants at Waterway 20 (e.g. oil dripping from vehicles, leaking drums, debris, etc.). The plan shall include treatment or containment of stormwater or a combination of treatment and containment to minimize the risk that untreated stormwater will reach Lake Union. State shall review and provide edits (if any) within 30 days. Licensee shall implement the plan within six months after State approves or waives approval of the plan.

B. Phase II Soil Investigation Plan. To further investigate and characterize contamination in excess of MTCA method A cleanup criterion for unrestricted land use identified in the June 30, 2016 Technical Memorandum from Herrera Environmental Consultants, Licensee shall provide State with an Environmental Site Assessment Plan for a Phase II soil investigation of the portion of the Property that is landward of the line of ordinary high water ("the Plan"). The Plan must meet the ASTM standard E1903-11 for Phase II Environmental Site Assessments. Licensee shall provide the Plan to State within 180 days of the Commencement Date. Within 90 days if of its receipt of the Plan, State will review and provide comments on the Plan to Licensee. If after State has reviewed the Plan and provided comments to Licensee, State and Licensee agree on a final Phase II Environmental Site Assessment Plan and sufficient time remains prior to the Termination Date to complete sampling on the Property under the final plan, Licensee may choose to conduct the Phase II Environmental Assessment as provided in the final plan agreed upon by Licensee and State.

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C. Protocols for Use of the Property ("the Protocols") have been established by Licensee to minimize Licensee's exposure to soil contaminants identified in the June 30, 2016 Technical Memorandum from Herrera Environmental Consultants. The Protocols are identified in Attachment 1 to this Exhibit B. Licensee shall ensure all workers conducting activities on the Property are in compliance with the Protocols.

D. Beginning on the Commencement Date, Licensee shall meet with the Wallingford Community Council and the Center for Wooden Boats on a monthly basis (unless both parties agree to cancel) to create a future conceptual plan for use of Waterway 20 which meets the interests of both the City of Seattle and the Wallingford Community Council. Licensee does not have a right to renew the Permit. If Licensee wishes to apply for a new Permit, Licensee must file an application with State at least one (1) year prior to the Termination Date. If Licensee and the Wallingford Community Council have not reached consensus on a conceptual plan by the Termination Date, State shall deny Licensee's application for a new Permit, unless State in its sole discretion waives the requirement of a consensus conceptual use plan.

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ATTACHMENT 1 TO EXHIBIT B
PROTOCOLS FOR USE

The Seattle Police Department Harbor Patrol Unit (HPU) occupies the property to the east of Waterway 20. See Figure 1.

The HPU is the base for all Seattle Police marine operations in the City of Seattle. This facility serves as the base for all water related emergency response in the City, as well as providing marine fire response for all waterways east of the Ballard locks.

Waterway 20 is specifically used to support this mission as storage for navigational hazards, impounded vessels, evidence, found property, recovered stolen vessels and other flotsam recovered from navigable waterways of the City. In particular, floating storage of hazards in a floating corral on the west side of the aquatic area of Waterway 20 is used for the safe storage of this material until it can be collected and permanently removed from the waterway by the Army Corps of Engineers.

The rudimentary boat launch in the aquatic area of Waterway 20 is used by the HPU as well as other government agencies to promote water safety and environmental protection. With the rudimentary boat launch, agencies including the HPU launch and retrieve vessels during emergencies, and other scheduled events.

The aquatic portion of Waterway 20 is included in the Gas Works Park sediment remediation plan.

The HPU also uses the upland area of Waterway 20 as temporary storage of impounded boats, evidence moorages and navigational obstacles until it can be collected and permanently removed by the Army Corps of Engineers.

Any activity on the upland portion of Waterway 20 other than for the sole use of HPU as defined in the Protocols for Use of the Property that may result in the release or exposure to the environment of the contaminated soil or create a new exposure pathway is prohibited.

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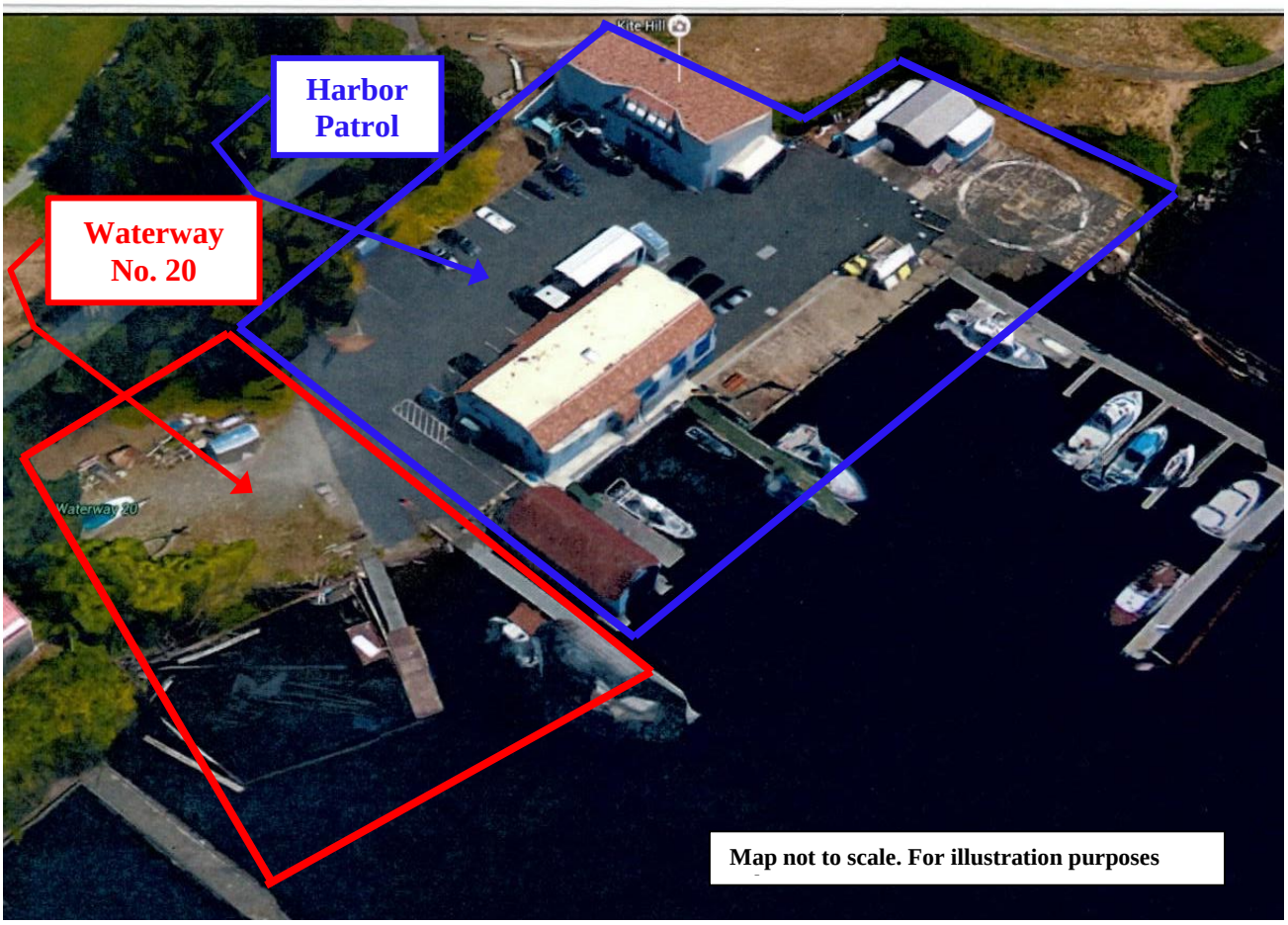

Figure 1