

Attachment 1

Recording Requested By
And When Recorded Mail To:

Skagit County
Public Works Department
Attn: Jan Flagan
1800 Continental Place
Mount Vernon, Washington 98273

DOCUMENT TITLE: **PERMANENT FLOWAGE EASEMENT**

RELATED DOCUMENTS: AFN Nos. 201405130012 and 201403100100

GRANTOR: **City of Seattle**, a municipal corporation of the State of Washington.

GRANTEE: **Skagit County**, a political subdivision of the State of Washington.

ABBREVIATED LEGAL DESCRIPTION: Ptn GL 4, 5, & 6, SEC 14, TWN 35 N, R 6 E, WM aka Tracts 1 & 2, Survey 8009250002, and fully set forth and described in Exhibit B

ASSESSOR'S TAX / PARCEL NUMBER(S): P41167, P41168, and P41865

PERMANENT FLOWAGE EASEMENT FOR OCCASIONAL FLOODING

The undersigned, **City of Seattle**, a municipal corporation in the State of Washington, acting by and through its City Light Department (“Grantor”), for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, hereby grants to **Skagit County**, a political subdivision of the State of Washington (“Grantee”), a permanent flowage easement for occasional flooding (“Permanent Easement”), as provided herein. Grantor and Grantee may be individually referred to herein as a “Party”, and may be collectively referred to herein as the “Parties.” The terms of this Permanent Easement are further provided as follows:

1. Nature and Location of Permanent Easement. The Permanent Easement hereby granted by Grantor herein shall be a Permanent Easement for occasional flooding for the benefit of Grantee, Grantee’s agents, employees, and contractors over, upon, across, through, a portion of Grantor’s Property (the “Easement Area”) in connection with Grantee’s Cumberland Creek

Mitigation Project (“Project”). The flowage area for the entire Project is legally described and depicted on *Exhibits “A” and “A-1”*, attached hereto and incorporated herein by this reference (the “Project Flowage Area”). The Easement Area is that portion of Grantor’s property that is within the Project Flowage Area. The legal description of the Easement Area is attached hereto as *Exhibit “B”*, and is hereby incorporated by reference. The Project is further described in *Exhibit “C”* (Scope of Work), attached hereto and incorporated herein by this reference. *Exhibit “D”* (copy of a letter dated, July 9th, 2015, from Janice Flagan, Skagit County Surface Water Section Manager to Douglas T. Weber, project manager for the Cumberland Creek/Cockreham Levee Mitigation project for the U.S. Army Corps of Engineers) provides confirmation that the Project was completed in accordance with the agreed upon scope of work and was constructed by the U.S. Army Corps of Engineers in 2014. The Permanent Easement shall be for the purpose of providing the right, power, privilege, and easement occasionally to overflow, flood, and submerge the Easement Area in connection with the completed construction and on-going operation and maintenance of the Project together with all right, title, and interest in and to the structures and improvements now situate on the Grantor’s Property; provided that no structures for human habitation shall be constructed or maintained on the Easement Area on Grantor’s Property, that no other structures shall be constructed or maintained on the Easement Area on Grantor’s Property except as may be approved in writing by the Grantee, and that no excavation shall be conducted and no landfill placed on the Easement Area on Grantor’s Property without such approval as to the location and method of excavation and/or placement of landfill by the Grantee, with said approvals not to be unreasonably withheld by Grantee. This Permanent Easement is granted subject to existing easements for public roads and highways, public utilities, railroads, and pipelines; reserving, however, to the Grantor, and Grantor’s heirs, successors, and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the Project or abridging the rights and Permanent Easement hereby acquired; provided further that any use of the Grantor’s Property shall be subject to Federal and State laws with respect to pollution.

2. Term of Permanent Easement. This Permanent Easement shall commence upon mutual execution by the parties, and shall be perpetual in nature and shall run with the land. This Permanent Easement shall remain in effect in perpetuity as provided by the terms of the Cooperative Agreement executed by and between the parties regarding the Project (Skagit County Contract # C20130376, as amended by Amendment # A20140061). Upon mutual execution, this Permanent Easement shall be promptly recorded with the Skagit County Auditor.

3. Use of Permanent Easement. Grantor and Grantor’s successors and assigns releases Grantee from any all claims, loss, damages, and/or harm arising from or in any way related to any discharges, releases, and/or inundations of drainage water, storm water, water flows and flowage, and flood water (of an indeterminate and unspecified origin, volume, duration, and quantity) onto the Grantor’s Property within the Easement Area. Grantor specifically recognizes and agrees that the terms of this Permanent Easement may result in drainage and flooding impacts to Grantor’s Property within the Easement Area including, but not necessarily limited to flowing, pooling, and/or standing water on Grantor’s Property within the Easement Area of an unknown quantity, origin, depth, volume and velocity, at any time for an unknown duration.

3.1 Except as provided to the contrary herein (including pursuant to the terms of Section 3. above), Grantee shall be responsible for Grantee's own negligence and that of its employees, agents, consultants, or contractors, and shall indemnify and hold harmless Grantor, its officials, officers, agents, and employees therefrom. Grantee shall not be required to indemnify, defend, and hold harmless Grantor, its officials, officers, agents, or employees if the claims and/or damages result from the negligence and/or intentional acts or omissions of the Grantor or Grantor's officials, officers, agents, or employees. To the extent a claim arises out of or alleges the concurrent negligence of both of the Parties, each Party shall only be responsible for its own negligence and that of its employees, officers, officials, agents, consultants, or contractors. It is further provided that no liability shall attach to either Party by reason of entering into this Permanent Easement except as expressly provided herein. The Parties specifically and expressly intend their indemnity duties hereunder stated to constitute a waiver of their immunity under Washington's Industrial Insurance Act, RCW Title 51 to the extent necessary to provide the other Party with a full and complete indemnity.

4. Non-Interference with Permanent Easement. Grantor shall not undertake, authorize, permit, allow, or otherwise consent to any activity, construction, or use of Grantor's Property within the Easement Area which would be inconsistent with the use of the Easement Area for the discharge and/or flowage of drainage, storm water, and/or flood water in accordance with the terms of this Permanent Easement; provided that the Grantor shall otherwise have full use of the Easement Area at Grantor's Property so long as such use does not interfere with the Grantee's use of the Easement Area for the purposes provided herein.

5. Governing Law; Venue. This Permanent Easement shall be construed under the laws of the State of Washington. It is agreed by the parties that the venue for any legal action brought under or relating to the terms of this Permanent Easement shall be in Skagit County, State of Washington.

6. Entire Agreement. Subject to the terms of the above-referenced amended Cooperative Agreement by and between the parties, this Permanent Easement contains the entire agreement between the parties hereto and incorporates and supersedes all prior negotiations or agreements. It may not be modified or supplemented in any manner for form whatsoever, either by course of dealing or by parol or written evidence of prior agreements and negotiations, except upon subsequent written agreement of the parties or their successors.. Waiver or breach of any term or condition of this Permanent Easement shall not be considered a waiver of any prior or subsequent breach.

DATED this _____ day of _____, 2016.

GRANTOR:

By: _____

Printed Name: _____

Title: _____

Seattle City Light

STATE OF WASHINGTON }
COUNTY OF KING } ss.

I certify that I know or have satisfactory evidence that _____, as the _____ of the City Light Department of the City of Seattle, a municipal corporation, is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was duly authorized to execute this instrument and executed the forgoing instrument as his/her free and voluntary act for the uses and purposes herein mentioned.

DATED this _____ day of _____, 2016.

Notary Public
Print name: _____
Residing at: _____
My appointment expires: _____

(SEAL)

GRANTEE:

DATED this ____ day of _____, 2016.

**BOARD OF COUNTY
COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Kenneth A. Dahlstedt, Chair

Lisa Janicki, Commissioner

Ron Wesen, Commissioner

Attest:

Clerk of the Board

Authorization per Resolution R20050224:

Recommended:

County Administrator

Department Head

Approved as to form:

Civil Deputy Prosecuting Attorney

Approved as to indemnification:

Risk Manager

Approved as to budget:

Budget & Finance Director