



# SEATTLE CITY COUNCIL

## Legislative Summary

CB 119301

Record No.: CB 119301

Type: Ordinance (Ord)

Status: Passed

Version: 1

Ord. no: Ord 125629

In Control: City Clerk

File Created: 06/15/2018

Final Action: 07/27/2018

**Title:** AN ORDINANCE authorizing the Superintendent of Parks and Recreation to execute and accept from the Washington State Department of Natural Resources, on behalf of The City of Seattle, an Aquatic Lands Lease for Andrews Bay; and ratifying and confirming certain prior acts.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Juarez

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments: Att 1 - Aquatics Land Lease

Drafter: Chip Nevins

Filing Requirements/Dept Action:

### History of Legislative File

Legal Notice Published:

Yes

No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	07/03/2018	Mayor's leg transmitted to Council	City Clerk			
1	City Clerk	07/03/2018	sent for review	Council President's Office			
	<b>Action Text:</b> The Council Bill (CB) was sent for review. to the Council President's Office						
	<b>Notes:</b>						
1	Council President's Office	07/09/2018	sent for review	Civic Development, Public Assets, and Native Communities Committee			
	<b>Action Text:</b> The Council Bill (CB) was sent for review. to the Civic Development, Public Assets, and Native Communities Committee						
	<b>Notes:</b>						

- 1 City Council 07/16/2018 referred Civic Development, Public Assets, and Native Communities Committee
- Action Text:** The Council Bill (CB) was referred. to the Civic Development, Public Assets, and Native Communities Committee
- Notes:**
- 1 Civic Development, Public Assets, and Native Communities Committee 07/18/2018 pass Pass
- Action Text:** The Committee recommends that City Council pass the Council Bill (CB).  
In Favor: 3 Chair Juarez, Vice Chair Bagshaw, Member González  
Opposed: 0
- 1 City Council 07/23/2018 passed Pass
- Action Text:** The Council Bill (CB) was passed by the following vote, and the President signed the Bill:
- Notes:**
- In Favor: 7 Councilmember Bagshaw, Councilmember González , Council President Harrell, Councilmember Johnson, Councilmember Juarez, Councilmember Mosqueda, Councilmember Sawant  
Opposed: 0
- 1 City Clerk 07/26/2018 submitted for Mayor's signature Mayor
- 1 Mayor 07/27/2018 Signed
- 1 Mayor 07/27/2018 returned City Clerk
- 1 City Clerk 07/27/2018 attested by City Clerk
- Action Text:** The Ordinance (Ord) was attested by City Clerk.
- Notes:**
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**CITY OF SEATTLE**

**ORDINANCE** 125629

**COUNCIL BILL** 119301

AN ORDINANCE authorizing the Superintendent of Parks and Recreation to execute and accept from the Washington State Department of Natural Resources, on behalf of The City of Seattle, an Aquatic Lands Lease for Andrews Bay; and ratifying and confirming certain prior acts.

WHEREAS, Seattle’s Seward Park, one of the City’s oldest parks, is located on the eastern shore of Andrews Bay in Lake Washington; and

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

WHEREAS, Andrews Bay serves as short-term moorage for recreational vessels; and

WHEREAS, lack of jurisdictional clarity between DNR and the Seattle Department of Parks and Recreation (DPR) has created problems in the summer months because of the City’s inability to control unruly behavior; and

WHEREAS, the Seattle Harbor Patrol would benefit from having the whole of Andrews Bay be under the management of DPR; and

WHEREAS, DPR and DNR have negotiated a new lease that will allow for the long-term management of Andrews Bay for the benefit of the City’s residents; NOW,

THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. The Superintendent of Parks and Recreation (“Superintendent”) or the Superintendent’s designee is hereby authorized, on behalf of The City of Seattle (“City”), to execute a lease agreement (“Lease”) with the Washington State Department of Natural Resources, substantially in the form of Attachment 1 to this ordinance and identified as “Aquatic

1 Lands Lease,” authorizing the City to use the property for recreational and educational  
2 opportunities for all citizens and visitors to the region.

3 Section 2. Any act consistent with the authority of this ordinance taken after its passage  
4 and prior to its effective date is ratified and confirmed.

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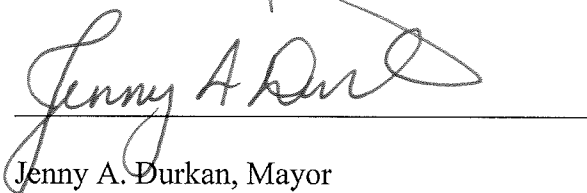
Section 3. This ordinance shall take effect and be in force thirty (30) days after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 23<sup>rd</sup> day of July, 2018,  
and signed by me in open session in authentication of its passage this 23<sup>rd</sup> day of July, 2018.



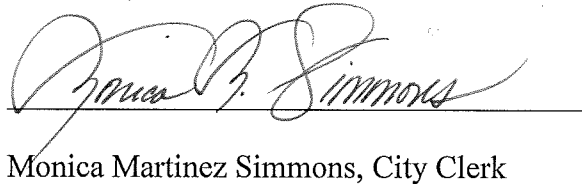
President \_\_\_\_\_ of the City Council

Approved by me this 27<sup>th</sup> day of July, 2018.



Jenny A. Durkan, Mayor

Filed by me this 27<sup>th</sup> day of JULY, 2018.



Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Attachment 1 – Aquatic Lands Lease

When recorded, return to:  
City of Seattle  
Department of Parks and Recreation  
800 Maynard Avenue South  
Seattle, WA 98134-1334



HILARY S. FRANZ  
COMMISSIONER OF PUBLIC LANDS

## AQUATIC LANDS LEASE

### Lease No. 22-096863

Grantor: Washington State Department of Natural Resources  
Grantee(s): City of Seattle Department of Parks and Recreation  
Legal Description: Section 23, Township 24 North, Range 04 East, W.M.  
Assessor's Property Tax Parcel or Account Number: 23240HYDRO  
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this lease: 2324049007

THIS LEASE is between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and CITY OF SEATTLE DEPARTMENT OF PARKS AND RECREATION, a government agency/entity ("Tenant").

### BACKGROUND

Tenant desires to lease the aquatic lands commonly known as Lake Washington, which is a harbor area located in King County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease. State has authority to enter

into this Lease under Chapter 43.12, Chapter 43.30 and Title 79 of the Revised Code of Washington (RCW).

THEREFORE, the Parties agree as follows:

## SECTION 1 PROPERTY

### 1.1 Property Defined.

- (a) State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property").
- (b) This Lease 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 Lease 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) Tenant prepared Exhibit A, which describes the Property. Tenant warrants that Exhibit A is a true and accurate description of the Lease boundaries and the improvements to be constructed or already existing in the Lease area. Tenant's obligation to provide a true and accurate description of the Property boundaries is a material term of this Lease.
- (b) State's acceptance of Exhibit A does not constitute agreement that Tenant's property description accurately reflects the actual amount of land used by Tenant. State reserves the right to retroactively adjust rent if at any time during the term of the Lease State discovers a discrepancy between Tenant's property description and the area actually used by Tenant.

**1.3 Inspection.** State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant'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. Tenant inspected the Property and accepts it "AS IS."

## SECTION 2 USE

**2.1 Permitted Use.** Tenant shall use the Property for Andrews Bay Anchorage Area at Seward Park (the "Permitted Use"), and for no other purpose. This is a water-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. Tenant's compliance with the following does not limit Tenant's liability under any other provision of this Lease.

- (a) Tenant shall not cause or permit:
  - (1) Damage to natural resources
  - (2) Waste, or
  - (3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.
- (b) Tenant shall not cause or permit scour or damage to aquatic land and vegetation. This prohibition includes the following limitations:
  - (1) Tenant shall not allow moorage or anchorage of vessels in water more shallow than seven (7) feet at the extreme low water and shall not allow vessels to come in contact with underlying bedlands ("ground out") at any time.
  - (2) Tenant shall avoid damage caused by propeller wash from vessels.

**2.3 Conformance with Laws.** Tenant 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 Tenant's use or occupancy of the Property.

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

### SECTION 3 TERM

**3.1 Term Defined.** The term of this Lease is Thirty (30) years (the "Term"), beginning on the 1st day of June, 2018 (the "Commencement Date"), and ending on the 31st day of May, 2048 (the "Termination Date"), unless terminated sooner under the terms of this Lease.

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

**3.3 End of Term.**



- (a) Upon the expiration or termination of this Lease, Tenant shall remove Tenant-Owned 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 Tenant or any other person on the premises with the permission of Tenant.
  - (2) Reasonable wear and tear does not include unauthorized deposit of material prohibited under Paragraph 2.2 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 Tenant a reasonable time to take all steps necessary to remedy the condition of the Property. State may require Tenant to enter into a right-of-entry or other use authorization prior to the Tenant entering the Property if the Lease has terminated.
  - (2) If Tenant fails to remedy the condition of the Property in a timely manner, State may take steps reasonably necessary to remedy Tenant's failure. Upon demand by State, Tenant shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of material deposited improperly on the Property, lost revenue resulting from the condition of the Property, and administrative costs associated with the State's remedy.

### 3.4 Holdover.

- (a) If Tenant remains in possession of the Property after the Termination Date, the occupancy will not be an extension or renewal of the Term. The occupancy will be a month-to-month tenancy, on terms identical to the terms of this Lease, which either Party may terminate on thirty (30) days' written notice.
  - (1) The monthly rent during the holdover will be the same rent that would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms.
  - (2) Payment of more than the monthly rent will not be construed to create a periodic tenancy longer than month-to-month. If Tenant pays more than the monthly rent and State provides notice to vacate the property, State shall refund the amount of excess payment remaining after the Tenant ceases occupation of the Property.
- (b) If State notifies Tenant to vacate the Property and Tenant fails to do so within the time set forth in the notice, Tenant will be a trespasser and shall owe the State all amounts due under RCW 79.02.300 or other applicable law.

## SECTION 4 RENT

**4.1 Annual Rent.** The Permitted Use does not require payment of rent pursuant to WAC 332-30-117 and RCW 79.105.230.

## SECTION 5 OTHER EXPENSES

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

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

**5.3 Right to Contest.** If in good faith, Tenant may contest any tax or assessment at its sole cost and expense. At the request of State, Tenant 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, Tenant shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Lease requires Tenant to pay.

**5.5 Failure to Pay.** If Tenant fails to pay amounts due under this Lease, 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 Rent.** Failure to pay rent is a default by the Tenant. 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 rent payment within ten (10) days of the date due, Tenant 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 Rent and Other Sums Owed.**

- (a) Tenant shall pay interest on the past due rent 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 Tenant, Tenant 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

Tenant 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 Lease, or other amounts not paid when due.

**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, Tenant shall pay collection agency fees in addition to the unpaid amount.

**6.5 No Accord and Satisfaction.** If Tenant 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 rent 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 Rent.** Except as expressly set forth elsewhere in this Lease, Tenant shall pay rent and all other sums payable by Tenant without the requirement that State provide prior notice or demand. Tenant'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, fill, structures, bulkheads, docks, pilings, and other 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 Tenant.
- (d) "Tenant-Owned Improvements" are Improvements authorized by State and (1) made by Tenant or (2) acquired by Tenant from the prior tenant.
- (e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Tenant that do not conform to plans submitted to and approved by the State.

**7.2 Existing Improvements.** On the Commencement Date, the following Improvements are located on the Property: two advisory buoys marking the northwest and southwest corner of the anchorage zone. The Improvements are Tenant-Owned Improvements.

**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, Tenant shall not conduct Work, without State’s prior written consent, which state will not unreasonably withhold.
  - (1) Except in an emergency, Tenant shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Tenant and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Tenant 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 Tenant 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 Lease 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) Tenant shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State’s request, Tenant shall provide State with plans and specifications or as-builts of emergency Work.
- (e) Tenant shall not commence or authorize Work until Tenant or Tenant’s contractor has:
  - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Tenant shall maintain the performance and payment bond until Tenant pays in full the costs of the Work, including all laborers and material persons. In lieu of a performance and payment bond Tenant may provide documentation satisfactory to State that sufficient expenditure allowances for the Work have been (i) made in the Tenant’s Capital Improvement

Program and budget adopted by Tenant's City Council and (ii) allocated to the Work.

- (2) Obtained all required permits.
- (f) Before completing Work, Tenant 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, Tenant shall restore the Property in accordance with Paragraph 3.3, End of Term.
- (g) Upon completing work, Tenant shall promptly provide State with as-built plans and specifications.
- (h) State shall not charge rent for authorized Improvements installed by Tenant during this Term of this Lease. State may charge rent for such Improvements when and if Tenant 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 Tenant 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 Tenant undertakes Work five years or more after the Commencement Date, Tenant shall comply with State's then current standards for Work.
  - (3) At Tenant's option, Tenant 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 Lease, Tenant shall request State to provide Tenant with then current standards for Work on State-owned Aquatic Lands.
    - (ii) Within thirty (30) days of receiving Tenant's request, State shall provide Tenant with current standards for Work, which will be effective for the purpose of State's approval of Tenant's proposed Work provided Tenant submits plans and specifications for State's approval within two (2) years of Tenant's request for standards.
    - (iii) If State does not timely provide current standards upon Tenant's request, the standards under Paragraph 7.4(b) apply to Tenant's Work provided Tenant submits plans and specifications as required by Paragraph 7.3 within two (2) years of Tenant's request for standards.
    - (iv) If Tenant fails to (1) make a request for current standards or (2) timely submit plans and specifications to State after receiving

current standards, Tenant shall make changes in plans or Work necessary to conform to current standards for Work upon State's demand.

- (b) Standards for Work.
  - (1) Tenant shall only conduct in-water Work during time periods authorized for such work under WAC 220-660-110, Authorized Work Times in freshwater Areas, as amended, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW), United States Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS).
  - (2) Tenant shall not provide anchorage or moorage in water more shallow than 7 feet (2 meters) at the extreme low tide or water.
  - (3) Tenant shall use embedded anchors and midline floats on all anchored structures and buoys.

**7.5 Tenant-Owned Improvements at End of Lease.**

- (a) Disposition
  - (1) Tenant shall remove Tenant-Owned Improvements in accordance with Paragraph 7.3 upon the expiration, termination, or cancellation of the Lease unless State waives the requirement for removal.
  - (2) Tenant-Owned Improvements remaining on the Property on the expiration, termination or cancellation date shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership. If RCW 79.125.300 or 79.130.040 apply at the time this Lease expires, Tenant could be entitled to payment by the new tenant for Tenant-Owned Improvements.
  - (3) If Tenant-Owned Improvements remain on the Property after the expiration, termination, or cancellation date without State's consent, State may remove all Improvements and Tenant shall pay State's costs.
- (b) Conditions Under Which State May Waive Removal of Tenant-Owned Improvements.
  - (1) State may waive removal of some or all Tenant-Owned Improvements whenever State determines that it is in the best interests of the State and regardless of whether Tenant re-leases the Property.
  - (2) If Tenant re-leases the Property, State may waive requirement to remove Tenant-Owned Improvements. State also may consent to Tenant's continued ownership of Tenant-Owned Improvements.
  - (3) If Tenant does not re-lease the Property, State may waive requirement to remove Tenant-Owned Improvements upon consideration of a timely request from Tenant, as follows:
    - (i) Tenant must notify State at least one (1) year before the Termination Date of its request to leave Tenant-Owned Improvements.
    - (ii) State, within ninety (90) days of receiving Tenant's notification, will notify Tenant whether State consents to some or all Tenant-

Owned Improvements remaining. State has no obligation to grant consent.

- (iii) State's failure to respond to Tenant's request to leave Improvements within ninety (90) days is a denial of the request.
- (c) Tenant's Obligations if State Waives Removal.
  - (1) Tenant shall not remove Improvements if State waives the requirement for removal of some or all Tenant-Owned Improvements.
  - (2) Tenant shall maintain such Improvements in accordance with this Lease until the expiration, termination, or cancellation date. Tenant is liable to State for cost of repair if Tenant 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 Tenant ownership of the Improvements, or
  - (2) Charge rent for use of the Improvements from the time of installation or construction and
    - (i) Require Tenant to remove the Improvements in accordance with Paragraph 7.3, in which case Tenant shall pay rent for the Improvements until removal, or
    - (ii) Consent to Improvements remaining and Tenant shall pay rent for the use of the Improvements, or
    - (iii) Remove Improvements and Tenant shall pay for the cost of removal and disposal, in which case Tenant shall pay rent for use of the Improvements until removal and disposal.

**7.7 Disposition of Personal Property.**

- (a) Tenant retains ownership of Personal Property unless Tenant and State agree otherwise in writing.
- (b) Tenant shall remove Personal Property from the Property by the Termination Date. Tenant is liable for damage to the Property and 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 Tenant to the State. State shall pay the remainder, if any, to the Tenant.
  - (2) If State disposes of Personal Property, Tenant shall pay for the cost of removal and disposal.

**SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION**

**8.1 Definitions.**

- (a) “Hazardous Substance” means any substance that 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 70.105D 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) Tenant’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 Tenant’s use of the Property.
- (b) Standard of Care.
  - (1) Tenant shall exercise the utmost care with respect to Hazardous Substances.
  - (2) In relation to the Permitted Use, Tenant 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 Lease does not impose a duty on State to conduct investigations or supply information to Tenant about Hazardous Substances, provided, however, this Lease 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 Tenant’s requests for public records and endeavor to provide the requested records promptly.
- (c) Tenant 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 Tenant to meet Tenant's obligations under this Lease.

**8.4 Use of Hazardous Substances.**

- (a) Tenant, 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) Tenant shall not undertake, or allow others to undertake by Tenant'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 Tenant's use of the Property.
- (c) If use of Hazardous Substance related to the Permitted Use results in a violation of an applicable law Tenant shall submit to State any plans for remedying the violation and clean up any contamination as required under Section 8.9.

**8.5 Management of Contamination.**

- (a) Tenant and affiliates shall not undertake activities that:
  - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
  - (2) Result in human or environmental exposure to contaminated sediments, if any;
  - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Tenant shall allow reasonable access to:
  - (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. Tenant may negotiate an access agreement with such parties, but Tenant may not unreasonably withhold such agreement.

**8.6 Notification and Reporting.**

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

- (5) Any notification from the 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) Tenant's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a) and to any other property used by Tenant in conjunction with the Property if a release of Hazardous Substances on the other property could affect the Property.
- (c) Tenant shall provide State with copies of all documents Tenant submits to any federal, state or local authorities concerning environmental impacts or proposals relative to the Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollution Discharge and Elimination System Permits; 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) Tenant 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 Tenant, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees occurring anytime Tenant 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 Tenant, its contractors, agents, employees, guests, invitees, or affiliates occurring anytime Tenant uses or has used the Property.
- (c) Tenant shall fully indemnify, defend, and hold State harmless for any Liabilities that arise out of or relate to Tenant's breach of obligations under Subsection 8.5.
- (d) Third Parties.
  - (1) Tenant has no duty to indemnify State for acts or omissions of third parties unless Tenant fails to exercise the standard of care required by Paragraph 8.2(b)(2). Tenant'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 Tenant failed to exercise care as described in Subparagraph 8.7(d)(1), Tenant 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) Tenant 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) Tenant's obligations under this indemnity provision shall not exceed the appropriation authorized at the time Tenant must fulfill its indemnity obligations and nothing in this Lease may be considered as insuring that Tenant 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 Tenant'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 Lease 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 Tenant's Permitted Use, or Tenant's breach of its obligations under this Lease, results in contamination of the Property with Hazardous Substances, Tenant shall, at Tenant'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) Tenant'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) Tenant shall cooperate with the Department of Natural Resources in development of plans for remedial actions and Tenant shall not proceed with remedial actions without Department of Natural Resources approval of final plans, which shall not be unreasonably withheld, unless Tenant is ordered to proceed by a court or a regulatory agency with jurisdiction. Tenant's completion of a remedial actions is not an implied release from or waiver of any obligation for Hazardous Substances under this Lease.

**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 Tenant’s Permitted Use or any violation of Tenant’s obligations under this Lease, Tenant 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 Tenant 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. Tenant shall reimburse State for Tests performed in response to an emergency if State has provided such notice as is reasonably practical and Tenant would be required to reimburse State under section (b).
- (d) Tenant is entitled to observe State’s collection of samples and obtain split samples of any Test samples obtained by State, but only if Tenant provides State with written notice requesting such samples within twenty (20) calendar days of the date of Tenant’s receipt of notice of State’s intent to conduct any non-emergency Tests. Tenant solely shall bear the additional cost, if any, of split samples. Tenant shall reimburse State for any additional costs caused by split sampling within thirty (30) calendar days after State sends Tenant 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 Lease 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 Tenant. There is no obligation to provide any analytical summaries or the work product of experts.

**SECTION 9 ASSIGNMENT AND SUBLETTING**

**9.1 State Consent Required.** Tenant shall not convey, transfer, or encumber any part of Tenant’s interest in this Lease or the Property without State’s prior written consent, which State shall not unreasonably condition or withhold.

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee’s financial condition, business reputation and experience, the nature of the proposed transferee’s business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. State may refuse its consent to any conveyance, transfer, or encumbrance if it will result in a subdivision of the

- leasehold. Tenant 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 Lease, including, but not limited to, the Annual Rent; and/or
    - (2) the agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.
  - (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant.
  - (d) State's consent under this Paragraph 9.1 does not constitute a waiver of any claims against Tenant for the violation of any term of this Lease.

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

**9.3 Terms of Subleases.**

- (a) Tenant shall submit the terms of all subleases to State for approval.
- (b) Tenant shall incorporate the following requirements in all subleases:
  - (1) The sublease must be consistent with and subject to all the terms and conditions of this Lease;
  - (2) The sublease must provide that this Lease controls if the terms of the sublease conflict with the terms of this Lease;
  - (3) The term of the sublease (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 sublease must terminate if this Lease terminates for any reason;
  - (5) The subtenant must receive and acknowledge receipt of a copy of this Lease;
  - (6) The sublease must prohibit the prepayment to Tenant by the subtenant of more than the annual rent;
  - (7) The sublease must identify the rental amount subtenant is to pay to Tenant;
  - (8) The sublease must provide that there is no privity of contract between the subtenant and State;
  - (9) The sublease must require removal of the subtenant's Improvements and Personal Property upon termination of the sublease;
  - (10) The subtenant's permitted use must be within the scope of the Permitted Use; and
  - (11) The sublease must require the subtenant to meet all obligations of Tenant under Section 10, Indemnification, Financial Security, and Insurance.

**9.4 Short-Term Subleases of Moorage Slips.** Short-term subleasing 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. Tenant shall conform moorage sublease agreements to the sublease requirements in Paragraph 9.3.

## SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

### 10.1 Indemnity.

- (a) Tenant shall indemnify, defend, and hold State, its employees, officers, and agents harmless from Claims arising out of the use, occupation, or control of the Property by Tenant, its subtenants, 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 Tenant 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) Tenant 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 Tenant's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.
- (f) Tenant's obligations under this indemnity provision shall not exceed the appropriation authorized at the time Tenant must fulfill its indemnity obligations and nothing in this Lease may be considered as insuring that Tenant 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 Tenant'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) Tenant 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. Tenant shall provide to State evidence of its status as a self-insured entity. Upon request by State, Tenant shall provide a written description of its financial condition and/or the self-insured funding mechanism. Tenant shall provide State with at least thirty (30) days' written notice prior to any material changes to Tenant's self-insured funding mechanism.

- (2) All self-insurance provided in compliance with this Lease must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
  - (1) Tenant waives all rights against State for recovery of damages to the extent self-insurance maintained pursuant to this Lease covers these damages.
  - (2) Except as prohibited by law, Tenant 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 lease.
- (c) Proof of Insurance
  - (1) Tenant shall provide State with a certification of self-insurance executed by a duly authorized representative of Tenant, showing compliance with insurance requirements specified in this Lease
  - (2) The certification of self-insurance must reference the Lease 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) Tenant must provide State no less than 30 days notice if Tenant'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) Tenant shall provide a certification that meets the requirements of Section 10.2(c)(1) and demonstrates coverage in compliance with the Lease within thirty (30) days after State requires changes in the limits of liability.
- (f) If Tenant fails to provide the certification described above within fifteen (15) days after Tenant 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, Tenant 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 Tenant's repayment
- (g) General Terms.
  - (1) State does not represent that coverage and limits required under this Lease are adequate to protect Tenant.
  - (2) Coverage and limits do not limit Tenant's liability for indemnification and reimbursements granted to State under this Lease.

- (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 Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Tenant.

### 10.3 Insurance Types and Limits.

- (a) General Liability Insurance.
  - (1) Tenant 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 Tenant'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) Tenant shall comply with all State of Washington workers' compensation statutes and regulations. Tenant shall provide workers' compensation coverage for all employees of Tenant. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Tenant's use, occupation, and control of the Property.
    - (ii) If Tenant 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, Tenant shall indemnify State. Indemnity shall include all fines; payment of benefits to Tenant, 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 Tenant to provide insurance coverage in some circumstances. Tenant shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employers' Liability Insurance. Tenant 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) **Builder's Risk Insurance.**

- (1) Tenant 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 Tenant, 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.
- (3) Tenant or Tenant's(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) Tenant or Tenant's(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 Tenant, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Paragraph 10.2(a)(3).

**10.4 Financial Security**

- (a) At its own expense, Tenant shall procure and maintain during the Term of this Lease a corporate security bond or provide other financial security that State, at its option, may approve ("Security"). Tenant shall provide Security in an amount equal to Five Hundred Dollars (\$500.00), which is consistent with RCW 79.115.100, and secures Tenant's performance of its obligations under this Lease, with the exception of the obligations under Section 8, Environmental

Liability/Risk Allocation. Tenant's failure to maintain the Security in the required amount during the Term constitutes a breach of this Lease.

- (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. Tenant may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement.
  - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
  - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
  - (1) State may require an adjustment in the Security amount:
    - (i) At the same time as revaluation of the Annual Rent,
    - (ii) As a condition of approval of assignment or sublease of this Lease,
    - (iii) Upon a material change in the condition or disposition of any Improvements, or
    - (iv) Upon a change in the Permitted Use.
  - (2) Tenant 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 Tenant in its obligations under this Lease, State may collect on the Security to offset the liability of Tenant to State. Collection on the Security does not (1) relieve Tenant of liability, (2) limit any of State's other remedies, (3) reinstate or cure the default or (4) prevent termination of the Lease because of the default.

## SECTION 11 ROUTINE MAINTENANCE AND REPAIR

**11.1 State's Repairs.** This Lease 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 Tenant'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 Tenant's own expense, Tenant 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 Tenant's own expense, Tenant 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, Tenant shall comply with Section 7 of this Lease.

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

- (a) Tenant shall not use or install tires (for example, floatation or fenders) at any location above or below water.
- (b) Tenant 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 floatation material into the water.

## SECTION 12 DAMAGE OR DESTRUCTION

**12.1 Notice and Repair.**

- (a) In the event of damage to or destruction of the Property or Improvements, Tenant shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction without Tenant's written notice.
- (b) Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and 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 Tenant'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 Tenant of each specific claim waived.

**12.3 Insurance Proceeds.** Tenant'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 Tenant 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 Default at the Time of Damage or Destruction.** If Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

## SECTION 13 CONDEMNATION

**13.1 Definitions.**

- (a) "Taking" means that an entity authorized by law exercises the power of eminent domain, either by judgment, settlement in lieu of judgment, or voluntary conveyance in lieu of formal court proceedings, over all or any portion of the Property and Improvements. This includes any exercise of eminent domain on any portion of the Property and Improvements that, in the judgment of the State, prevents or renders impractical the Permitted Use.
- (b) "Date of Taking" means the date upon which title to the Property or a portion of the Property passes to and vests in the condemner or the effective date of any order for possession if issued prior to the date title vests in the condemner.

**13.2 Effect of Taking.** If there is a taking, the Lease terminates proportionate to the extent of the taking. If this Lease terminates in whole or in part, Tenant shall make all payments due and attributable to the taken Property up to the date of taking. If Tenant has pre-paid rent and Tenant is not in default of the Lease, State shall refund Tenant the pro rata share of the pre-paid rent attributable to the period after the date of taking.

**13.3 Allocation of Award.**

- (a) The Parties shall allocate the condemnation award based upon the ratio of the fair market value of (1) Tenant's leasehold estate and Tenant-Owned Improvements and (2) State's interest in the Property; the reversionary interest in Tenant-Owned Improvements, if any; and State-Owned Improvements, if any.
- (b) If Tenant 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 AND REMEDIES

**14.1 Default Defined.** Tenant is in default of this Lease on the occurrence of any of the following:

- (a) Failure to pay rent 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 Lease;
- (d) Commencement of bankruptcy proceedings by or against Tenant or the appointment of a trustee or receiver of Tenant's property.

**14.2 Tenant's Right to Cure.**

- (a) A default becomes an "Event of Default" if Tenant 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 Lease, the cure period is sixty (60) days for failure to pay rent or other monetary defaults; for other defaults, the cure period is thirty (30) days.

- (c) For nonmonetary defaults not capable of cure within thirty (30) days, State will not unreasonably withhold approval of a reasonable alternative cure schedule. Tenant must submit a cure schedule within thirty (30) days of a notice of default. The default is not an Event of Default if State approves the schedule and Tenant works diligently and in good faith to execute the cure. The default is an Event of Default if Tenant fails to timely submit a schedule or fails to cure in accordance with an approved schedule.
- (d) State may elect to deem a default by Tenant as an Event of Default if the default occurs within six (6) months after a default by Tenant for which State has provided notice and opportunity to cure and regardless of whether the first and subsequent defaults are of the same nature.

#### **14.3 Remedies.**

- (a) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise.
- (b) If the Event of Default (1) arises from Tenant'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 Lease to (1) restore the natural resources or Property and charge Tenant restoration costs and/or (2) charge Tenant for damages. On demand by State, Tenant shall pay all costs and/or damages.
- (c) Without terminating this Lease, State may relet the Property on any terms and conditions as State may decide are appropriate.
  - (1) State shall apply rent received by reletting: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. State shall hold and apply any balance to Tenant's future rent as it becomes due.
  - (2) Tenant is responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly.
  - (3) At any time after reletting, State may elect to terminate this Lease for the previous Event of Default.
- (d) State's reentry or repossession of the Property under Paragraph 14.3 is not an election to terminate this Lease or cause a forfeiture of rents or other charges Tenant is obligated to pay during the balance of the Term, unless (1) State gives Tenant written notice of termination or (2) a legal proceeding decrees termination.
- (e) 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 Tenant's breach or threatened breach of any provision of this Lease.

### **SECTION 15 ENTRY BY STATE**

State may enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease, to monitor impacts to habitat, or survey habitat and species. Tenant grants State permission to cross Tenant's upland [and aquatic land] property to access the Property. State may coordinate the site inspection with Washington State Department of Ecology or other regulatory authorities, if appropriate. State's failure to inspect the Property does not constitute a waiver of any rights or remedies under this Lease.

## SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

### 16.1 No Guaranty or Warranty.

- (a) State believes that this Lease 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 Tenant's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.
- (b) State disclaims and Tenant releases State from any claim for breach of any implied covenant of quiet enjoyment. 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) Tenant is responsible for determining the extent of Tenant's right to possession and for defending Tenant's leasehold interest.

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

## SECTION 17 NOTICE AND SUBMITTALS

Following are the locations for delivery of notice and submittals required or permitted under this Lease. 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 Avenue North  
Enumclaw, WA 98022-9282

Tenant: CITY OF SEATTLE  
Department of Parks and Recreation  
800 Maynard Avenue South  
Seattle, WA 98134-1334

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

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

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

**18.4 Entire Agreement.** This Lease, including the exhibits and addenda, if any, contains the entire agreement of the Parties. This Lease 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 Lease 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 Lease. State's acceptance of a rental payment is not a waiver of any preceding or existing breach other than the failure to pay the particular rental payment that was accepted.
- (b) The renewal of the Lease, extension of the Lease, or the issuance of a new lease to Tenant, does not waive State's ability to pursue any rights or remedies under the Lease.

**18.6 Cumulative Remedies.** The rights and remedies under this Lease 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 Lease.

**18.8 Language.** The word "Tenant" as used in this Lease applies to one or more persons and regardless of gender, as the case may be. If there is more than one Tenant, their obligations are

joint and several. The word “persons,” whenever used, shall include individuals, firms, associations, and corporations. The word “Parties” means State and Tenant in the collective. The word “Party” means either or both State and Tenant, depending on the context.

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

**18.10 Applicable Law and Venue.** This Lease 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 Lease 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 Tenant’s expense and no later than thirty (30) days after receiving the fully-executed Lease, Tenant shall record this Lease in the county in which the Property is located. Tenant shall include the parcel number of the upland property used in conjunction with the Property, if any. Tenant shall provide State with recording information, including the date of recordation and file number. If Tenant fails to record this Lease, State may record it and Tenant shall pay the costs of recording upon State’s demand.

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

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



**18.15 Exhibits.** All referenced exhibits are incorporated in the Lease 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 PARKS AND RECREATION

Dated: \_\_\_\_\_, 2018

By: \_\_\_\_\_  
CHRISTOPHER WILLIAMS  
Title: Interim Superintendent  
Address: 100 Dexter Avenue North  
Seattle, WA 98109-5102  
Phone: 206-684-8022

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

Dated: \_\_\_\_\_, 2018

By: \_\_\_\_\_  
KRISTIN SWENDDAL  
Title: Acting Deputy Supervisor for  
Aquatics, Geology and IT  
Address: 1111 Washington Street SE  
Olympia, WA 98504-7027

Approved as to form this  
23<sup>rd</sup> day of April 2015  
Terence Pruit, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF )  
 ) ss.  
County of )

I certify that I know or have satisfactory evidence that CHRISTOPHER WILLIAMS is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Department of Parks and Recreation Interim Superintendent of City of Seattle to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_, 2018

(Seal or stamp)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

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

My appointment expires \_\_\_\_\_

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)

County of \_\_\_\_\_ ) ss.  
\_\_\_\_\_ )

I certify that I know or have satisfactory evidence that KRISTIN SWENDDAL is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Acting Deputy Supervisor for Aquatics, Geology and IT of the Department of Natural Resources, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_, 2018

(Seal or stamp)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

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

\_\_\_\_\_  
My appointment expires \_\_\_\_\_

**THE PROPERTY  
EXHIBIT A**

**Agreement Number: 22-096863**

**Recording number of final DNR approved survey in King County: TBD**

**Legal description of the Property:**

**ANDREWS BAY LEASE AREA LEGAL DESCRIPTION:**

THAT PORTION OF THE EAST HALF OF THE NORTHWEST QUARTER, THE WEST HALF OF THE NORTHEAST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, ALSO ANY PORTION LYING IN FRONT OF AND ADJACENT TO GOV'T LOTS 1, 2, 4, 6, 7 & 8, ALL IN SECTION 23, TOWNSHIP 24, RANGE 4 EAST, W.M., IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE FOUND EAST 1/4 CORNER MONUMENT OF SAID SECTION 23 AND THE SOUTHEAST CORNER OF SAID GOV'T LOT 2; THENCE ALONG THE SOUTH LINE OF SAID GOV'T LOT 2 SOUTH 88°48'39". EAST 2315.14 FEET TO THE INNER HARBOR LINE OF ANDREWS BAY AND THE TRUE POINT OF BEGINNING; THENCE ALONG SAID INNER HARBOR LINE S 54°38'05" W 173.30 FEET; THENCE CONTINUING ALONG SAID INNER HARBOR LINE N 18°11'55" W 1782.71 FEET; THENCE N 25°51'55" W 1209.99 FEET TO THE NORTH LINE OF SECTION 23; THENCE ALONG SAID SECTION LINE S 88°40'12" E 1871.58 FEET TO INNER HARBOR LINE OF ANDREWS BAY; THENCE ALONG SAID INNER HARBOR LINE S 02°58'05" WEST 2267.05 FEET; THENCE CONTINUING ALONG SAID INNER HARBOR LINE, S 54°38'05" W 647.15 TO THE POINT OF BEGINNING.

CONTAINING 3,165,019 S.F. (72.66 ACRES)

SUBJECT TO AND TOGETHER WITH EASEMENTS, RESTRICTIONS

**Square footage of each of these Use classifications:**

Water-dependent	3,165,019 Square Feet
Nonwater-dependent	0
Public Access	3,165,019 Square Feet
<b>Total square feet</b>	<b>3,165,019 Square Feet</b>

**PLAN OF OPERATIONS  
EXHIBIT B**

**1. DESCRIPTION OF PERMITTED USE**

**A. Existing Facilities.**

Andrews Bay Anchorage Area is located on the west shore of Lake Washington in Andrews Bay, along the west of Bailey Peninsula and City of Seattle Seward Park. Short term anchorage in Andrews Bay is approved under City of Seattle Ordinance Number 118570/SMC 16.40.030 (F), passed into law May 1997.

The anchorage area is defined by two buoys marked with "A" indicating the northwest (47°33'48"N, 122°15'58"W) and southwest (47°33'21"N, 122°15'48"W) corners of the anchorage zone. Shore markers, on the City's uplands, note the northeast and southeast corners. Anchorage is restricted to this area and limited to 72 hours within any seven day period.

The buoys are constructed with polyethylene mooring balls and secured with chain to a deadweight anchor consisting of half of a 55-gallon drum filled with concrete. No other improvements are located on the Property.

**B. Proposed Work.** Tenant proposes no new facilities or Work.

**2. ADDITIONAL OBLIGATIONS**

State has not authorized Tenant to conduct any Work on the Property. Where Work will need to be conducted to meet the Additional Obligations below, Tenant shall obtain State's prior written consent in accordance with Section 7.3 of this Lease and obtain all necessary regulatory permits prior to commencing such Work.

**A.** Tenant shall replace anchorage systems on all buoys with systems using midline floats. Replacement may occur under an ordinary maintenance or repair schedule, but all replacement must be complete by 31st day of May, 2019.

Approved as to form this  
13<sup>th</sup> day of December 2017  
Jennifer Clements, Assistant Attorney General