



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**Ordinance 19462**

**Proposed No. 2022-0165.3**

**Sponsors Perry and Dunn**

1           AN ORDINANCE authorizing the King County executive  
2           to execute an aquatic land easement between the state of  
3           Washington, acting through the department of natural  
4           resources and parks, and King County department of  
5           natural resources and parks, a governmental agency,  
6           regarding the construction, operation and maintenance of  
7           the Foothills Trail.

8           **STATEMENT OF FACTS:**

9           1. King County is working cooperatively with the state of Washington,  
10          the city of Buckley, the city of Enumclaw and Pierce County to construct a  
11          new multiuse bridge over the White river, which separates the completed  
12          portions of the Foothills Trail in Enumclaw and Buckley.

13          2. King County owns certain real property which contains a portion of  
14          King County's Foothills Trail to the north of and adjacent to the White  
15          river.

16          3. The completed portions of King County's and Pierce County's Foothills  
17          Trail remain separated by the White river. The lack of a safe pedestrian  
18          and cycling trail river crossing between the surrounding communities  
19          presents certain health and safety risks and limits the ability of the  
20          communities to interact using nonmotorized transportation methods.

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21           There is also a need for alternative emergency vehicle egress from the city  
22           of Buckley to Enumclaw in the event of a SR-410 bridge closure.

23           4. In 2015, King County, the city of Buckley, Pierce County and the  
24           Washington state Department of Transportation entered into the interlocal  
25           agreement for cooperative planning design and construction of a Foothills  
26           nonmotorized bridge across the White river.

27           5. King County will lead efforts to connect the southern terminus of the  
28           trail in King County to the northern terminus of the trail in Pierce County  
29           through construction of the nonmotorized-use bridge across the White  
30           river. This construction project will primarily consist of the  
31           nonmotorized-use bridge, a maintenance turnaround area, and mitigation  
32           plantings.

33           6. When executed, the aquatic lands easement that is the subject of this  
34           Ordinance will grant King County a nonexclusive easement from the state  
35           of Washington to build the nonmotorized-use bridge over the White river.

36           7. The term of this aquatic lands easement, Attachment A to this  
37           ordinance, is thirty years.

38           BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

39           SECTION 1. The King County executive is hereby authorized to execute a thirty-  
40           year aquatic lands easement between the King County parks and recreation division of  
41           the department of natural resources and parks and the Washington state Department of  
42           Natural Resources, substantially in the form of Attachment A to this

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- 43 ordinance, for the construction, operation and maintenance of the portion of Foothills
- 44 Trail that is over the White river.

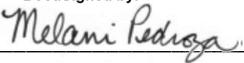
Ordinance 19462 was introduced on 5/3/2022 and passed as amended by the Metropolitan King County Council on 6/28/2022, by the following vote:

Yes: 9 - Balducci, Dembowski, Dunn, Kohl-Welles, Perry, McDermott, Upthegrove, von Reichbauer and Zahilay

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

DocuSigned by:  
  
 \_\_\_\_\_  
7E1C273CE9994B6...  
 Claudia Balducci, Chair

ATTEST:

DocuSigned by:  
  
 \_\_\_\_\_  
8DE1BB375AD3422...  
 Melani Pedroza, Clerk of the Council

APPROVED this \_\_\_\_\_ day of 7/14/2022, \_\_\_\_\_.

DocuSigned by:  
  
 \_\_\_\_\_  
4FBCAB8196AE4C6...  
 Dow Constantine, County Executive

**Attachments:** A. Aquatic Lands Easement - June 28, 2022

When recorded, return to:  
Christie True, Department Director  
King County Department of Natural Resources and Parks  
King Street Center  
201 S Jackson St Rm 5700  
Seattle, WA 98104-3855



## **AQUATIC LANDS EASEMENT**

Easement No. 51-102169

Grantor: Washington State Department of Natural Resources

Grantee(s): King County Department of Natural Resources and Parks

Abbreviated Legal Description: NE ¼ of the SE ¼ of Section 34, Township 20 North, Range 6 East, W.M.

Complete Legal Description on Page: 30

Auditor Reference Number(s) for King County: 20210514900010

Auditor Reference Number(s) for Pierce County: 202105125002

Assessor's Property Tax Parcel or Account Number: Not Applicable

Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this Easement: Not Applicable

THIS EASEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and KING COUNTY DEPARTMENT OF NATURAL RESOURCES AND PARKS, a governmental agency ("Grantee"). State has authority to enter into this Easement under Chapter 43.12 RCW, Chapter 43.30 RCW, and Title 79 of the Revised Code of Washington (RCW).

THEREFORE, the Parties agree as follows:

## SECTION 1 GRANT OF EASEMENT

### 1.1 Easement Defined.

- (a) State grants and conveys to Grantee a nonexclusive in gross easement, subject to the terms and conditions of this agreement, over, upon, and under those shorelands and bedland legally described in Exhibit A (“Easement Property”). In this agreement, the term “Easement” means this agreement and the rights granted.
- (b) This Easement 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 Easement does not include any right to harvest, collect or damage any natural resources, including, but not limited to, aquatic life or living plants; any water rights; any mineral rights; or any right to excavate or withdraw sand, gravel, or other valuable materials.
- (d) This Easement is not exclusive. State may enter and use the Easement Property for any purpose or permit others to enter and use the Easement Property for any purpose so long as such use does not unreasonably interfere with the rights granted herein.

### 1.2 Survey and Easement Property Descriptions.

- (a) Grantee’s obligation to provide a true and accurate description of the Easement Property, and the location of the Improvements to be constructed is a material term of this Easement. Grantee warrants that the record of survey referenced in Exhibit A includes a true and accurate description of the Easement Property, and the location of the Improvements to be constructed.
- (b) Unless State has given Grantee written authorization to use such lands, Grantee’s use of any state-owned aquatic lands outside the Easement Property boundaries is a material breach of this Easement and State may seek remedies under Section 14 of this Easement in addition to any other remedies afforded by law or equity or otherwise.
- (c) Grantee shall submit an updated record of survey for State’s acceptance within One Hundred Eighty (180) days of the completion of the Proposed Work described in Exhibit B. Upon State’s written acceptance of the updated record of survey, the updated record of survey shall supersede the record of survey referenced in Exhibit A. The specific location of the Easement Property shall be deemed to be as shown on the updated record of survey.
- (d) Grantee’s submission of the updated record of survey shall constitute a warranty that the updated record of survey is a true and accurate description of the Easement Property and the as-built location of all Improvements on the Easement Property. Grantee’s obligation to provide a true and accurate description of the Easement Property and the as-built location of Improvements on the Easement Property in the updated record of survey is a material term of this Easement.

- (e) At Grantee's expense, and no later than thirty (30) days after receiving State's written acceptance of the updated record of survey, Grantee shall record the updated record of survey in the Counties in which the Property is located. Grantee shall provide State with recording information, including the date of recordation and the file number, within fifteen (15) days after recording the updated record of survey.

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

## SECTION 2 USE

**2.1 Permitted Use.** This Easement is granted for the purpose of and is limited to: installation, use, and maintenance of a pedestrian bridge. The pedestrian bridge will also be used for limited emergency vehicle access (the "Permitted Use"). The Permitted Use does not include any utilities attached to the bridge. Any utilities attached to the bridge require a separate easement agreement with State.

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

**2.2 Restrictions on Permitted Use and Operations.**

- (a) Grantee shall not cause or permit:
  - (1) Damage to land or natural resources on the Easement Property or adjacent state-owned aquatic lands, regardless of whether the damages are a direct or indirect result of the Permitted Use.
  - (2) Waste on the Easement Property or adjacent state-owned aquatic lands; or
  - (3) Deposit of material or filling activity on the Easement Property or adjacent state-owned aquatic lands, unless approved by State in writing. This prohibition includes, without limitation, any deposit of fill, rock, earth, ballast, wood waste, hydrocarbons, refuse, garbage, waste matter (including, but not limited to, chemical, biological, or toxic wastes), pollutants, or other matter.
- (b) Nothing in this Easement shall be interpreted as an authorization to dredge the Easement Property.
- (c) Grantee shall not construct new bulkheads or place new hard bank armoring.
- (d) Grantee shall immediately notify State if Grantee breaches any of the terms and conditions of this Easement.

- (e) State's failure to notify Grantee of Grantee's failure to comply with all or any of the restrictions set out in this Paragraph 2.2 does not constitute a waiver of any remedies available to State.
- (f) Grantee's compliance with the restrictions in this Paragraph 2.2 does not limit Grantee's liability under any other provision of this Easement or the law.

**2.3 Conformance with Laws.** Grantee shall keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Grantee's use of the Easement Property.

**2.4 Liens and Encumbrances.** Unless expressly authorized by State in writing, Grantee shall keep the Easement Property free and clear of any liens and encumbrances arising out of or relating to the Permitted Use or Grantee's use of the Easement Property.

**2.5 Interference with Other Uses.**

- (a) Grantee shall exercise Grantee's rights under this Easement in a manner that minimizes or avoids interference with the rights of State, the public, or others with valid rights to use or occupy the Easement Property or surrounding lands and water.
- (b) To the fullest extent reasonably possible, Grantee shall place and construct Improvements in a manner that allows unobstructed movement in and on the waters above and around the Easement Property.
- (c) Except in an emergency, Grantee shall provide State with written notice regarding the start of construction or other significant activity on Easement Property at least sixty (60) days in advance. "Significant Activity" means any activity that may affect the use or enjoyment of the Easement Property or adjacent state-owned aquatic lands by the State of Washington, public, or others with valid rights to use or occupy the Easement Property or adjacent state-owned aquatic lands.
- (d) Grantee shall mark the location of any hazards associated with the Permitted Use and any hazards associated with the Improvements in a manner that ensures reasonable notice to the public, including, but not limited to, boaters, kayakers, swimmers, and divers.

### SECTION 3 TERM

**3.1 Term Defined.** The term of this Easement is Thirty (30) years (the "Term"), beginning on the 15th day of June, 2022 (the "Commencement Date"), and ending on the 14th day of June, 2052 (the "Termination Date"), unless terminated sooner under the terms of this Easement. Whenever the phrase "termination of this Easement" or "termination of the Easement" is used in this Easement, it shall refer to the ending, termination, cancellation, or expiration of the Easement.

**3.2 Renewal of Easement and/or Application for New Easement.**

This Easement does not provide a right of renewal. Grantee may apply for a new Easement, which State has discretion to grant. Grantee must apply for a new Easement at least one (1) year prior to Termination Date.

**3.3 End of Term.**

- (a) Removal of Improvements: Prior to the termination of this Easement, Grantee shall remove Improvements in accordance with Section 7.
- (b) Restoration of the Easement Property:
  - (1) Prior to the termination of this Easement, Grantee shall restore the Easement Property to its condition prior to Grantee's Use of the Easement Property.
  - (2) Restoration of the Easement Property is to be done at Grantee's expense and to the satisfaction of State. Restoration of the Easement Property is considered to be Work, as described in Section 7 of the Easement. Grantee's plans for restoring the Easement Property shall be submitted to State for prior approval in accordance with Section 7 of this Easement.
  - (3) If Grantee fails to restore the condition of the Easement Property as required by this Paragraph, State may take steps reasonably necessary to remedy Grantee's failure. Upon demand by State, Grantee shall pay all costs of State's remedy, lost revenue resulting from the condition of the Easement Property, and administrative costs associated with State's remedy.
- (c) Vacation of Property: Upon the termination of this Easement, Grantee shall cease all operations on and use of the Easement Property.

**SECTION 4 CONSIDERATION**

**4.1** This Easement is granted in consideration of the agreements herein.

**SECTION 5 OTHER EXPENSES**

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

**5.2 Taxes and Assessments.** Grantee shall pay all taxes, assessments, and other governmental charges applicable or attributable to the Easement, the Grantee-Owned Improvements, or the Permitted Use.

**5.3 Proof of Payment.** If required by State, Grantee shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Easement requires Grantee to pay.

**SECTION 6 LATE PAYMENTS AND OTHER CHARGES**

**6.1 Failure to Pay.** Failure to pay any fees or other expenses due under this Easement is a breach by Grantee. State may seek remedies in Section 14 as well as late charges and interest as provided in this Section 6. In addition, if Grantee fails to pay any amounts due to third parties under this Easement, State may pay the amount due, and recover its cost in accordance with this Section 6.

**6.2 Late Charge.** If State does not receive any payment within ten (10) days of the date due, Grantee 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) Grantee 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. Fees 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 Grantee, Grantee 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 Grantee of the payment or advance. This includes, but is not limited to State's payment of taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials, costs of removal and disposal of Improvements under any provision of this Easement, 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, Grantee shall pay collection agency fees in addition to the unpaid amount.

**6.5 No Accord and Satisfaction.** If Grantee pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance 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.

## **SECTION 7 IMPROVEMENTS, PERSONAL PROPERTY, AND WORK**

**7.1 Improvements and Personal Property Defined.**

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

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

**7.2 Existing Improvements.** On the Commencement Date, the following Improvements Owned by Others are located on the Easement Property: (1) railroad bridge footing previously owned by the Burlington Northern Inc. conveyed by quitclaim deed to the City of Buckley on October 14, 1987.

**7.3 Construction, Major Repair, Modification, and Other Work.**

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, and removal of Improvements (collectively “Work”).
- (b) Except in an emergency, Grantee shall not conduct any Work without State’s prior written consent. Grantee shall obtain State’s prior written consent as follows:
  - (1) Grantee shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities, unless Grantee and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Grantee shall submit plans and specifications to State at least ninety (90) days before commencement of Work.
  - (2) State may deny consent if State determines that denial is in the best interests of the State of Washington or if the proposed Work does not comply with Paragraphs 7.4 and 11.3. State may impose additional conditions intended to protect and preserve the Easement Property or adjacent state-owned aquatic lands.
  - (3) State will not approve plans to construct new Improvements or expand existing Improvements in or over habitats designated by State as important habitat, including, but not limited to: native aquatic vegetation, commercial geoduck tracts, forage fish spawning areas, and salmon critical habitat. Grantee shall confirm location of important habitat on Property, if any, with State before submitting plans and specifications in accordance with Paragraph 7.3.

- (c) Grantee shall immediately notify State of emergency Work. Upon State's request, Grantee shall provide State with as-built plans and specifications of emergency Work.
- (d) Grantee shall not commence Work until Grantee or Grantee's contractor has:
  - (1) Obtained a performance and payment bond in an amount equal to One Hundred percent (100%) of the estimated cost of construction. Grantee or Grantee's contractor shall maintain the performance and payment bond until the costs of the Work, including all laborers and material persons, are paid in full.
  - (2) Obtained all required permits.
  - (3) Provided notice of Significant Activity in accordance with Paragraph 2.5(c).
- (e) Grantee shall preserve and protect Improvements Owned by Others, if any.
- (f) Grantee shall preserve all legal land subdivision survey markers and witness objects ("Markers"). If disturbance of a Marker will be a necessary consequence of Grantee's construction, Grantee shall reference and/or replace the Marker in accordance with all applicable laws and regulations current at the time, including, but not limited to Chapter 58.24 RCW. At Grantee's expense, Grantee shall retain a registered professional engineer or licensed land surveyor to reestablish destroyed or disturbed Markers in accordance with U.S. General Land Office standards.
- (g) Before completing Work, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to its natural condition before the Work began. If Work is intended for removal of Improvements at End of Term, Grantee shall restore the Easement Property in accordance with Paragraph 3.3, End of Term.
- (h) Upon completing Work, Grantee shall promptly provide State with as-built plans and specifications. State may also require Grantee to obtain an updated record of survey showing the Easement Property boundaries and the as-built location of all Improvements on the Easement Property.
- (i) State shall not charge additional fees for authorized Improvements installed by Grantee on the Easement Property during this Term of this Easement, but State may charge additional fees for such Improvements if and when the Grantee or successor obtains a subsequent use authorization for the Easement Property and State has waived the requirement for removal of Improvements as provided in Paragraph 7.5.

#### **7.4 Standards for Work.**

- (a) Applicability of Standards for Work.
  - (1) All Work must conform to the requirements of Paragraph 7.4. All Work must also comply with the requirements and limitations set forth in Paragraph 11.3.
  - (2) The standards for Work in Paragraph 7.4(b) apply to Work commenced in the five-year period following the Commencement Date. Work commences when State approves plans and specifications.

- (3) If Grantee commences Work five years or more after the Commencement Date, Grantee shall comply with State's then current standards for Work.
- (4) If Grantee commences Work five years or more after the Commencement Date, Grantee shall 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 Easement, Grantee shall request State to provide Grantee with State's current standards for Work on state-owned aquatic lands.
  - (ii) Within thirty (30) days of receiving Grantee's request, State shall provide Grantee with State's current standards for Work, which will be effective for the purpose of State's approval of Grantee's proposed Work, provided Grantee submits plans and specifications for State's approval within two (2) years of Grantee's request for standards.
  - (iii) If State does not timely provide State's current standards for Work upon Grantee's request, the standards for Work under Paragraph 7.4(b) apply to Grantee's Work, provided Grantee submits plans and specifications as required by Paragraph 7.3 within two (2) years of Grantee's request for State's current standards for Work.
  - (iv) If Grantee fails to (1) make a request for State's current standards for Work or (2) timely submit plans and specifications to State after receiving State's current standards for Work, Grantee, at Grantee's sole expense, shall make changes in plans or Work necessary to conform to State's current standards for Work upon State's demand.
- (b) The following standards for Work apply to Work commenced in the five-year period following the Commencement Date.
  - (1) Grantee shall only conduct in-water Work during time periods authorized for such work under WAC 220-660-110, Authorized Work Times in Freshwater Areas, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW).
  - (2) Grantee shall install grating on the new pedestrian overlook located on the south bridge abutment as follows: Grantee shall install unobstructed grating on one-hundred percent (100%) of the surface area. All grating material must have at least eighteen percent (18%) functional open space.
  - (3) Grantee shall orient and shield lighting fixtures attached to overwater structures in a manner that minimizes the amount of light shining directly on the water, minimizes the amount of glare on the water, and minimizes the amount of light broadcasting into the night sky. Grantee shall implement the following measures to achieve this requirement:
    - (i) Grantee shall direct light to walkways,
    - (ii) Grantee shall use light shields which prevent light from being emitted upward and prevent glare on the water,
    - (iii) Grantee shall use fixtures that do not emit light upward,

- (iv) Grantee shall use lights that are “warm-white” or filtered.

## **7.5 Grantee-Owned Improvements at End of Easement.**

- (a) Disposition.
  - (1) Grantee shall remove Grantee-Owned Improvements in accordance with Paragraph 7.3 upon the termination of the Easement unless State waives the requirement for removal.
  - (2) Grantee-Owned Improvements remaining on the Easement Property on the termination of the Easement shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.
  - (3) If Grantee-Owned Improvements remain on the Easement Property after the termination of the Easement without State’s consent, State may remove all Improvements and Grantee shall pay State’s costs of removal and disposal.
- (b) Conditions Under Which State May Waive Removal of Grantee-Owned Improvements.
  - (1) State may waive removal of any Grantee-Owned Improvements whenever State determines that it is in the best interests of the State of Washington.
  - (2) If Grantee enters into a new Easement, State may waive requirement to remove Grantee-Owned Improvements. State also may consent to Grantee’s continued ownership of Grantee-Owned Improvements.
  - (3) State may waive requirement to remove Grantee-Owned Improvements upon consideration of a timely request from Grantee, as follows:
    - (i) Grantee shall submit its request to leave Grantee-Owned Improvements to State at least one (1) year before the Termination Date.
    - (ii) State, within ninety (90) days of receiving Grantee’s request, will notify Grantee whether State consents to any Grantee-Owned Improvements remaining. State has no obligation to grant consent.
    - (iii) State’s failure to respond to Grantee’s request to leave Improvements within ninety (90) days is a denial of the request.
- (c) Grantee’s Obligations if State Waives Removal.
  - (1) Grantee shall not remove a Grantee-Owned Improvement if State waives the requirement for removal of that Grantee-Owned Improvement.
  - (2) Grantee shall maintain such Grantee-Owned Improvements in accordance with this Easement until the termination of this Easement. State may require Grantee to take appropriate steps to decommission the structure. Grantee is liable to State for cost of repair if Grantee causes or allows damage to Grantee-Owned Improvements State has designated to remain.
  - (3) State may condition its waiver of removal on Grantee entering into a new Easement for the Grantee-Owned Improvements.

## **7.6 Unauthorized Improvements.**

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

- (b) The placement of Unauthorized Improvements on the Easement Property is a breach of this Easement and State may require removal of any or all Unauthorized Improvements. If State requires removal of Unauthorized Improvements and if Grantee fails to remove the Unauthorized Improvements, State may remove the Unauthorized Improvements and Grantee shall pay for the cost of removal and disposal.
- (c) In addition to requiring removal of Unauthorized Improvements, State may charge Grantee a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until the time the Unauthorized Improvements are removed.
- (d) If State consents to Unauthorized Improvements remaining on the Easement Property, upon State's consent, the Unauthorized Improvements will be treated as Grantee-Owned Improvements and the removal and ownership of such Improvements shall be governed by Paragraph 7.5. If State consents to the Unauthorized Improvements remaining on the Easement Property, State may charge a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until State consents.

#### **7.7 Personal Property.**

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

### **SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION**

#### **8.1 Definitions.**

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.

- (b) “Release or threatened release of Hazardous Substance” means a release or threatened release as defined under any law described in Paragraph 8.1(a).
- (c) “Utmost care” means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the utmost care required under RCW 70A.305.040(3)(a)(iii) of the Washington State Model Toxics Control Act.
- (d) “Grantee and affiliates” when used in this Section 8 means Grantee or Grantee’s subgrantees, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Easement Property with the Grantee’s permission.
- (e) “Liabilities” as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys’ fees and disbursements), penalties, or judgments.

## **8.2 General Conditions.**

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

## **8.3 Current Conditions and Duty to Investigate.**

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

## **8.4 Use of Hazardous Substances.**

- (a) Grantee and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.

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

### **8.5 Management of Contamination.**

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

### **8.6 Notification and Reporting.**

- (a) Grantee shall immediately notify State if Grantee becomes aware of any of the following:
  - (1) A release or threatened release of Hazardous Substances;
  - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances;
  - (3) Any lien or action arising from Hazardous Substances;
  - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
  - (5) Any notification from the EPA or the Washington State Department of Ecology that remediation or removal of Hazardous Substances is or may be required at the Easement Property.
- (b) Grantee's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a), and to any other property used by Grantee in conjunction with the Easement Property if a release of Hazardous Substances on the other property could affect the Easement Property.

- (c) Grantee shall provide State with copies of all documents Grantee submits to any federal, state, or local authorities concerning environmental impacts or proposals relative to the Easement Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollutant Discharge Elimination System permits (NPDES); U.S. Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality Certifications; Substantial Shoreline Development permits; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Easement Property.

### **8.7 Indemnification.**

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

### **8.8 Reservation of Rights.**

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

### **8.9 Cleanup.**

- (a) If Grantee's act, omission, or breach of obligation under Paragraph 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standards, Grantee shall, at Grantee's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.

- (b) If a cleanup is eligible for the Washington State Department of Ecology's Voluntary Cleanup Program, Grantee may undertake a cleanup of the Easement Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Grantee cooperates with the Department of Natural Resources in development of cleanup plans. Grantee shall not proceed with Voluntary Cleanup without the Department of Natural Resources' approval of final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Easement. Grantee's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Easement.

#### **8.10 Sampling by State, Reimbursement, and Split Samples.**

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

### **SECTION 9 NATURE OF ESTATE AND ASSIGNMENT**

This Easement shall be in gross for the sole benefit of Grantee's use associated with the Permitted Use. This Easement shall not run with the land. This Easement is indivisible. Grantee shall not sell, convey, mortgage, assign, pledge, grant franchises for, or otherwise transfer or encumber any part of Grantee's interest in this Easement or any part of Grantee's interest in the Easement Property without State's prior written consent, which shall be at State's sole discretion. State reserves the right to reasonably change the terms and conditions of this Easement upon State's consent to requests made under this Section 9.

### **SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE**

**10.1 Allocation of Responsibility.** Each Party shall be responsible for the actions and inactions of itself and its own officers, employees, and agents acting within the scope of their authority. Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Grantee's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold harmless State for Hazardous Substances.

**10.2 Insurance Terms.**

(a) Insurance Required.

- (1) Grantee certifies that on the Commencement Date of this Easement it is self-insured for all the liability exposures, its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 10.2 and by Paragraph 10.3, Insurance Types and Limits. Grantee shall provide to State evidence of its status as a self-insured entity. Upon request by State, Grantee shall provide a written description of its financial condition and/or the self-insured funding mechanism. Grantee shall provide State with at least thirty (30) days' written notice prior to any material changes to Grantee's self-insured funding mechanism. If during the Term of this Easement Grantee's self-insurance plan fails to provide coverage equal to that required in Paragraphs 10.2 and Paragraph 10.3 of this Easement, Grantee shall procure additional commercial insurance coverage to meet the requirements of this Easement. The requirements in Paragraphs 10.2(a)(3) and (4) only apply where the Grantee procures additional commercial insurance to meet the requirements of this Easement.
- (2) Unless State agrees to an exception, Grantee shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of A.M. Best's Insurance Reports. Grantee may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
- (3) All general liability, excess, umbrella, and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as an additional insured by way of endorsement.
- (4) All property, builder's risk, and equipment breakdown insurance must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as loss payees.
- (5) All insurance provided in compliance with this Easement must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

(b) Waiver.

- (1) Grantee waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Easement covers these damages.
  - (2) Except as prohibited by law, Grantee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this Easement.
- (c) Proof of Insurance.
- (1) Grantee shall provide State with a certificate(s) and endorsement(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Easement and, if requested, copies of policies to State.
  - (2) The certificate(s) of insurance must reference the Easement number.
  - (3) Receipt of such certificates, endorsements, or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Easement, as follows:
- (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
  - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State twenty (20) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
- (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
  - (2) Grantee shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Grantee fails to procure and maintain the insurance described above within fifteen (15) days after Grantee receives a notice to comply from State, State may either:
- (1) Terminate this Easement, or
  - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Grantee shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.3 from the date of State's notice of the expenditure until Grantee's repayment.
- (g) General Terms.
- (1) State does not represent that coverage and limits required under this Easement are adequate to protect Grantee.
  - (2) Coverage and limits do not limit Grantee's liability for indemnification and reimbursements granted to State under this Easement.
  - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to Easement Property first to restore the Easement Property,

then to pay the cost of the reconstruction, then to pay State any sums in arrears, and then to Grantee.

### 10.3 Insurance Types and Limits.

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

the law. Grantee is responsible for all civil and criminal liability arising from failure to maintain such coverage.

- (c) **Employers' Liability Insurance.** Grantee shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
- (d) **Property Insurance.**
- (1) Grantee shall buy and maintain property insurance covering all real property and fixtures, equipment, Improvements and betterments (regardless of whether owned by Grantee or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived. The policy must include State as a loss payee.
  - (2) Grantee shall buy and maintain equipment breakdown insurance covering all real property and fixtures, equipment, Improvements and betterments (regardless of whether owned by Grantee or State) from loss or damage caused by the explosion of equipment, fired or unfired vessels, electric or steam generators, electrical arcing, or pipes.
  - (3) In the event of any loss, damage, or casualty that is covered by one or more of the types of insurance described above, the Parties shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned on such proceeds, for use according to the terms of this Easement. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).
  - (4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:
    - (i) Repair and restore damaged Improvements to their former condition, or
    - (ii) Replace and restore damaged Improvements with new Improvements on the Easement Property of a quality and usefulness at least equivalent to, or more suitable than, damaged Improvements.
- (e) **Builder's Risk Insurance.**
- (1) Grantee shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance must be written on a completed form and in an amount equal to the value of the completed Improvements, subject to subsequent modifications to the sum. The

- insurance must be written on a replacement cost basis. The insurance must name Grantee, all contractors, and subcontractors in the work as insured.
- (2) Insurance described above must cover or include the following:
    - (i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;
    - (ii) The entire work on the Easement Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
    - (iii) Portions of the work located away from the Easement Property but intended for use at the Easement Property, and portions of the work in transit;
    - (iv) Scaffolding, falsework, and temporary buildings located on the Easement Property; and
    - (v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.
  - (3) Grantee or Grantee's contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.
  - (4) Grantee or Grantee's contractor(s) shall buy and maintain equipment breakdown insurance covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Grantee, all contractors, and subcontractors in the work as insured.
  - (f) Business Auto Policy Insurance.
    - (1) Grantee or Grantee's contractor(s) shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance with a limit not less than One Million Dollars (\$1,000,000) per accident. Such insurance must cover liability arising out of "Any Auto."
    - (2) Business auto coverage must be written on ISO Form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy must be endorsed to provide contractual liability coverages and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

#### **10.4 Financial Security.**

- (a) On the Commencement Date of this Easement, Grantee is not required to procure and maintain a corporate security bond or other financial security ("Security"). During the Term of this Easement, State may require Grantee to procure and maintain Security upon any of the events listed in Paragraph 10.4(c)(1).
- (b) All Security must be in a form acceptable to State.
  - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports, unless State approves an exception in writing. Grantee may submit a request to

- the Risk Manager for the Department of Natural Resources for an exception to this requirement.
- (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
  - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
- (1) State may require an adjustment in the Security amount:
    - (i) As a condition of approval of assignment of this Easement,
    - (ii) Upon a material change in the condition or disposition of any Improvements, or
    - (iii) Upon a change in the Permitted Use.
  - (2) Grantee shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any breach by Grantee in its obligations under this Easement, State may collect on the Security to offset the liability of Grantee to State. Collection on the Security does not (1) relieve Grantee of liability, (2) limit any of State's other remedies, (3) reinstate the Easement or cure the breach or (4) prevent termination of the Easement because of the breach.

## **SECTION 11 MAINTENANCE AND REPAIR**

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

**11.2 Grantee's Repairs and Maintenance.**

- (a) Grantee shall, at its sole cost and expense, keep and maintain the Easement Property and all Grantee-Owned Improvements in good order and repair, in a clean, attractive, and safe condition. Grantee shall repair all damage caused or permitted by Grantee to Improvements Owned by Others on the Easement Property.
- (b) Grantee shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Easement Property or to any Grantee-Owned Improvements on the Easement Property that may be required by any public authority having jurisdiction over the Easement Property and requiring it for public health, safety and welfare purposes.
- (c) Except as provided in Paragraph 11.2(d), all additions, repairs, alterations, maintenance, replacements or changes to the Easement Property and to any Grantee-Owned Improvements on the Easement Property shall be made in accordance with, and ownership shall be governed by, Section 7 above.
- (d) Routine maintenance and repair are acts intended to prevent a decline, lapse, or cessation of the Permitted Use and associated Grantee-Owned Improvements.

Routine maintenance or repair that does not require regulatory permits does not require authorization from State pursuant to Section 7.

- (e) Upon completion of maintenance activities, Grantee shall remove all debris and restore the Easement Property to the condition prior to the commencement of Work.

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

- (a) Grantee shall not use or install treated wood at any location above or below water, except that Grantee may use Ammoniacal Copper Zinc Arsenate (ACZA) treated wood for above water structural framing. Grantee shall never use Chromated Copper Arsenate (CCA), Alkaline Copper Quaternary (ACQ), or creosote-treated wood at any location.

## SECTION 12 DAMAGE OR DESTRUCTION

**12.1 Damage to Improvements.**

- (a) In the event of any damage to or destruction of any Improvements on the Easement Property, Grantee shall immediately notify State, with subsequent written notice to State within five (5) days.
- (b) Grantee shall be solely responsible for any reconstruction, repair, or replacement of any Grantee-Owned Improvements. If Grantee elects not to reconstruct, repair, or replace all or a portion of any damaged Improvements, Grantee shall promptly remove any damaged or destroyed Improvements and restore the Easement Property. Any reconstruction, repair, or replacement of Improvements is governed by Section 7 Improvements, Personal Property, and Work, and Section 11, Maintenance and Repair, and any Additional Obligations in Exhibit A.
- (c) If Grantee is in breach of this Easement at the time damage or destruction occurs to Grantee-Owned Improvements, State may elect to terminate the Easement without giving Grantee an opportunity to cure, and State may retain any insurance proceeds payable as a result of the damage or destruction.

**12.2 Damage to Land or Natural Resources**

- (a) In the event of any damage to or destruction to the land or natural resources on the Easement Property, Grantee shall immediately notify State, with subsequent written notice to State within five (5) days. In the event of any damage or destruction to land or natural resources on adjacent state-owned aquatic lands that is attributable to Grantee's use of the Property, to the Permitted Use, or to related activities, Grantee shall immediately notify State, with subsequent written notice to State within five (5) days.
- (b) Grantee, at Grantee's sole cost, shall remedy any damages to land or natural resources on the Easement Property and adjacent state-owned aquatic lands that are attributable to Grantee's use of the Property, the Permitted Use, or related activities, in accordance with a plan approved by State. Grantee shall also

compensate State for any lost or damaged natural resource values in accordance with Paragraph 12.2(c).

- (c) Compensation for lost resource values:
- (1) If damages to the land or natural resources result in lost or damaged natural resource values, Grantee shall compensate State with (1) monetary compensation; (2) the completion of a project approved by State that includes replacing, enhancing, or otherwise providing in-kind habitats, resources, or environments on other state-owned aquatic lands in order to offset the damage and impacts; or (3) a mixture of both monetary compensation and a project. State shall have the discretion to determine if Grantee will compensate with monetary compensation, a project, or both. If State requires monetary compensation, the value of damages shall be determined in accordance with Paragraph 12.2(c)(2).
  - (2) If State requires monetary compensation under Paragraph 12.2(c)(1), unless the Parties otherwise agree on the value, a three-member panel of professional appraisers or resource economists will determine the measure of lost resource values, and issue a written decision. The appraisers or resource economists shall be qualified to assess economic value of natural resources. State and Grantee each shall appoint and compensate one member of the panel. By consensus, the two appointed members shall select the third member, who will be compensated by State and Grantee equally. The panel shall base the calculation of compensation on generally accepted valuation principles. The written decision of the majority of the panel shall bind the Parties.
- (d) If damage to land or natural resources on the Easement Property or adjacent state-owned aquatic lands are attributable to Grantee's use of the Property, to the Permitted Use, or to related activities, or if such damage occurs when Grantee is in breach of the Easement, State may elect to terminate the Easement in accordance with Section 14. If State elects to terminate the Easement, Grantee is still responsible for restoring any damages to land or natural resources on the Easement Property and adjacent state-owned aquatic lands, and for compensating State for any lost resource values in accordance with Paragraph 12.2(c). State may retain any insurance proceeds payable as a result of the damage or destruction.
- (e) State may, with or without terminating the Easement, at the sole expense of Grantee, remedy any damages and complete a project that offsets lost or damaged natural resource values. If State takes any such actions, upon demand by State, Grantee shall pay all costs incurred by State.

**12.3 State's Waiver of Claim.** State does not waive any claims for damage or destruction of the Easement Property or adjacent state-owned aquatic lands unless State provides written notice to Grantee of each specific claim waived.

**12.4 Insurance Proceeds.** Grantee's duties under Paragraphs 12.1 and 12.2 are not conditioned upon the availability of any insurance proceeds to Grantee from which the cost of

repairs may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

### SECTION 13 CONDEMNATION

In the event of condemnation, the Parties shall allocate the condemnation award between State and Grantee based upon the ratio of the fair market value of (1) Grantee's rights in the Easement Property and Grantee-Owned Improvements and (2) State's interest in the Easement Property; the reversionary interest in Grantee-Owned Improvements, if any; and State-Owned Improvements, if any. In the event of a partial taking, the Parties shall compute the ratio based on the portion of Easement Property or Improvements taken. If Grantee 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 REMEDIES AND TERMINATION

**14.1 Termination by Breach.** State may terminate this Easement upon Grantee's failure to cure a breach of the terms and conditions of this Easement. Unless otherwise stated in this Easement, State shall provide Grantee written notice of breach, and Grantee shall have sixty (60) days after receiving the notice to cure the breach. State may extend the cure period if breach is not reasonably capable of cure within sixty (60) days. This sixty (60) day cure period does not apply where State terminates this Easement under Paragraph 10.2(f) or Section 12.

**14.2 Termination by Nonuse.** If Grantee does not use the Easement Property for a period of three (3) successive years, this Easement terminates without further action by State and Grantee's rights revert to State. Grantee shall still be responsible for complying with all end of Term requirements.

**14.3 Termination by Grantee.** Grantee may terminate this Easement upon providing State with sixty (60) days written notice of intent to terminate. If Grantee terminates under this Paragraph, the date of Grantee's termination shall be deemed the Termination Date and Grantee shall comply with all end of Term requirements. Grantee is not entitled to any refunds of Easement fees already paid to State.

**14.4 Remedies Not Exclusive.** The remedies specified under this Section 14 are not exclusive of any other remedies or means of redress to which State is lawfully entitled for Grantee's breach or threatened breach of any provision of this Easement.

### SECTION 15 NOTICE AND SUBMITTALS

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

State: DEPARTMENT OF NATURAL RESOURCES  
Shoreline District  
950 Farman Street North  
Enumclaw, Washington 98022

Grantee: KING COUNTY DEPT OF NATURAL RESOURCES AND PARKS  
Christie True, Director  
King Street Center  
201 S Jackson St Rm 5700  
Seattle, WA 98104-3855

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 Easement 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.

**15.2 Contact Persons.** On the Commencement Date, the following persons are designated day-to-day contact persons. Any Party may change the Contact Person upon reasonable notice to the other.

State: Department of Natural Resources  
Shoreline District, Aquatics  
950 Farman Street North  
Enumclaw, Washington 98022  
(360) 825-1631  
[aquaticleasing.shoreline@dnr.wa.gov](mailto:aquaticleasing.shoreline@dnr.wa.gov)

Grantee: King County Department of Natural Resources and Parks  
Christie True, Director  
(206) 477-4550  
[christie.true@kingcounty.gov](mailto:christie.true@kingcounty.gov)

## SECTION 16 MISCELLANEOUS

**16.1 Authority.** Grantee and the person or persons executing this Easement on behalf of Grantee represent that Grantee is qualified to do business in the State of Washington, that Grantee has full right and authority to enter into this Easement, and that each and every person

signing on behalf of Grantee is authorized to do so. Upon State's request, Grantee shall provide evidence satisfactory to State confirming these representations.

**16.2 Successors and Assigns.** Subject to the limitations set forth in Section 9, this Easement binds and inures to the benefit of the Parties, their successors, and assigns.

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

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

**16.5 Waiver.**

- (a) The waiver of any breach or default of any term, covenant, or condition of this Easement 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 Easement. 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 Easement, extension of the Easement, or the issuance of a new Easement to Grantee, does not waive State's ability to pursue any rights or remedies under the Easement.

**16.6 Cumulative Remedies.** The rights and remedies of State under this Easement are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

**16.7 Time is of the Essence.** TIME IS OF THE ESSENCE as to each and every provision of this Easement.

**16.8 Language.** The word "Grantee" as used in this Easement applies to one or more persons and regardless of gender, as the case may be. The singular includes the plural, and the neuter includes the masculine and feminine. If there is more than one Grantee, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Grantee in the collective. The word "Party" means either or both State and Grantee, depending on the context.

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

**16.10 Applicable Law and Venue.** This Easement 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 Easement is in the Superior Court for Thurston County, Washington.

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

**16.12 Recordation.** At Grantee's expense and no later than thirty (30) days after receiving the fully-executed Easement, Grantee shall record this Easement in the county in which the Easement Property is located. Grantee shall include the parcel number of the upland property used in conjunction with the Easement Property, if any. Grantee shall provide State with recording information, including the date of recordation and file number. If Grantee fails to record this Easement, State may record this Easement and Grantee shall pay the costs of recording upon State's demand.

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

**16.14 Survival.** Any obligations of Grantee not fully performed upon termination of this Easement do not cease, but continue as obligations of the Grantee until fully performed.

**16.15 Exhibits and Attachments.** All referenced exhibits and attachments are incorporated in this Easement unless expressly identified as unincorporated.

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

KING COUNTY DEPARTMENT OF  
NATURAL RESOURCES AND PARKS

Dated: \_\_\_\_\_, 20\_\_

By: Christie True  
Title: Director  
Address: King Street Center  
201 S Jackson St Rm 5700  
Seattle, WA 98104-3855  
Phone: (206) 477-4550

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

Dated: \_\_\_\_\_, 20\_\_

By: Alexandra K. Smith  
Title: Deputy Supervisor for Forest Resources,  
Regulation, and Aquatics  
Address: 950 Farman Street North  
Enumclaw, WA 98022

Approved as to form this  
24th day of February 2022  
Jennifer Clements, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

*Notarized online using audio-video communication*

STATE OF )  
 ) ss  
County of )

I certify that I know or have satisfactory evidence that CHRISTIE TRUE 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 Director of King County Natural Resources and Parks to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

This notarial act involved the use of communication technology.

Dated: \_\_\_\_\_, 20\_\_

(Seal or stamp)

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

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

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

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



**EXHIBIT A**

**Agreement Number 51-102169**

**LEGAL DESCRIPTION OF THE PROPERTY:**

That real property legally described and shown as DNR Easement Area in that Record of Survey recorded in King County, Washington on May 14, 2021 under Auditor's File Number 20210514900010 and in Volume 445 of Surveys at Page 275 and recorded in Pierce County, Washington on May 12, 2021 under Auditor's File Number 202105125002.

**SQUARE FOOTAGE OF EASEMENT:**

Total Second Class Shorelands:	270
Total First Class Shorelands:	502
Total Bedlands:	4,723
<u>Total Square Feet:</u>	<u>5,495</u>

## EXHIBIT B

### 1. DESCRIPTION OF PERMITTED USE

#### A. Existing Conditions.

The Easement Property is located over the White River within King and Pierce Counties. The Easement Property includes portions below ordinary high water line of the northern bank (King County), extending south to below the ordinary high water line of the southern bank (Pierce County). An administrative line of navigability (ordinary low water) to determine bedlands and shorelands is demarcated on the record of survey referenced in Exhibit A.

The White River provides habitat Chinook salmon and steelhead trout which are listed as endangered under the Endangered Species Act (ESA). Coho salmon are also listed as a Species of Concern under the ESA. Washington State Department of Fish and Wildlife has mapped the Easement Property as containing the following Priority Habitat and Species (PHS): Rainbow trout, Cutthroat trout, Pink salmon, Bull trout, Sockeye salmon, and Roosevelt Elk. Priority habitats mapped include freshwater emergent, freshwater forested/shrub, and riverine wetlands.

#### B. Proposed Work.

Grantee has submitted to State plans and specifications for the Proposed Work shown in Attachment 1 to this Exhibit B (Proposed Work). State grants its consent to the Proposed Work. Grantee shall conform the Proposed Work to the plans and specifications. Grantee's Proposed Work is considered Work and subject to the terms and conditions of this Easement. If the Proposed Work is not commenced within five years of the Commencement Date of the Easement, or if Grantee is required to renew, extend, modify, or obtain a new regulatory permit for the Proposed Work, Grantee shall obtain State's prior written consent before conducting the Proposed Work pursuant to Section 7.3 of the Easement

#### C. **Permits for Proposed Work.** Grantee has secured the following permits for the Proposed Work:.

- Washington Department of Fish and Wildlife, Hydraulic Project Approval (2021-4-367+01); issued June 3, 2021
- Department of Ecology, Approval of City of Buckley Conditioned Shoreline Conditional Use Permit and Shoreline Variance Permit (Shoreline 21-0001), issued February 4, 2022
- Department of Ecology, Approval of King County Shoreline Substantial Development Permit, and Conditional Use Permit (SHOR21-0017, SHOR21-0018), issued October 5, 2021.
- City of Buckley, Shoreline Conditional Use Permit / Shoreline Variance (Shoreline 21-0001); issued September 28, 2021
- City of Buckley, Notice of Decision (Shoreline-21-0001); issued October 6, 2021
- King County, Shoreline Substantial Development Decision (SHOR21-0017, SHOR21-0018); issued June 30, 2021
- King County, Notice of Decision (NOD) for Shoreline Management Substantial

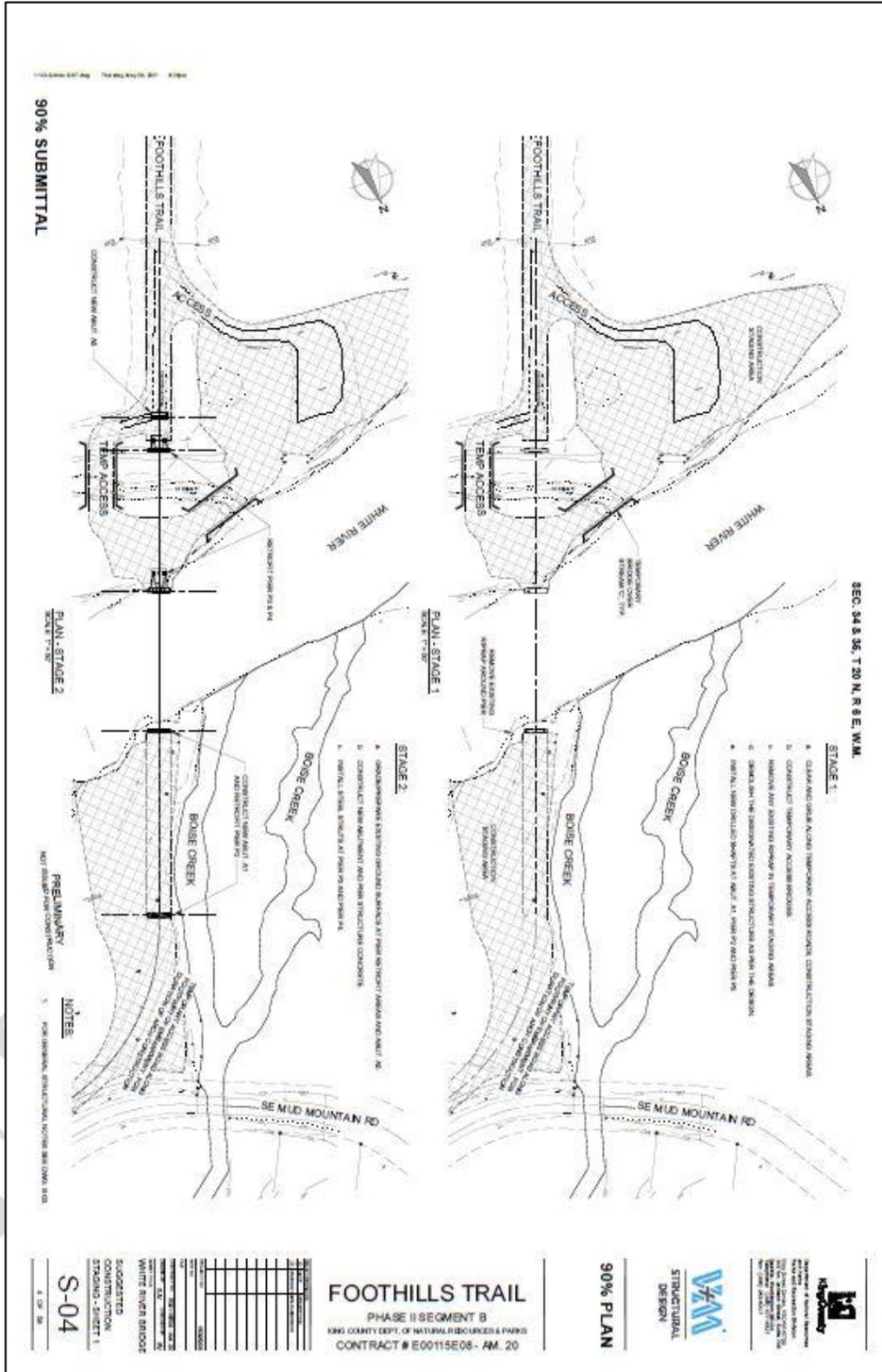
Development Permit (SHOR21-0017) and Shoreline Conditional Use Permit (SHOR21-0018); issued September 9, 2021

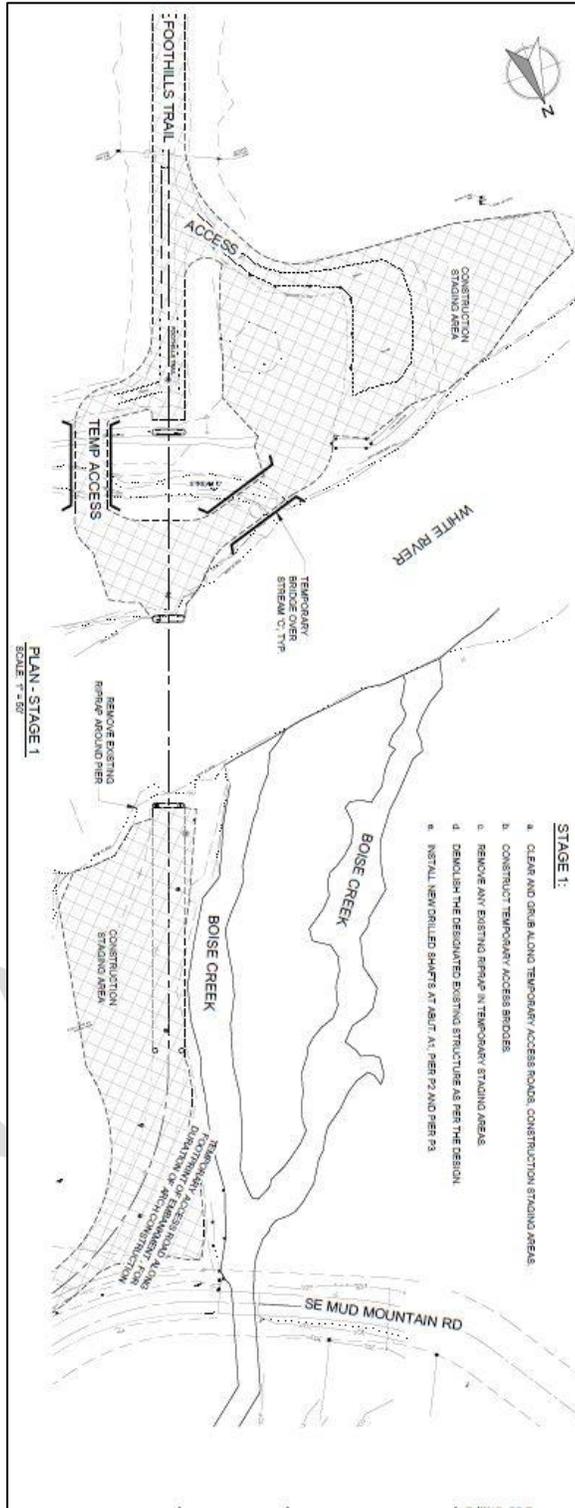
- King Count SEPA Checklist generated May 18, 2017; signed May 23, 2017
- King County SEPA DNS; issued June 8, 2017
- Department of Ecology, Construction Stormwater General Permit (WAR310850), issued December 8, 2021.

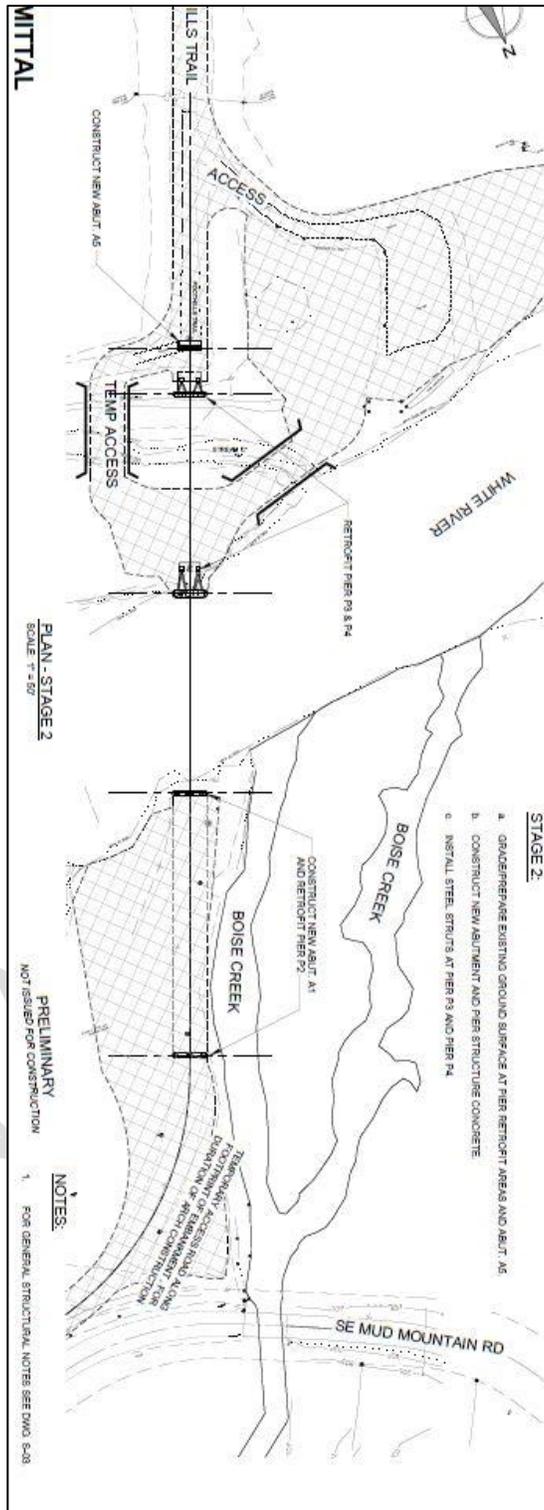
## **2. ADDITIONAL OBLIGATIONS**

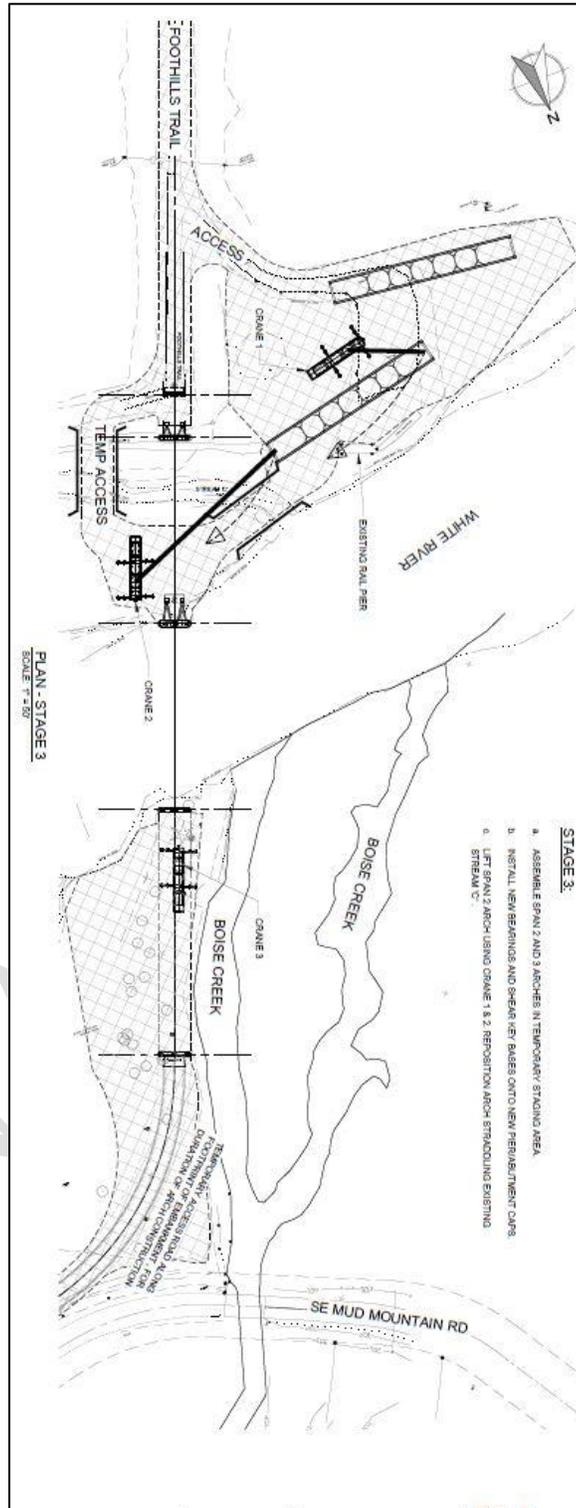
There are two mitigation plans that Grantee is required to follow to offset impacts caused by the construction of the pedestrian bridge – one required by King County and one required by the City of Buckley. Grantee shall follow the mitigation plans and shall submit to State any reports that Grantee submits to King County or the City of Buckley related to the mitigation plans.

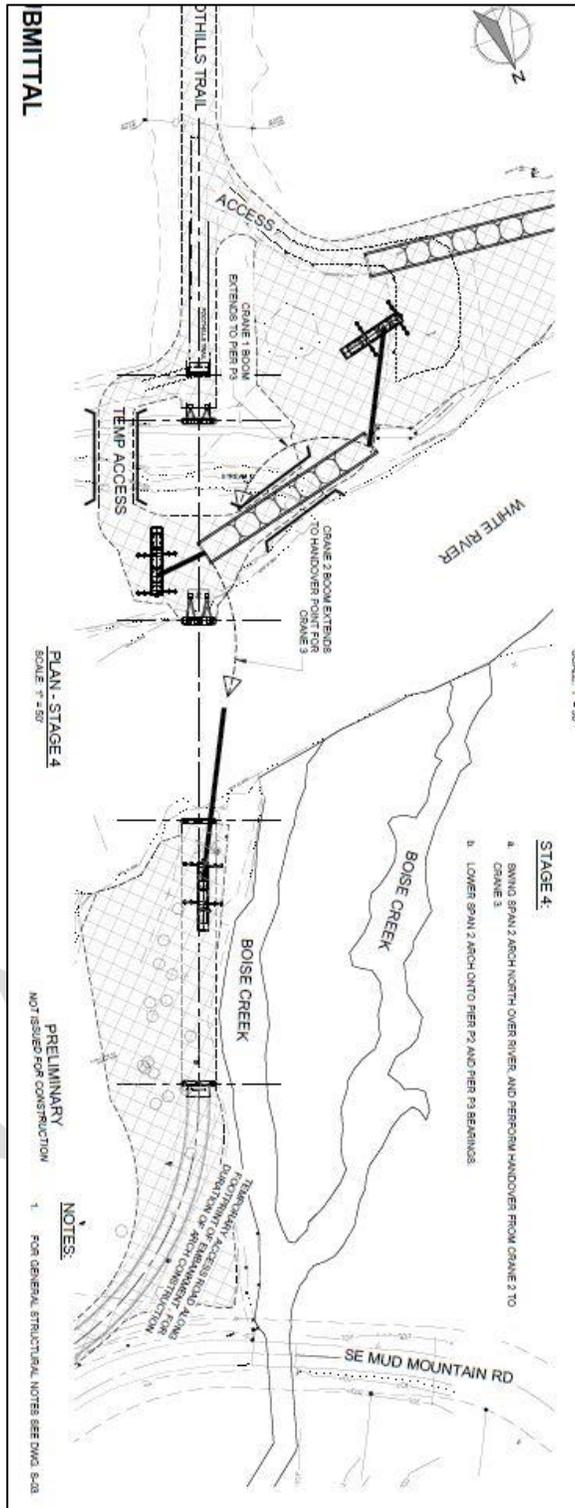
## ATTACHMENT 1 TO EXHIBIT B PROPOSED WORK



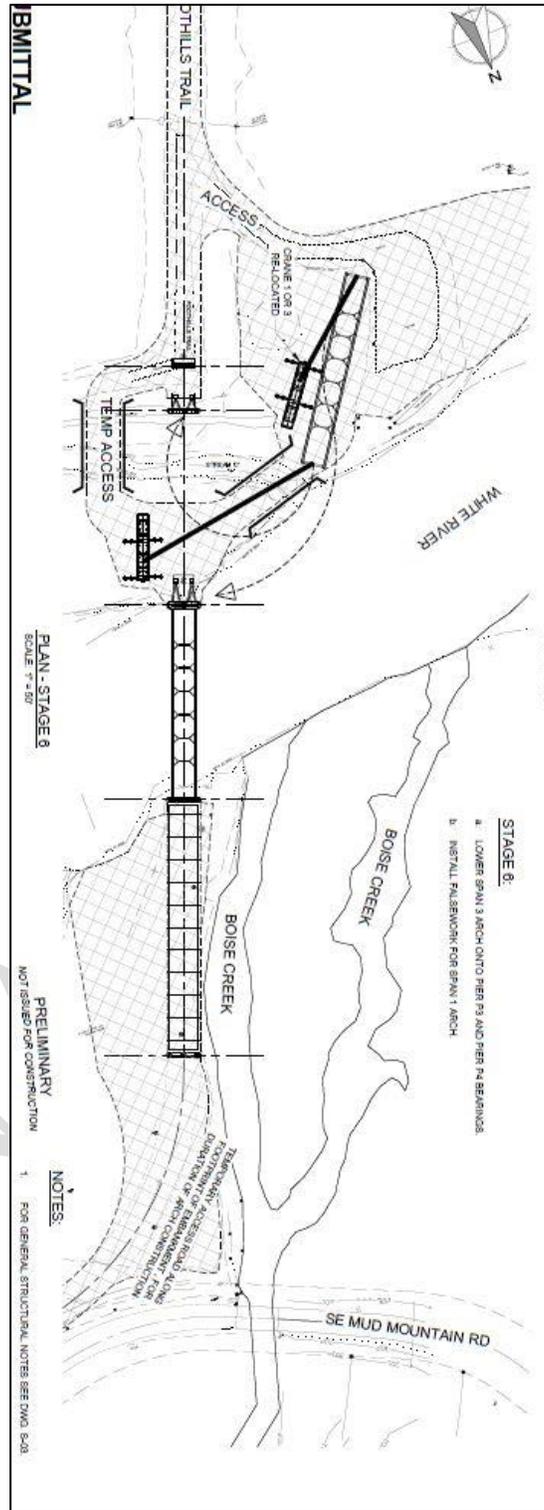


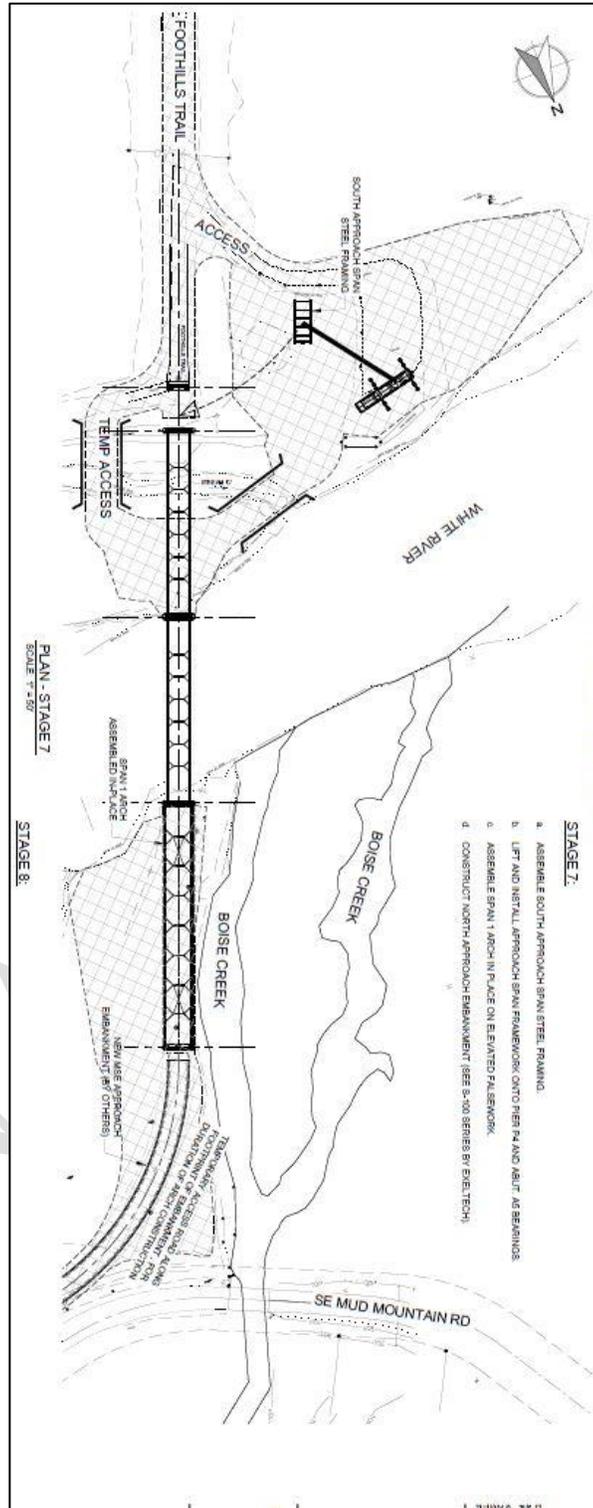


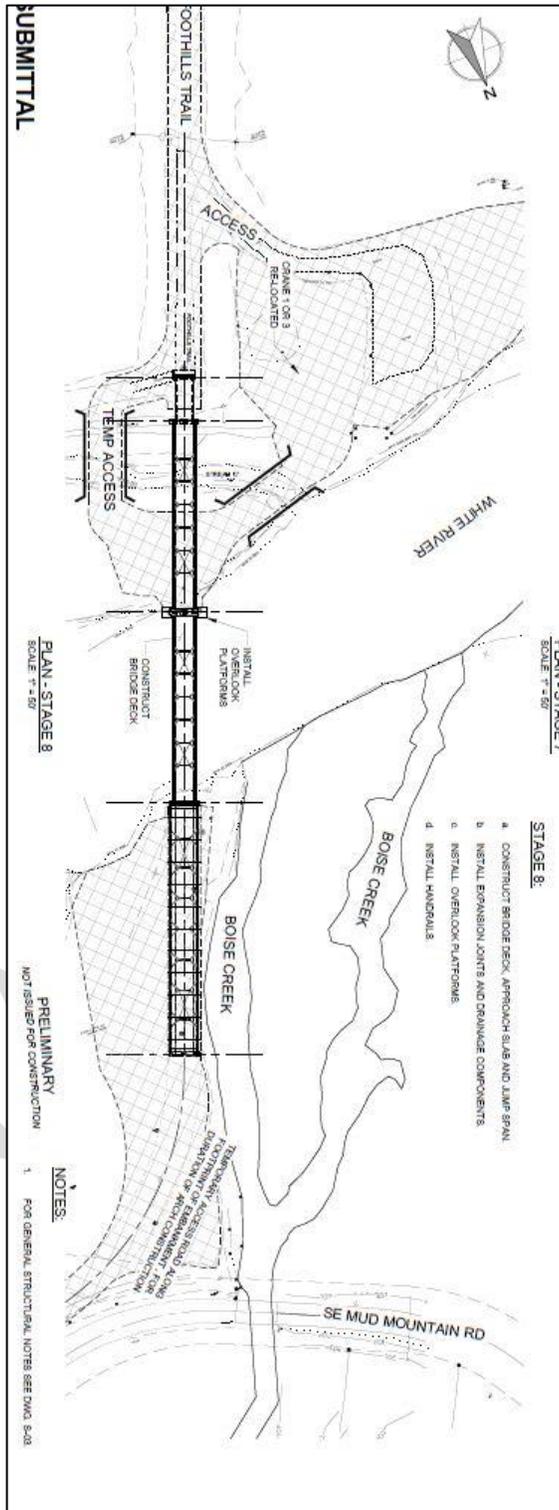




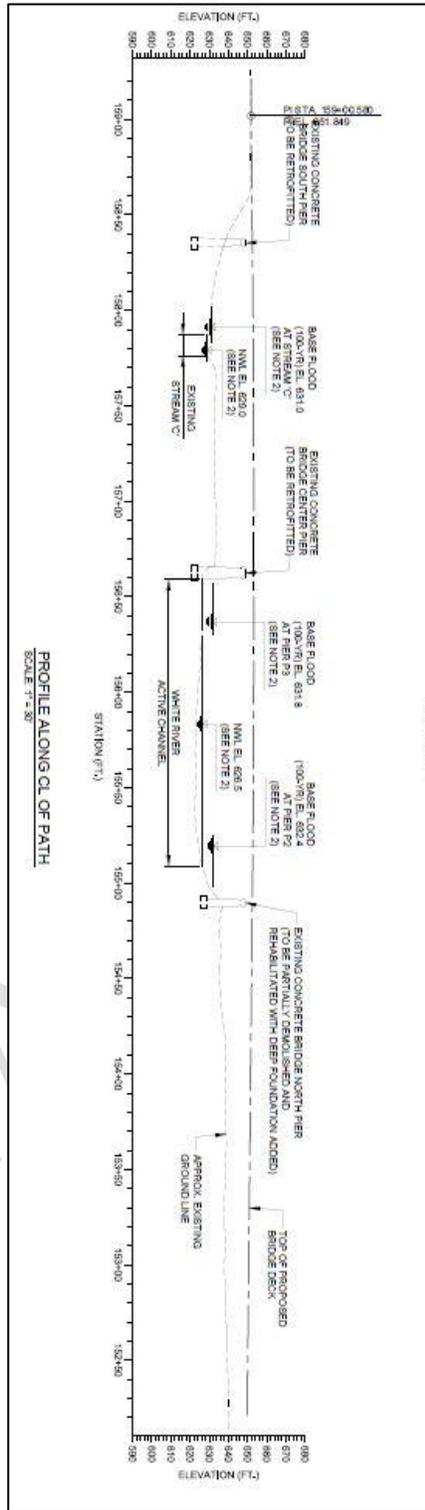




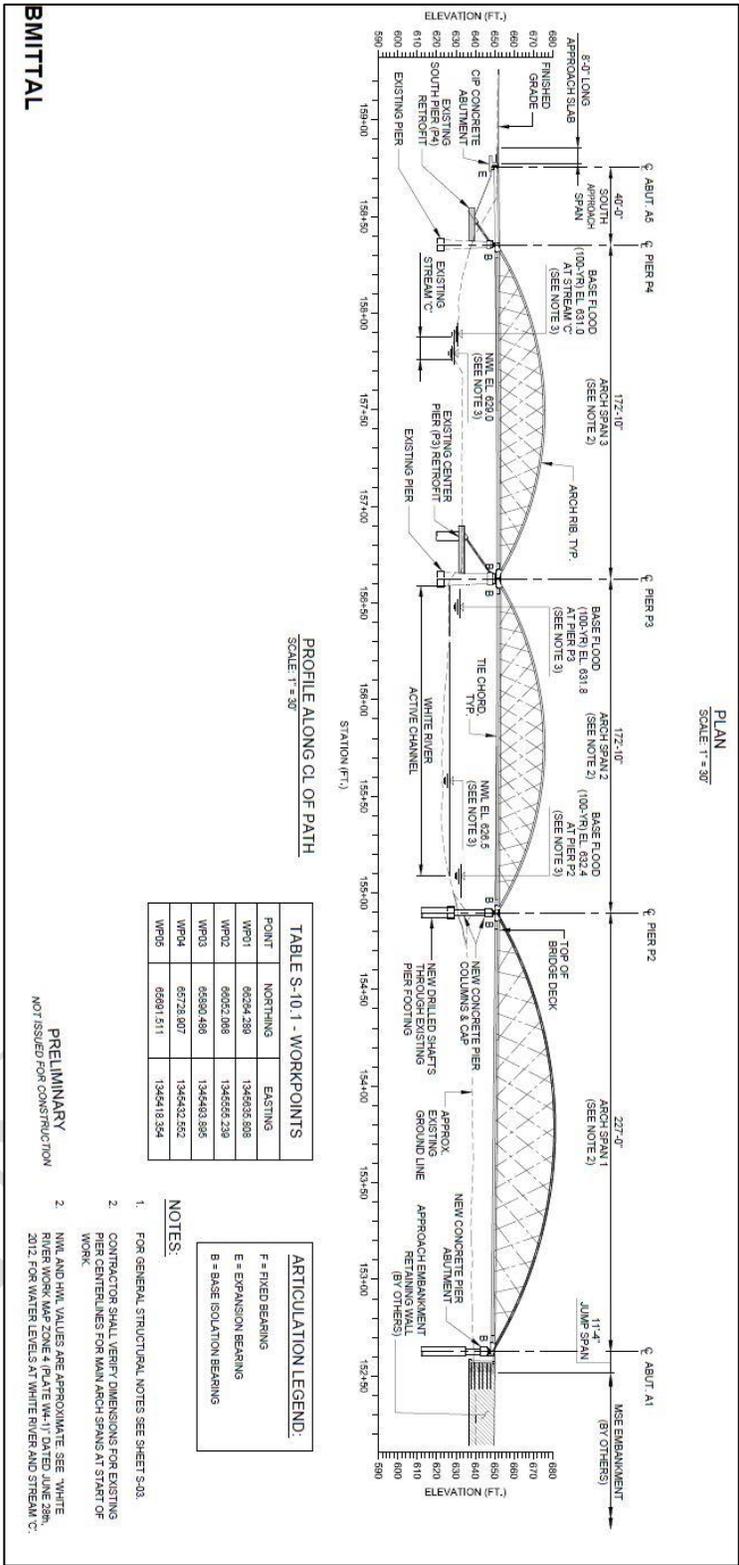


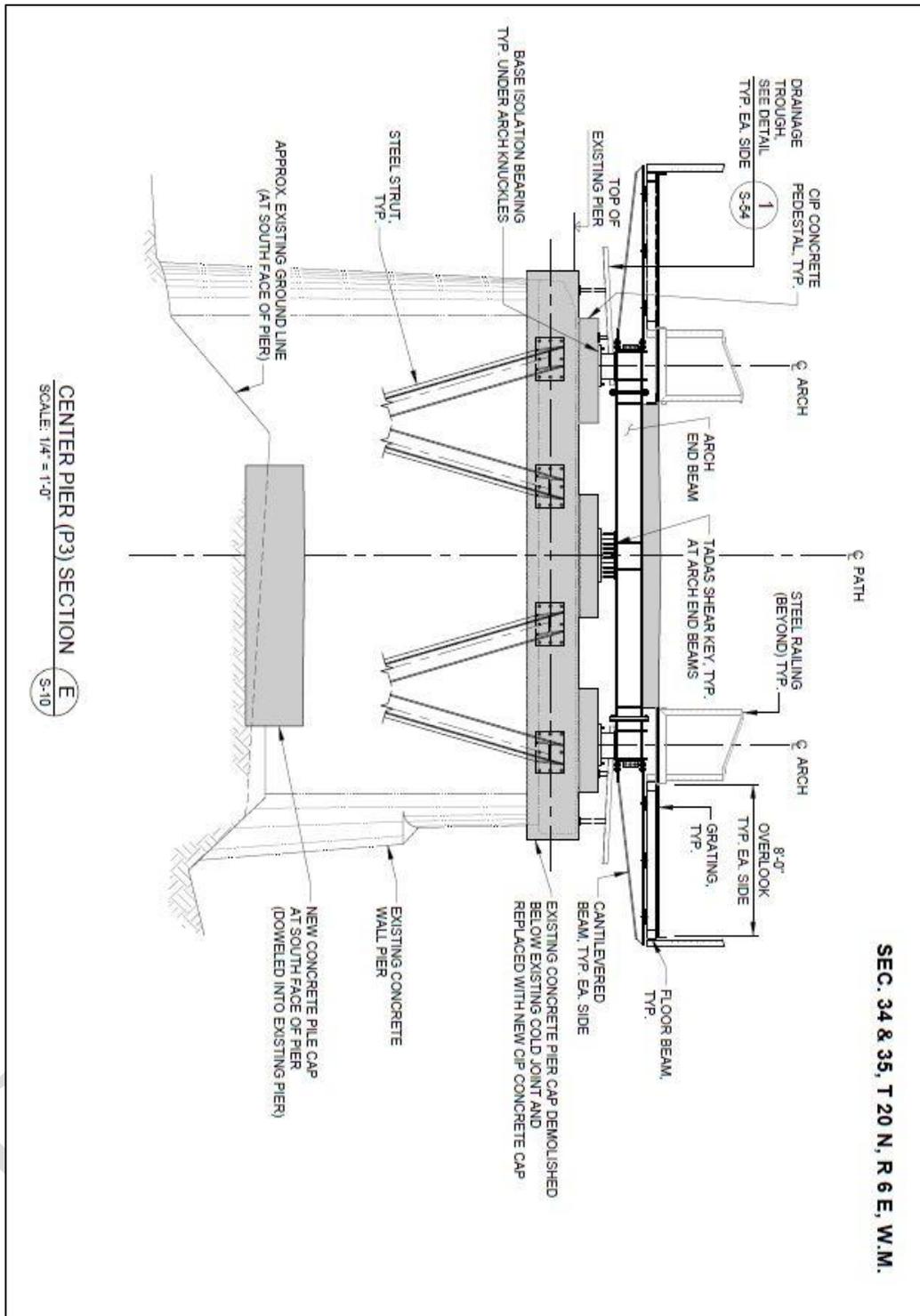














**Certificate Of Completion**

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Document Pages: 3	Signatures: 3
Supplemental Document Pages: 48	Initials: 0
Certificate Pages: 5	Envelope Originator:
AutoNav: Enabled	Cherie Camp
Enveloped Stamping: Enabled	401 5th Ave
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	Suite 100
	Seattle, WA 98104
	Cherie.Camp@kingcounty.gov
	IP Address: 198.49.222.20

**Record Tracking**

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Security Appliance Status: Connected	Pool: FedRamp	
Storage Appliance Status: Connected	Pool: King County General (ITD)	Location: DocuSign

**Signer Events**

Claudia Balducci  
 claudia.balducci@kingcounty.gov  
 King County General (ITD)  
 Security Level: Email, Account Authentication (None)

**Signature**

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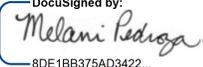
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 Supplemental Documents:

Ordinance 19462 Attachment A.pdf

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 Accepted: Not Required

Melani Pedroza  
 melani.pedroza@kingcounty.gov  
 Clerk of the Council  
 King County Council  
 Security Level: Email, Account Authentication (None)

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**Electronic Record and Signature Disclosure:**

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 Supplemental Documents:

Ordinance 19462 Attachment A.pdf

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 Dow.Constantine@kingcounty.gov  
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Ordinance 19462 Attachment A.pdf

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Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact Carahsoft OBO King County ITD:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: bob.johnson@kingcounty.gov

**To advise Carahsoft OBO King County ITD of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at bob.johnson@kingcounty.gov and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

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- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to bob.johnson@kingcounty.gov and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum

Enabled Security Settings:	Allow per session cookies
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\*\* These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

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- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Carahsoft OBO King County ITD as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Carahsoft OBO King County ITD during the course of my relationship with you.