



**CITY OF ABERDEEN**  
200 East Market Street, Aberdeen, Washington 98520

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**NOTICE:** RCW 42.30 Open Public Meetings Act compliance during the COVID-19 public health crisis has been altered as long as the Governor’s “Stay Home, Stay Safe” Order is in place. In compliance with that Order as amended, and under the guidance of the Washington State Attorney General, as amended, the City Council meeting will be held using telephone audio conferencing. This will allow the public to listen into the meeting.

**To listen to this meeting:**

**DAY/DATE:** Wednesday, August 26, 2020  
**TIME:** 7:00 PM (Meeting will be called to order at 7:15 PM)  
**DIAL-IN NUMBER:** (425) 585-6257  
**ACCESS CODE:** 618-313-093 # (you must include the # symbol)

For the immediate future under the Order and associated Guidance, the City Council meeting will not include public comment periods. **If you wish to submit any comments in advance, please email your comments to the City Clerk at [cfrederickson@aberdeenwa.gov](mailto:cfrederickson@aberdeenwa.gov) and they will be provided to City Council.** Please be sure to put “CITY COUNCIL PUBLIC COMMENT” in the subject line.

The City of Aberdeen requests that you provide your full name. If you reside in Aberdeen, please also include your Ward Number; if you do not reside in Aberdeen please let us know where you live.

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## **ABERDEEN CITY COUNCIL**

**August 26, 2020**

### **COUNCIL MEETING AGENDA**

**7:15 PM – Via Telephonically**

### **COMMITTEE OF THE WHOLE**

- A. Department Heads
- B. Mayor's Report
- C. Non-Standing Committee Reports

### **COUNCIL MEETING**

#### **I. ROLL CALL**

#### **II. FLAG SALUTE**

#### **III. APPROVAL OF MINUTES**

#### **IV. ADDITIONS / DELETIONS**

#### **V. PUBLIC COMMENT SUBMITTED TO CITY CLERK ON ALL TOPICS**

#### **VI. FINANCE COMMITTEE**

- A. Committee Chair Report
- B. Approval of expenditures
  - 1. Recommend approval of expenditures and payroll.
- C. Public Hearings
- D. Reports & Communications
  - 1. Report from Finance and the Community Development Director recommending that the City Council authorize the Mayor to execute 13 contracts for CRF Small Business Grants in the amount of \$77,600.
  - 2. Report from Finance Committee and the Finance Director recommending that the City Council approve the Resolution authorizing investment of City monies in the Local Government Investment Pool ("LGIP") and identifying the Finance Director as the authorized individual to provide updates or other documentation on behalf of the City.
- E. Resolutions
  - 1. A Resolution authorizing investment of City of Aberdeen monies in the Local Government Investment Pool.
- F. Ordinances

#### **VII. PUBLIC WORKS**

- A. Committee Chair Report
- B. Public Hearings
- C. Reports & Communication

1. Report from Public Works and the Public Works Director recommending that the Public Works Director shall be authorized to execute Task Order #1 for the North Shore Levee project under Supplemental Agreement #6 for a fee not to exceed \$150,000.
2. Report from Public Works recommending that the Mayor shall execute the contract with the Department of Natural Resources ("DNR").

D. Resolutions

E. Ordinances

**VIII. PUBLIC SAFETY**

A. Committee Chair Report

B. Reports & Communications

**IX. SPECIAL AGENDA ITEMS**

A. Reports & Communication

B. Proclamation

C. Resolutions

D. Ordinances

1. Third reading and adoption of Bill No. 20-03 an Ordinance relating to Department Head Benefit Program and amending Ordinance 6491.
2. Third reading and adoption of Bill No. 20-04 an Ordinance relating to Employee Benefits for FLSA Exempt and Unrepresented Employees and amending Ordinance 6620.

E. Appointments

**X. CITY COUNCIL COMMENT PERIOD**

**XI. EXECUTIVE SESSION**

The City of Aberdeen does not discriminate against or exclude anyone from participation in public meetings. Requests for assistance should be made by contacting the Human Resources Department at 360-537-3207, 24 hours in advance of the meeting.  
Thank you.

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**LEGISLATIVE DEPARTMENT  
CITY OF ABERDEEN**

**Mr. Mayor:** Hon. Pete Schave

**The Members of Your Committee On:** Finance

**To Whom was Referred:** Community Development Director

**RE:** **Recommendations for Funding for the Coronavirus Relief Fund (CRF) Small Business Grant Agreement Round Two**

**REPORT AND RECOMMEND AS FOLLOWS:**

The City Council authorized \$200,000 in funds that the City of Aberdeen Received from the CRF be used for Small Business Grants to our local businesses.

The first round of funding only looked at those applicants that had not yet received any funds to help offset business losses incurred by COVID and on August 12<sup>th</sup>, the City Council approved funding for nine of our businesses, totaling \$30,757.

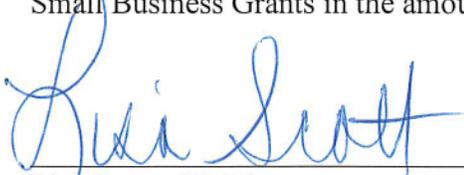
The Mayor, at the August 12, 2020 City Council meeting, appointed five members of the City Council (Deborah Ross, Dee Anne Shaw, Tawni Andrews, Kati Kachman and Nathan Kennedy), to serve on an Ad Hoc Committee established to review round two applications for the CRF Small Business Grants.

The Ad Hoc Committee met on August 19, 2020 to review 25 applications for funding and are recommending that 13 of the 25 applicants be awarded small business grants through the City of Aberdeen.

One of the 25 applicants need to provide additional information before the Committee can make a recommendation. If the additional information is received prior to the City Council meeting on August 26, 2020, that one will be considered in addition to the 13.

Seven of the 25 applicants did not qualify based on the City grant requirements and information provided to the City, based on previous money received and one withdrew their application. Two of the 25 applicants were recommended for funding through Grays Harbor County, which made them not eligible for this round of funding and one of the 25 applicants withdrew their application.

Therefore, it is recommended that the City Council authorize the Mayor to execute 13 contracts for CRF Small Business Grants in the amount of \$77,600.



\_\_\_\_\_  
Lisa Scott, CD Director

\_\_\_\_\_  
Chair

Reported: August 26, 2020  
\_\_\_\_\_

Adopted: August 26, 2020 \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**CITY OF ABERDEEN SMALL BUSINESS GRANTS 2020 ROUND TWO**

BUSINESS NAME	CURRENT LICENSE	UBI#	IN BUSINESS	B & O TAXES OWED	UTILITY FEES	BLDG FEES	DPBID FEES	IN CITY LIMITS	# OF EMPLOYE	PROOF OF LOSS	ELIGIBILITY AMOUNT
Aberdeen Office	YES	600-377-638	YES	No	No	NO	No	YES	8	Yes	\$ 10,000.00
Andy's Lock & Safe	YES	602-283-920	YES	No	N/A	NO	No	YES	1	Yes	\$ 1,171.00
Atwood Autobody	YES	602-679-635	YES	No	No	NO	No	YES	1	Yes	\$ 3,755.00
Bryan & Son's	YES	604-043-304	YES	No	N/A	NO	No	YES	3.5	Yes	\$ 2,796.00
Cascade Driving School	YES	602-803-911	YES	No	N/A	NO	No	YES	2	Yes	\$ -
Crowley Marine	YES	600-573-562	YES	No	No	NO	No	YES	5	Yes	\$ -
<b>Desert Sun</b>	<b>YES</b>	<b>602-758-305</b>	<b>YES</b>	<b>Q.2-18, Q1.20</b>	<b>No</b>	<b>NO</b>	<b>No</b>	<b>YES</b>	<b>7</b>		
Dr. Todd Johnson	YES	603-369-102	YES	No	N/A	NO	No	YES	11	Yes	\$ -
Dunsire's	YES	141-005-588	YES	No	No	NO	No	YES	4	Yes	\$ 1,560.00
Grand Heron	YES	600-275-540	YES	No	No	NO	No	YES	Volunteers	Yes	\$ 2,253.00
Grays Harbor Stamp	YES	601-600-846	YES	No	No	NO	No	YES	4	Yes	\$ 10,000.00
Happy at Home	YES	601-463-135	YES	No	No	NO	No	YES	7	Yes	\$ 3,961.00
Harbor Accounting Tax	YES	601-783-163	YES	No	N/A	NO	No	YES	1	Yes	\$ 3,281.00
Harbor Blooms	YES	603-571-162	YES	No	N/A	NO	No	YES	7	Yes	\$ 10,000.00
Mount Olympus	YES	603-451-193	YES	No	No	NO	No	YES	5	Yes	\$ -
NW Collision	YES	601-092-028	YES	No	No	NO	No	YES	8	Yes	\$ -
Oceana Spa	YES	602-930-961	YES	No	No	NO	No	YES	7	Yes	\$ -
Rainier Lanes	YES	602-018-035	YES	No	No	NO	No	YES	9	Yes	\$ 8,823.00
Redivia	YES	603-245-515	YES	No	No	NO	No	YES	8	Yes	\$ 10,000.00
Steinman Insurance	YES	603-263-290	YES	No	No	NO	No	YES	5	Yes	\$ -
Tap Room	YES	604-414-324	YES	No	N/A	NO	No	YES	1	Yes	\$ -
Tinderbox	YES	604-630-796	YES	No	N/A	NO	No	YES	11	Yes	\$ -
Waugh's	YES	601-290-029	YES	No	No	NO	No	YES	5	Yes	\$ 10,000.00
											<b>\$ 77,600.00</b>

Criteria:

- 1) Current Business License
- 2) In business for at least one year prior to March 1, 2020
- 3) Good financial standing with the City of Aberdeen
- 4) Physical location in City limits
- 5) No more than 20 FTE
- 6) Ability to demonstrate a loss of income due to COVID-19
- 7) Ability to prove that you have been previously profitable with financial statements or tax returns.;

**8) Need additional information**

Eligible businesses can receive up to \$10,000. Award amounts will be based on the businesses gross revenue loss's from March 1, 2019 through May 31, 2019 and from March 1, 2020 through May 31, 2020, less other award amounts received from grants and loans. Maximum award amounts will be at 30% of the loss amounts, not to exceed \$10,000 in total.

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**LEGISLATIVE DEPARTMENT  
CITY OF ABERDEEN**

**Mr. Mayor:**

Hon. Pete Schave

**The Members of:**

Finance Committee and Finance Director

**To whom was Referred:**

**Resolution authorizing investment of City of Aberdeen monies in the Local Government Investment Pool and identifying the Finance Director as the authorized individual to provide updates or other documentation on behalf of the City**

**Reports and Recommends as Follows:** In July 2019, City Council authorized the then Finance provide information and authorized financial management in the Local Government Investment Pool (“LGIP”). In consideration of the new Finance Director, and to provide information in a format compliant with current requirements of the Office of State Treasurer, a new Resolution and Authorization Form as attached to this Report is the most efficient means available. The City has no immediate plans to invest in the LGIP, but has done so in the past and may need intervening access to LGIP reports and information. The authorization form has not been amended since it was approved at the July 10, 2019 City Council meeting

*It is recommended that:* City Council approve the Resolution authorizing investment of City monies in the Local Government Investment Pool (“LGIP”) and identifying the Finance Director as the authorized individual to provide updates or other documentation on behalf of the City.

/s/ Patricia Soule  
Reported by:  
Patricia Soule (Finance Director)

\_\_\_\_\_  
Committee Chair

\_\_\_\_\_  
Committee Vice-chair

Reported \_\_\_\_\_, 2020

\_\_\_\_\_  
Committee Member

Adopted \_\_\_\_\_, 2020

\_\_\_\_\_  
Committee Member

# LOCAL GOVERNMENT INVESTMENT POOL AUTHORIZATION FORM

Please fill out this form completely, including any existing information, as this form will **replace** the previous form.

<b>Entity Name:</b>
<b>Mailing Address:</b>

**Statement Delivery Options:**

EMAIL: \_\_\_\_\_  FAX: \_\_\_\_\_  BOTH

Note: Statements can only be emailed to **ONE** address due to system restrictions

Bank account where funds will be wired when a withdrawal is requested.

(Note: Funds **will not** be transferred to any account other than listed)

<b>Bank Name:</b>
<b>Branch Location:</b>
<b>Bank Routing Number:</b>
<b>Accounting Number:</b>
<b>Account Name:</b>

**ACH Authorization:**       Yes       No

**Account Type:**       Checking     Savings     General Ledger

By selecting “Yes” and by signing this form, I hereby authorize the WA Local Government Investment Pool to initiate credit entries to the account listed above. I acknowledge that the origination of ACH transactions to our account must comply with the provisions of U.S. law.

**Persons authorized to make deposits and withdrawals for entity listed above.**

Name:	Title:	Phone Number:	Signature:

**Online TMS Access:**  Yes  No

If you selected yes, please complete the online section on page 2

If you selected no, skip the online access section

**TMS Online Web Access**

Note: Only complete this section if anyone wishes to have online access. Each Full access LGIP person must also be listed on the Transaction Authorization Form. **[Please do not fill out the greyed-out areas]**

Name:	Service Type:				Account Type:	
	Add	Delete	Modify	No Change	Full	View Only
Email:	<input type="checkbox"/>					
Name:	Add	Delete	Modify	No Change	Full	View Only
Email:	<input type="checkbox"/>					
Name:	Add	Delete	Modify	No Change	Full	View Only
Email:	<input type="checkbox"/>					
Name:	Add	Delete	Modify	No Change	Full	View Only
Email:	<input type="checkbox"/>					
Name:	Add	Delete	Modify	No Change	Full	View Only
Email:	<input type="checkbox"/>					
Name:	Add	Delete	Modify	No Change	Full	View Only
Email:	<input type="checkbox"/>					
Name:	Add	Delete	Modify	No Change	Full	View Only
Email:	<input type="checkbox"/>					

OST Staff	
UserID	App Date
UserID	App Date
UserID	App Date
UserID	App Date
UserID	App Date
UserID	App Date
UserID	App Date

**By signing below, I certify I am authorized to represent the institution/agency for the purpose of this transaction.**

<i>(Authorized Signature)</i>	<i>(Title)</i>	<i>(Date)</i>
<i>(Print Authorized Name)</i>	<i>(E-mail address)</i>	<i>(Phone no.)</i>

**Any changes to these instructions must be submitted in writing to the Office of the State Treasurer.**

OFFICE OF THE STATE TREASURER  
[STACI.ASHE@TRE.WA.GOV](mailto:STACI.ASHE@TRE.WA.GOV)  
 PHONE: (360) 902-9017  
 FAX: (360) 902-9044

<b>Date Received:</b> ____ / ____ / ____
<b>Account Number:</b> _____
<b>OK'd by:</b> _____
<i>(For OST use only)</i> 04/26/19

State of Washington    )  
 County of \_\_\_\_\_) ss.

Signed or attested before me by \_\_\_\_\_.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
*Signature of Notary*

SEAL OR STAMP \_\_\_\_\_

*Typed or printed name of Notary*  
 Notary Public in and for the State of Wash.

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

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**RESOLUTION No. 2020 - \_\_\_\_\_**

**A RESOLUTION AUTHORIZING INVESTMENT OF CITY OF ABERDEEN MONIES IN THE LOCAL GOVERNMENT INVESTMENT POOL.**

**WHEREAS**, pursuant to Chapter 294, Laws of 1986, the Legislature created a trust fund to be known as the public funds investment account (commonly referred to as the Local Government Investment Pool (LGIP)) for the contribution and withdrawal of money by an authorized governmental entity for purposes of investment by the Office of the State Treasurer; and

**WHEREAS**, from time to time it may be advantageous to the authorized governmental entity, the City of Aberdeen (“governmental entity”) to contribute funds available for investment in the LGIP; and

**WHEREAS**, the investment strategy for the LGIP is set forth in its policies and procedures; and

**WHEREAS**, any contributions or withdrawals to or from the LGIP made on behalf of the governmental entity shall be first duly authorized by the Aberdeen City Council, (“governing body”) or any designee of the governing body pursuant to this resolution, or a subsequent resolution; and

**WHEREAS** the governmental entity will cause to be filed a certified copy of said resolution with the Office of the State Treasurer; and

**WHEREAS** the governing body and any designee appointed by the governing body with authority to contribute or withdraw funds of the governmental entity has received and read a copy of the prospectus and understands the risks and limitations of investing in the LGIP; and

**WHEREAS**, the governing body attests by the signature of its members that it is duly authorized and empowered to enter into this agreement, to direct the contribution or withdrawal of governmental entity monies, and to delegate certain authority to make adjustments to the incorporated transactional forms, to the individuals designated herein.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF ABERDEEN:** that the governing body does hereby authorize the contribution and withdrawal of governmental entity monies in the LGIP in the manner prescribed by law, rule, and prospectus.

**BE IT FURTHER RESOLVED** that the governing body has approved the Local Government Investment Pool Transaction Authorization Form (Form) as completed by the Finance Director of

the City of Aberdeen, Patricia Soule, and incorporates said form into this resolution by reference and does hereby attest to its accuracy.

**BE IT FURTHER RESOLVED** that the governmental entity designates the Finance Director (“authorized individual”) to authorize all amendments, changes, or alterations to the Form or any other documentation including the designation of other individuals to make contributions and withdrawals on behalf of the governmental entity.

**BE IT FURTHER RESOLVED** that this delegation ends upon the written notice, by any method set forth in the prospectus, of the governing body that the authorized individual has been terminated or that his or her delegation has been revoked. The Office of the State Treasurer will rely solely on the governing body to provide notice of such revocation and is entitled to rely on the authorized individual’s instructions until such time as said notice has been provided.

**BE IT FURTHER RESOLVED** that the Form as incorporated into this resolution or hereafter amended by delegated authority, or any other documentation signed or otherwise approved by the authorized individual shall remain in effect after revocation of the authorized individual’s delegated authority, except to the extent that the authorized individual whose delegation has been terminated shall not be permitted to make further withdrawals or contributions to the LGIP on behalf of the governmental entity. No amendments, changes, or alterations shall be made to the Form or any other documentation until the entity passes a new resolution naming a new authorized individual; and

**BE IT FURTHER RESOLVED** that the governing body acknowledges that it has received, read, and understood the prospectus as provided by the Office of the State Treasurer. In addition, the governing body agrees that a copy of the prospectus will be provided to any person delegated or otherwise authorized to make contributions or withdrawals into or out of the LGIP and that said individuals will be required to read the prospectus prior to making any withdrawals or contributions or any further withdrawals or contributions if authorizations are already in place.

**PASSED and APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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Pete Schave, Mayor

ATTESTED:

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Patricia Soule, Finance Director

Proposed Resolution  
2020 LGIP Investment and Appointment  
August 2020

**LEGISLATIVE DEPARTMENT  
CITY OF ABERDEEN**

**MR. MAYOR:** Pete Schave

**THE MEMBERS OF YOUR COMMITTEE ON:** Public Works

**TO WHOM IT WAS REFERRED:** Authorization to Execute North Shore Levee Task Order #1

**REPORTS AS FOLLOWS:** The City Council authorized the Mayor to execute Supplemental Agreement #6 for the contract with KPFF Consulting Engineers for the North Shore Levee project at the August 12, 2020 city council meeting. Supplemental Agreement #6 was executed on August 17, 2020 and allows the City to issue individual task orders based on agreed upon scope and fee under the terms of the original contract as amended. The first task order includes evaluating the alternative site for the proposed Fry Creek Pump Station including:

1. Project Coordination & Administration
2. Land Surveying
3. Environmental & Permitting Services
4. Geotechnical Investigation
5. Hydraulic Modeling
6. Pump Station Design Evaluation

The Public Works Department is negotiating the final details of the scope and fee for the work which is anticipated to cost no more than \$150,000. The cost will be paid for utilizing existing external funding agreements for the North Shore Levee and this spending is within the City's 2020 Budget under account number 105-00-334-001-00-04.

**IT IS RECOMMENDED:** The Public Works Director shall be authorized to execute Task Order #1 for the North Shore Levee project under Supplemental Agreement #6 for a fee not to exceed \$150,000.

\_\_\_\_\_  
Rick Sangder  
Public Works Director

\_\_\_\_\_  
Nathan Kennedy, Chair

\_\_\_\_\_  
Joshua Francy, Vice-Chair

Reported \_\_\_\_\_, 2020

\_\_\_\_\_  
Dave Haviland, Member

Adopted \_\_\_\_\_, 2020

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**LEGISLATIVE DEPARTMENT  
CITY OF ABERDEEN**

**MR. MAYOR:** Pete Schave

**THE MEMBERS OF YOUR COMMITTEE ON:** Public Works

**TO WHOM IT WAS REFERRED:** Elliot Slough Land Lease Agreement

**REPORTS AS FOLLOWS:** The land lease agreement with the Department of Natural Resources (DNR) allowing the industrial water line to cross Elliot Slough has expired. The DNR has proposed a new contract to continue the City's use of this water crossing.

**IT IS RECOMMENDED:** The Mayor shall execute the contract with the DNR.

\_\_\_\_\_  
Rick Sangder  
Public Works Director

\_\_\_\_\_  
Nathan Kennedy, Chair

\_\_\_\_\_  
Joshua Francy, Vice-Chair

Reported \_\_\_\_\_, 2020

\_\_\_\_\_  
Dave Haviland, Member

Adopted \_\_\_\_\_, 2020

When recorded, return to:  
City of Aberdeen  
200 E Market St  
Aberdeen, WA 98520



## **AQUATIC LANDS EASEMENT**

### **Easement No. 51-100246**

Grantor: Washington State Department of Natural Resources  
Grantee(s): City of Aberdeen  
Legal Description: Section 11, Township 17 North, Range 09 West, W.M.  
Assessor's Property Tax Parcel or Account Number: 170911220030  
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this Easement: Not Applicable

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and CITY OF ABERDEEN, a Government 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).

THE Parties agree as follows:

### **SECTION 1 GRANT OF EASEMENT**

#### **1.1 Easement Defined.**

- (a) State grants and conveys to Grantee a nonexclusive easement, subject to the terms and conditions of this agreement, over, upon, and under the real property at Elliot Slough described in Exhibit A. In this agreement, the term "Easement" means this agreement and the rights granted; the term "Easement Property" means the real property subject to the easement.
- (b) This Easement is subject to all valid interests of third parties noted in the records of Grays Harbor 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 resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable materials.
- (d) This Easement does not include the right to grant easements and franchises to third parties.

## **1.2 Survey and Easement Property Descriptions.**

- (a) Grantee prepared Exhibit A, which describes the Easement Property. Grantee represents that Exhibit A is a true and accurate description of the Easement boundaries and the improvements to be constructed or already existing in the Easement area. Grantee's obligation to provide a true and accurate description of the Easement Property boundaries is a material term of this Easement.
- (b) State's acceptance of Exhibit A does not constitute agreement that Grantee's property description accurately reflects the actual amount of land used by Grantee. State reserves the right to retroactively adjust fees if at any time during the Term State discovers a discrepancy between Grantee's property description and the area actually used by Grantee.
- (c) State accepts a preliminary Exhibit A upon the Commencement Date of this Easement. Grantee shall submit a final Exhibit A for State's approval within Seven Hundred and Thirty (730) days of the Commencement Date. Upon State's written approval, the final Exhibit A supersedes the preliminary Exhibit A. Until superseded, the preliminary Exhibit A has full legal effect.

**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.** Grantee shall use the Easement Property for:

One Waterline (the "Permitted Use"),

and for no other purpose, including utilities unless specifically identified as part of the Permitted Use. The Permitted Use is described or shown in detail in Exhibit B.

## **2.2 Restrictions on Use.**

- (a) The limitations in this Paragraph 2.2 apply to the Property and adjacent state-owned aquatic land. Grantee's compliance with this Paragraph 2.2 does not limit Grantee's liability under any other provision of this Easement.

- (b) Grantee shall not cause or permit:
  - (1) Any damage to natural resources, regardless of whether the damages are a direct or indirect result of the Permitted Use.
  - (2) Waste, or
  - (3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, hydrocarbons, refuse, garbage, waste matter, pollutants of any type, or other matter.
- (c) Failure to Comply with Restrictions on Use.
  - (1) Grantee's failure to comply with the restrictions on use under this Subsection 2.2 is a breach subject to Subsection 14.1. Grantee shall cure the breach by taking all steps necessary to remedy the failure and restore the Easement Property and adjacent state-owned aquatic lands to the condition before the failure occurred within the time for cure provided in Subsection 14.1.
- (d) State's failure to notify Grantee of Grantee's failure to comply with all or any of the restrictions set out in this Subsection 2.2 does not constitute a waiver of any remedies available to State.
- (e) This Section 2.2 does not limit Grantee's liability under Section 8, below.

**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.** Grantee shall keep the Easement Property free and clear of any liens and encumbrances arising out of or relating to its use of the Easement Property, unless expressly authorized by State in writing.

**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 right 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 of construction or other significant activity on Easement Property at least thirty (30) days in advance. "Significant Activity" means any activity that may affect use or enjoyment by the State, public, or others with valid rights to use or occupy the Easement Property or surrounding lands and water.
- (d) Grantee shall mark the location of any hazards associated with the Permitted Use and any Improvements in a manner that ensures reasonable notice to the public.

## SECTION 3 TERM

**3.1 Term Defined.** The term of this Easement is Thirty (30) years (the “Term”), beginning on the 1st day of June, 2020 (the “Commencement Date”), and ending on the 31st day of May, 2050 (the “Termination Date”), unless terminated sooner under the terms of this Easement.

**3.2 Renewal of the 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. State shall notify Grantee within ninety (90) days of its intent to approve or deny a new Easement.

**3.3 End of Term.**

- (a) Upon the expiration or termination of this Easement, Grantee shall remove Improvements in accordance with Section 7, Improvements, and surrender the Easement 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 by Grantee or Grantee’s contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.
  - (2) Reasonable wear and tear does not include any deposit of material prohibited under Paragraph 2.2(b) unless expressly permitted by State in writing and regardless of whether the deposit is incidental to or the byproduct of the Permitted Use.
- (c) If Easement 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 Grantee a reasonable time to take all steps necessary to remedy the condition of the Easement Property. State may require Grantee to enter into a right-of-entry or other use authorization prior to the Grantee entering the Easement Property to remedy any breach of this Paragraph 3.3.
  - (2) If Grantee fails to remedy the condition of the Easement Property in a timely manner, State may take any steps reasonably necessary to remedy Grantee’s failure. Upon demand by State, Grantee shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly on the Easement Property, lost revenue resulting from the condition of the Easement Property prior to and during remedial action, and any administrative costs associated with the remedial action.

**SECTION 4 FEES**

**4.1 Fee.** For the Term, Grantee shall pay to State an administrative fee calculated in accordance with RCW 79.110.230(1). Any payment not paid by State’s close of business on the date due is past due.

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

## **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, of any kind whatsoever, applicable or attributable to the Easement and the Permitted Use.

**5.3 Failure to Pay.** If Grantee fails to pay any of the amounts due under this Easement, 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.** Failure to pay any fees or other expenses is a default by Grantee. State may seek remedies in Section 14 as well as late charges and interest as provided in 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 fee at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Fee not paid by the close of business day 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 taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Paragraph 2.2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due.

**6.4 Referral to Collection Agency and Collection Agency Fees.** If State does not receive 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. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

## SECTION 7 IMPROVEMENTS

### 7.1 Improvements Defined.

- (a) “Improvements,” consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, structures and fixtures.
- (b) “Personal Property” means items that can be removed from the 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 State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Grantee.
- (d) “Grantee-Owned Improvements” are Improvements made by Grantee with State’s consent.
- (e) “Unauthorized Improvements” are Improvements made on the Easement Property without State’s prior consent or Improvements made by Grantee that do not conform with plans submitted to and approved by the State.
- (f) “Improvements Owned by Others” are Improvements made by Others with a right to occupy or use the Easement Property or adjacent state-owned lands.

**7.2 Existing Improvements.** On the Commencement Date, the following Grantee-Owned Improvements are located on the Easement Property: One Water line. On the Commencement Date, the following Improvements Owned By Others are located on the Easement Property: One Sewer Line owned by Grays Harbor County, authorized under easement 51-100112.

### 7.3 Construction, Major Repair, Modification, and Demolition.

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification alteration, demolition and deconstruction of Improvements (“Work”).
- (b) All Work must conform with State’s standards for Improvements current at the time Grantee submits plans and specifications for State’s approval.
- (c) Except in an emergency, Grantee shall not conduct any Work without State’s prior written consent, as follows:
  - (1) State may deny consent if State determines that denial is in the best interests of the State. State may impose additional conditions reasonably intended to protect and preserve the Easement Property. If Work is for removal of Improvements at End of Term, State may waive removal of some or all Improvements.

- (2) Except in an emergency, 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 at least ninety (90) days before commencement of Work.
- (3) State waives the requirement for consent if State does not notify Grantee of its grant or denial of consent within sixty (60) days of submittal.
- (d) Grantee shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Grantee shall provide State with plans and specifications or as-builts of emergency Work.
- (e) Grantee shall not commence or authorize Work until Grantee or Grantee's contractor has:
  - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty five percent (125 %) of the estimated cost of construction. Grantee shall maintain the performance and payment bond until Grantee pays in full the costs of the Work, including all laborers and material persons.
  - (2) Obtained all required permits.
  - (3) Provided notice of Significant Activity in accordance with Paragraph 2.5(c).
- (f) Grantee shall preserve and protect Improvements Owned by Others, if any.
- (g) 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.
- (h) Before completing Work, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to the condition prior to the commencement of Work. 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.
- (i) Upon completing work, Grantee shall promptly provide State with as-built plans and specifications.
- (j) State shall not charge rent for authorized Improvements installed by Grantee during this Term of this Easement, but State may charge rent for such Improvements when and if the Grantee or successor obtains a subsequent use authorization for the Easement Property and State has waived the requirement for Improvements to be removed as provided in Paragraph 7.5.

#### **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 commences when State approves plans and specifications.
- (2) If Grantee commences Work five years or more after the Commencement Date, Grantee shall comply with State's then current standards for Work.
- (3) Grantee 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 Easement, Grantee shall request State to provide Grantee with then current standards for Work on State-owned Aquatic Lands.
  - (ii) Within thirty (30) days of receiving Grantee's request, State shall provide Grantee with 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 current standards upon Grantee's request, the standards 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 standards.
  - (iv) If Grantee fails to (1) make a request for current standards or (2) timely submit plans and specifications to State after receiving current standards, Grantee shall make changes in plans or Work necessary to conform to 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) None.

## **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 expiration, termination, or cancellation of the Easement unless State waives the requirement for removal.
  - (2) Grantee-Owned Improvements remaining on the Easement Property on the expiration, termination, or cancellation date become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.
  - (3) If Grantee-Owned Improvements remain on the Easement Property after the expiration, termination, or cancellation date without State's consent, State may remove all Improvements and Grantee shall pay the costs of removal and disposal.
- (b) Conditions Under Which State May Waive Removal of Grantee-Owned Improvements.

- (1) State may waive removal of any or all Grantee-Owned Improvements whenever State determines that it is in the best interests of the State.
  - (2) If Grantee renews the Easement or 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) If Grantee does not renew the Easement or enter into a new Easement, State may waive requirement to remove Grantee-Owned Improvements upon consideration of a timely request from Grantee, as follows:
    - (i) Grantee must notify State at least one (1) year before the Termination Date of its request to leave Grantee-Owned Improvements.
    - (ii) State, within ninety (90) days, will notify Grantee whether State consents to any or all 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 Improvements if State waives the requirement for removal of any or all Grantee-Owned Improvements.
  - (2) Grantee shall maintain such Improvements in accordance with this Easement until the expiration, termination, or cancellation date. Grantee is liable to State for cost of repair if Grantee 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 Grantee ownership of the Improvements, or
  - (2) Charge use and occupancy fee in accordance with RCW 79.105.200 for the Improvements from the time of installation or construction and
    - (i) Require Grantee to remove the Improvements in accordance with Paragraph 7.3, in which case Grantee shall pay use and occupancy fee for the Improvements until removal,
    - (ii) Consent to Improvements remaining and Grantee shall pay use and occupancy fee for the use of the Improvements, or
    - (iii) Remove Improvements and Grantee shall pay for the cost of removal and disposal, in which case Grantee shall pay use and occupancy fee for use of the Improvements until removal and disposal.

#### **7.7 Disposition of 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 Date. Grantee is liable for any damage to the Easement Property and to any Improvements that may result from removal of Personal Property.
- (c) State may sell or dispose of all Personal Property left on the Easement 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 Grantee to the State, and State shall pay the remainder, if any, to the Grantee.
  - (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 standard of care applicable under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105D RCW, as amended.
- (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. Hazardous Substances may exist in, on, under, or above the Easement Property.
- (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 about the existence, scope, and location of Hazardous Substances on or near the Property necessary for Grantee to meet Grantee's obligations under this Easement and utilize the 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 violations, 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, if any.**

- (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 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 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 US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Easement Property.
- (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 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) Grantee shall fully indemnify, defend, and hold State harmless from and against 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 State harmless for any Liabilities that arise out of or relate to Grantee's breach of obligations under Paragraph 8.5.

### **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 rights, claims, immunities, and defenses 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 standard, 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) Grantee may undertake a cleanup of the 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 the Tests, provided State gave Grantee thirty (30) calendar 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) calendar 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 Property, the conducting Party shall provide the other with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) calendar days of a written request by the other party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Grantee shall submit data and information to State without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

### **8.11 Closeout Assessment.**

- (a) State may require Grantee to conduct a Closeout Environmental Assessment ("Closeout Assessment") prior to Termination of the Easement.
- (b) The purpose of the Closeout Assessment is to determine the existence, scope, or effects of Hazardous Substances on the Easement Property and associated natural

resources. The Closeout Assessment may include sediment sampling. [Optional if an Exhibit C is attached: Sediment sampling includes the sample locations and parameters reported in Exhibit C as well as additional testing State may require.]

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

## **SECTION 9 ASSIGNMENT**

Grantee shall not assign any part of Grantee's interest in this Easement or the Easement Property or grant any rights or franchises to third parties without State's prior written consent. State reserves the right to reasonably change the terms and conditions of this Easement upon State's consent to assignment.

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

### **10.1 Indemnity.**

- (a) Grantee shall indemnify, defend, and hold State, its employees, officers, and agents harmless from any Claims arising out of the Permitted Use or activities related to the Permitted Use by Grantee, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees to the fullest extent permitted by law and subject to the limitations provided below.
- (b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, costs, fees (including attorneys' fees), fines, penalties, or judgments attributable to bodily injury, sickness, disease, death, 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 Easement Property diminution of value, and/or damages resulting from loss of use of the Easement Property.

- (c) State shall not require Grantee to indemnify, defend, and hold State harmless for claims caused solely by or resulting solely from the negligence or willful act of State or State's elected officials, employees, or agents.
- (d) Grantee specifically and expressly waives any immunity that may be granted under the Washington State Industrial Act, Title 51 RCW in connection with its obligation to indemnify, defend, and/or hold State and its agencies, officials, agents, or employees harmless. Further, the indemnification obligation under this Easement shall not be limited in any way by any limitation on amount or type of damages, compensation, or benefits payable to or for any third party under the worker's compensation acts.
- (e) Section 8, Environmental Liability/Risk Allocation, exclusively governs Grantee's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.
- (f) Only to the extent RCW 4.24.115 applies and requires such a limitation, if a claim, suit, or action for injuries or damage is caused by or results from the concurrent negligence of (a) the State or State's agents or employees and (b) the Grantee or Grantee's agents or employees, these indemnity provisions shall be valid and enforceable only to the extent of the negligence of the Grantee and those acting on its behalf.

## **10.2 Insurance Terms.**

- (a) Insurance Required.
  - (1) Grantee certifies that on the Commencement Date of this Easement, it is a member of a self-insured risk pool 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 member of a self-insured risk pool. 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 Paragraph 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 Section 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 Best's 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 must comply with Chapter 48.15 RCW and 284-15 WAC.

- (3) All general liability, excess, umbrella, builder's risk, and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees as an additional insured by way of endorsement.
  - (4) All property insurance must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, 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) of insurance and endorsement(s) 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) Deem the failure an Event of Default under Section 14, 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 the 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 includes 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. 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 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 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.

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

- (a) At its own expense, Grantee shall procure and maintain during the Term of this Easement a corporate security bond or provide other financial security that State may approve ("Security"). Grantee shall provide Security in an amount equal to Zero Dollars (\$0), which is consistent with RCW 79.105.330, and secures Grantee's performance of its obligations under this Easement, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Grantee's failure to maintain the Security in the required amount during the Term constitutes a breach of this Easement.
- (b) All Security must be in a form acceptable to 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. 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) At the same time as revaluation, if any,
    - (ii) As a condition of approval of assignment of this Easement,

- (iii) Upon a material change in the condition or disposition of any Improvements, or
  - (iv) 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 default 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 or cure the default or (4) prevent termination of the Easement because of the default.

## **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 improvements (regardless of ownership) in good order and repair, in a clean, attractive, and safe condition.
- (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 improvements on the Easement Property which 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 Section 11.2(d), all additions, repairs, alterations, replacements or changes to the Easement Property and to any 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 Improvements. Routine maintenance or repair that does not require regulatory permits does not require

## **SECTION 12 DAMAGE OR DESTRUCTION**

**12.1 Notice and Repair.**

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

- (b) Unless otherwise agreed in writing, Grantee shall promptly reconstruct, repair, or replace any Improvements in accordance with Paragraph 7.3, Construction, Major Repair, Modification, and Demolition, as nearly as possible to its condition immediately prior to the damage or destruction. Where damage to state-owned aquatic land or natural resources is attributable to the Permitted Use or related activities, Grantee shall promptly restore the lands or resources to the condition preceding the damage in accordance with Paragraph 7.3 unless otherwise agreed in writing.

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

**12.3 Insurance Proceeds.** Grantee's duty to reconstruct, repair, or replace any damage or destruction of the Easement Property or any Improvements on the Easement Property is 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 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. 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 Breach.**

- (a) State may terminate this Easement upon Grantee's failure to cure a breach of its terms within sixty (60) days of State's written notice of breach.
- (b) For nonmonetary breach not capable of cure within sixty (60) days, State will not unreasonably withhold approval of a reasonable alternative cure schedule. Grantee must submit a cure schedule within thirty (30) days of a notice of breach. State shall not terminate if State approves the schedule and Grantee works diligently and in good faith to execute the cure. State may terminate if Grantee fails to timely submit a schedule or fails to cure in accordance with an approved schedule.
- (c) If breach arises from Grantee's failure to comply with restrictions on Permitted use under Paragraph 2.2, State may, without terminating this Easement, restore

the natural resources or Property and charge Grantee restoration costs and/or charge Grantee damages. On demand by State, Grantee shall pay all costs and/or damages.

**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. Grantee's rights revert to State upon Termination by Nonuse.

**14.3 Termination by Grantee.** Grantee may terminate this Easement upon providing State with sixty (60) days written notice of intent to terminate. Grantee shall comply with Paragraph 3.3, End of Term.

**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 the State is lawfully entitled for Grantee's breach or threatened breach of any provision of this Easement.

## SECTION 15 NOTICE AND SUBMITTALS

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  
Rivers District  
601 Bond Road  
P.O. Box 280  
Castle Rock, WA 98611  
Grantee: CITY OF ABERDEEN  
Sheri Runyon  
200 E Market St  
Aberdeen, WA 98520

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.

## 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.** 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 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, 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, includes 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 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. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out

of or in connection with this Easement is in the Superior Court for Thurston County, Washington.

**16.11 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 Property is located. Grantee shall include the parcel number of the upland property used in conjunction with the Property, if any. Grantee shall provide State with recording information, including the date of recordation and file number.

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

**16.13 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.

**16.14 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.

CITY OF ABERDEEN

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

\_\_\_\_\_  
By: Pete Schave  
Title: Mayor  
Address: 200 E Market St  
Aberdeen, WA 98520  
Phone: 360-537-3227

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

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

\_\_\_\_\_  
By: Katrina Lassiter  
Title: Interim Deputy Supervisor for Aquatics  
Address: 1111 Washington St SE  
Olympia, WA 98504

Master approved as to form this  
5<sup>th</sup> Day of February 2018  
Jennifer Clements, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF )  
 ) ss  
County of )

I certify that I know or have satisfactory evidence that PETE SCHAVE 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 Mayor of City of Aberdeen to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_, 2020

(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)
) ss.
County of )

I certify that I know or have satisfactory evidence that KATRINA LASSITER 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 Interim Deputy Supervisor of Aquatics 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: \_\_\_\_\_, 2020

(Seal or stamp)

(Signature)

(Print Name)

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

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

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

Agreement Number 51-100246

**1. LEGAL DESCRIPTION OF THE PROPERTY:**

That real property legally described and shown as Easement No. 51-100246 in that Record of Survey recorded in Grays Harbor County, Washington on April 12, 2002 under Auditor's File Number 2002-04120039 and in Book 23 of Surveys at Page 35.

**2. SQUARE FOOTAGE OF EASEMENT:**

Total square feet 8499.

## **EXHIBIT B**

### **1. DESCRIPTION OF PERMITTED USE**

**A. Existing Facilities.** One 54 inch diameter raw water concrete cylinder pipeline owned by the City of Aberdeen, permit number 51-100246. This water line is above ground at the start and terminus point of the agreement. This water line and a sewer line owned by Grays Harbor County (51-100112) are attached to the north side of a railroad trestle bridge suspended over Elliot Slough.

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

### **2. ADDITIONAL OBLIGATIONS**

None.

Master Approved as to form this  
1<sup>st</sup> day of June 2017  
Jennifer Clements, Assistant Attorney General

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**LEGISLATIVE DEPARTMENT  
CITY OF ABERDEEN**

**MR. MAYOR:** Pete Schave

**THE MEMBERS OF YOUR COMMITTEE ON:** Public Works

**TO WHOM IT WAS REFERRED:** Elliot Slough Land Lease Agreement

**REPORTS AS FOLLOWS:** The land lease agreement with the Department of Natural Resources (DNR) allowing the industrial water line to cross Elliot Slough has expired. The DNR has proposed a new contract to continue the City's use of this water crossing.

**IT IS RECOMMENDED:** The Mayor shall execute the contract with the DNR.

\_\_\_\_\_  
Rick Sangder  
Public Works Director

\_\_\_\_\_  
Nathan Kennedy, Chair

\_\_\_\_\_  
Joshua Francy, Vice-Chair

Reported \_\_\_\_\_, 2020

\_\_\_\_\_  
Dave Haviland, Member

Adopted \_\_\_\_\_, 2020

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Bill No. 20-03

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE RELATING TO A DEPARTMENT HEAD BENEFIT PROGRAM AND AMENDING ORDINANCE 6491.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF ABERDEEN:

**SECTION 1. DEPARTMENT HEAD BENEFITS.** Section 1 of Ordinance 6348, as amended by Ordinance 6391, is hereby amended to read as follows:

The following benefit program is hereby adopted for Department Heads of the City of Aberdeen:

**I. Included Positions**

The benefits provided herein shall apply to the following City officials:

- ~~1. City Engineer~~
- ~~2. Building Inspector III~~
3. Corporation Counsel
4. Parks and Recreation Director
5. Fire Chief
6. Police Chief
7. Finance Director
8. Community Development Director
9. Public Works Director
10. Human Resources Director
11. Municipal Court Judge
12. City Administrator

In the event an individual holds more than one of the above offices, the benefits shall apply as if that individual held one office.

Except as provided herein, Department Heads shall receive no additional pay above their basic salary for any of the following: overtime, longevity, call-back, working on a designated holiday or weekend, or working in excess of 40 hours per week.

**II. Paid Leave Time**

Department Heads shall receive the same number of hours of paid leave time in accordance to years of service as is provided for by contract with City employees represented by the American Federation of State, County, and Municipal Employees plus eight hours per month.

**III. Paid Leave Time Usage**

- (A) A Department Head may use paid leave time during the first year of employment.
- (B) Department Heads may accumulate up to a maximum of seven hundred and twenty (720) hours of paid leave. Any amount of paid leave time over 720 hours can be converted to medical leave at the

end of the year.

(C) After one complete year of employment with the City, each Department Head is expected to use ten (10) days of **paid leave** per year (dating from appointment as a Department Head or the date this provision goes into effect, whichever is later

(D) All **paid leave** shall be taken at the Department Head's convenience and shall be with the consent of the Mayor if over three consecutive days are taken or if the leave is taken at a time likely to interfere with the operational functions of the City. The Mayor reserves the right to recall Department Heads from **paid leave** during times of emergency provided that any **paid leave** not taken as a result of such action shall be retained by the Department Head and shall not be forfeited.

(E) Department Heads shall be responsible to account for used and accumulated **paid leave** and shall report such as directed by the Mayor.

(F) Upon the termination of employment as a Department Head, unused accumulated **paid leave** shall be processed as follows:

- (1) If a person's employment as a Department Head is terminated and that person remains employed by the City in another classified position, that employee shall retain his or her accumulated **paid leave**.
- (2) Upon the death of a Department Head, the last paycheck shall include payment for the unused accumulated **paid leave**.
- (3) If a person's employment as a Department Head is terminated for any other reason, the employee shall be compensated all accrued leave time.

#### **IV. Leave Time Conversion**

A Department Head who is participating in the City's Deferred Compensation Program may elect to exchange up to ten (10) hours of **paid leave** per month in return for the deposit by the City of the cash equivalent into the City's Deferred Compensation Program. Such an election will take effect upon the next opening date for changing contributions to the Deferred Compensation Program and an election by a Department Head to withdraw from the vacation leave conversion program shall be effective upon the next opening date. Changes by the Department Heads to their **paid leave time** conversion election shall not occur more frequently than once every six months.

#### **V. Medical Leave Bank**

Except for a Fire Chief or a Police Chief who were members of and retained their membership in the law enforcement and firefighters' retirement system prior to October 1, 1977 (LEOFF I), Department Heads shall accrue a medical leave bank of 1040 hours during their first year of employment. A Department Head will receive an additional 480 hours at 12 years and again at 20 years of continuous employment. However, the accumulation of medical leave shall still be limited to 1,040 hours. Except as provided herein, or mandated by state or federal law, **medical leave** shall be used only for illness, injury, or disability.

In the event that a Department Head requests leave for a death in his or her immediate family, he or she may elect to take three days funeral leave if the funeral is to be held in the State of Washington, and five days if it is to be held outside the State of Washington.

Fire Chiefs and Police chiefs who are under the LEOFF I system, in addition to the benefits of that system, shall be entitled to the sick leave benefits under [1-40-0352.52.100](#) Aberdeen City Code and shall be entitled to the same bereavement or funeral leave as is provided to the members of their respective departments.

**VI. Holidays**

The following days are designated paid holidays for Department Heads:

- New Year's Day,
- Memorial Day,
- Independence Day,
- Labor Day,
- Thanksgiving Day,
- Christmas Eve,
- Christmas Day.

In addition to those specific holidays listed above, each Department Head shall be allowed five floating holidays, four of which shall be taken on or in lieu of 1) Martin Luther King Day, 2) President's Day, 3) Veteran's Day, and 4) the day after Thanksgiving. Any Department Head who terminates after taking an in-lieu- of-holiday prior to the actual holiday shall have the advance holiday deducted from his or her paycheck at eight (8) hours straight time pay per holiday. Any holidays not taken within a calendar year shall be forfeited.

Whenever a specified holiday falls upon a Saturday, the preceding Friday shall be the legal holiday. Whenever a specified holiday falls on a Sunday, the following Monday shall be the legal holiday.

**VII. Death Benefits**

~~The City will provide health and welfare coverage for Department Heads and their dependents. The City shall determine by resolution, or by adoption of a Personnel Committee report to the City Council, which insurance plans shall be offered and what portion of the premium shall be the responsibility of the employee. If a Department Head dies while employed by the City, the City will pay a death benefit equal to Twenty Thousand Dollars (\$20,000) to the Department Head's named beneficiary or to the Department Head's estate. This death benefit may be funded by an insurance policy or by self-insurance. The Council may from time to time determine to provide a death benefit greater than Twenty Thousand Dollars (\$20,000) by obtaining an insurance policy with a higher benefit. Termination of an insurance policy with a higher benefit shall automatically reduce the death benefit to Twenty Thousand Dollars (\$20,000).~~

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**VIII. Health and Welfare Insurance**

The City will provide health and welfare coverage for Department Heads and their dependents. The City shall determine by resolution, or by adoption of a Personnel Committee report to the City Council, which insurance plans shall be offered and what portion of the premium shall be the responsibility of the employee.

**IX. Deferred Compensation**

~~Department Heads participating in the City's Deferred Compensation Program shall receive a dollar for dollar match from the city. The City's match will be a maximum of four (4%) percent. The City's match shall be in addition to the basic salary of the exempt employee. Paid leave conversion under Article IV of this ordinance shall be included in determining the amount of the Department Head's contribution under this section.~~

**X. Jury Duty**

Department Heads shall be granted paid time off for jury duty.

**XI. Vehicles**

Vehicle assignments are made solely for the benefit of the City and shall under no circumstances be deemed a Department Head benefit. Vehicles may be considered a taxable benefit per the Internal Revenue Services (IRS), in the event that the vehicle is a taxable benefit the City will follow IRS rules and regulations. The following positions may be assigned a vehicle:

Fire Chief  
Police Chief  
Public Works Director

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**XII. Conversion Rate**

For the purpose of determining benefits available to Department Heads, the rate per hour shall be computed by dividing the annualized base salary by 2,080 hours.

**XIII. Longevity Pay**

Department Heads shall be entitled to longevity pay based on years of continued employment within the City. The longevity pay rate shall be as follows:

After 10 years: Two and one-half percent (2.5%);

After 15 years: Three percent (3.0%);

After 20 years: Three and one half percent (3.5%);

After 25 years: Four percent (4%)

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**XIV. Program Modifications**

Upon the recommendation of the Mayor, the City Council by Resolution may give a newly- hired or appointed Department Head credit in the paid leave time schedule for prior years of work experience, or a portion thereof, outside the City of Aberdeen under such circumstances as the Council may deem appropriate.

In the event of an emergency situation placing extraordinary demands upon Department Heads, the City may, by resolution, increase the benefits provided herein or provide for additional benefits during the existence of the emergency.

The City reserves the right to amend or modify the benefits provided herein so long as such modification does not affect vested or accrued rights.

**SECTION 2. PUBLICATION BY SUMMARY.** Attached here to and incorporated herein is a summary of this ordinance for the purposes of publication. The Finance Director is authorized and directed to publish the attached summary in lieu of this ordinance, according to law.

**SECTION 3. EFFECTIVE DATE.** This ordinance shall take effect immediately upon its passage, signing, and publication.

**PASSED and APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

---

Pete Schave, Mayor

Attest: \_\_\_\_\_  
\_\_\_\_\_  
City Clerk/Finance Director

**ORDINANCE NO. \_\_\_**

**AN ORDINANCE RELATING TO A DEPARTMENT HEAD BENEFIT PROGRAM  
AND AMENDING ORDINANCE 6348.**

The following is a summary of the above ordinance for the purposes of publication. The full text of the ordinance will be mailed upon request.

**Section 1.** Includes death benefits as previously written and approved. Amended vehicles to include applicable positions. Addition of longevity benefits.

**Section 2.** Publication by summary authorized.

**Section 3.** Effective date immediately upon passage and publication.

**PASSED and APPROVED:** \_\_\_\_\_, 2020.

Bill # 20-04

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE RELATING TO EMPLOYEE BENEFITS FOR FLSA  
EXEMPT AND UNREPRESENTED EMPLOYEES AND AMENDING ORDINANCE  
~~6620~~ 6659.**

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF  
ABERDEEN:

SECTION 1. UNREPRESENTED EMPLOYEE BENEFITS. Section 1 of  
Ordinance 6492, as amended by Ordinance 6572, is hereby amended to read as follows:

The following benefit program is hereby adopted for unrepresented employees of the city of  
Aberdeen:

**I. Included Positions**

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(A) The benefits provided herein shall apply to the following City employees for so long as  
the positions are not represented by a bargaining unit:

1. Assistant Finance Director
2. Accountant II
3. Deputy Chief of Police
4. Police Administrative Coordinator
5. Assistant Fire Chief
6. Fire Administrative Coordinator
7. Wastewater Systems Manager
8. Water Systems Manager
9. Public Works Accountant
10. Assistant Parks and Recreation Director
11. Court Administrator

- 12. Administrative Legal Assistant
- 13. Deputy Corporation Counsel
- 14. Human Resources Technician
- 15. Assistant Community Development Director
- 16. Police Commander
- 17. City Engineer
- 18. Building Inspector III
- 19. Public Works Maintenance & Operations Manager

(B) In addition to the above positions, the benefit program shall also apply to unrepresented positions approved by the City, which are not covered by the Department Head benefit ordinance.

(C) Except as provided herein, unrepresented employees who are exempt from the mandatory overtime provisions of state or federal law shall receive no compensatory time off or additional pay above their annualized base salary for working in excess of 40 hours per week. An unrepresented employee who contests the determination that his or her position is exempt from the mandatory overtime provisions of state and federal law shall continue to receive exempt employee benefits until a final administrative or judicial determination of the mandatory overtime exemption status.

~~(D) Employees who are not exempt from the mandatory overtime provisions of state and federal law may request accrual of compensatory time off instead of receiving compensation. The request for compensatory time must be made at the time the hours are worked. Employees may accrue up to forty (40) hours of compensatory time off. Use of accrued compensatory time off must be pre-approved by a supervisor, and may be approved to be used within a reasonable period following request for the time, provided that it does not unduly disrupt the work place or interfere with the business needs of the work group or department. In addition, the City may require employees to use all or a portion of their accrued compensatory time off within a specified period of time and subject to the scheduling needs of the work group or department. Employees should consult with their immediate supervisor to schedule the leave. Upon separation of employment with the City for any reason, an employee will be paid for all earned and accrued compensatory time.~~

**Commented [PK1]:** No named positions are not exempt from overtime hours; compensatory time off policy is in the Personnel Policy (Section 8.150)

**II. Paid Leave Time**

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Unrepresented exempt employees shall receive the same number of hours of vacation leave in accordance to years of service as is provided for by contract with City employees represented by the American Federation of State, County, and Municipal Employees (AFSCME) plus six hours per month. Unrepresented employees who are not exempt from the mandatory overtime provisions of state or federal law shall receive four additional hours per month.

### **III. Paid Leave Time Usage**

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(A) Unrepresented employees may accumulate up to a maximum of seven hundred and twenty (720) hours of paid leave, computed on the basis of an eight-hour day. Any amount of paid leave time over 720 hours will be converted to medical leave at the end of the year.

(B) All paid leave shall be taken per Personnel Policy.

(C) In one complete year of employment with the City, each unrepresented employee is expected to use ten (10) days of paid leave per year ~~(~~dating from appointment as an unrepresented employee or the date this provision goes into effect, whichever is later). Any amount of paid leave not used up to ten (10) days shall be forfeited unless prior permission to accrue those days or a portion thereof is given in writing by the Mayor.

(D) Department Heads shall be responsible to account for used and accumulated paid leave and shall report as directed by the Mayor.

(E) Upon the termination of employment as an unrepresented employee, unused accumulated paid leave shall be processed as follows:

a. If a person's employment as an unrepresented employee is changed to another classified position, that employee shall retain his or her accumulated paid leave.

b. Upon the death of an unrepresented employee, the last paycheck shall include payment for the unused accumulated paid leave.

c. If a person's employment as an unrepresented employee is terminated for any other reason, the employee shall be compensated all accrued paid leave time.

### **IV. Paid Leave Time Conversion**

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An unrepresented employee who is participating in the City's Deferred Compensation Program may elect to exchange up to ten (10) hours of paid leave per month in return for the deposit by the City of the cash equivalent into the City's Deferred Compensation Program. Such an election will take effect upon the next opening date for changing contributions to the Deferred Compensation Program and an election by an unrepresented employee to withdraw from the paid leave time conversion program shall be effective upon the next opening date. Changes by the unrepresented employees to their paid leave conversion election shall not occur more frequently than once per year.

### **V. Medical Leave Bank**

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Unrepresented employees who are not active members of the LEOFF I retirement system shall accrue a medical leave bank of 1040 hours during their first year of employment. There will be

an additional accrual of 480 hours at 12 and again at 20 years of consecutive employment; however, the accumulation of medical leave shall still be limited to 1040 hours. Except as provided herein or mandated by state or federal law, ~~sick~~ medical leave shall be used only for illness, injury, or disability. Except for rights vested under Ordinance 4902 prior to its repeal in February of 1973, there shall be no payout of medical leave upon termination. In the event that an unrepresented employee requests leave for a death in his or her immediate family, he or she may elect to take three days' bereavement leave if the funeral is to be held in the state of Washington, and five days if it is to be held outside the State of Washington.

Unrepresented employees who are active LEOFF I members (not retired for service or disability) shall be entitled to the sick leave benefits under Section 2.52.100 of the Aberdeen Municipal Code.

#### **VI. Workers Compensation Supplement**

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An unrepresented employee injured on the job and entitled to receive Worker's Compensation, on the employee's election, may use accumulative medical leave with pay for the first three (3) days not covered by the Worker's Compensation Law and to use medical leave to supplement the amount received for Workman's Compensation to make the amount received equal to the unrepresented employee's daily rate of pay, if paid on a daily rate, or monthly salary, if paid on a monthly salary, to the full extent of any unused medical leave. Medical leave used as a supplement to an unrepresented employee's Worker's Compensation shall be deducted and prorated according to the actual amount of medical leave time needed to provide compensation equal to the unrepresented employee's annualized base wage rate.

#### **VII. Holidays**

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The following days are designated paid holidays for unrepresented employees:

New Year's Day,

Martin Luther King Day,

President's Day,

Memorial Day,

Independence Day,

Labor Day,

Veteran's Day,

Thanksgiving Day,  
Day after Thanksgiving  
Christmas Eve,  
Christmas Day,

Floating Holiday (to be taken during the year upon mutual consent of employee and Department Head)

With the prior consent and agreement of the Department Head, or the Department Head's designee, or the Mayor in the absence of both the Department Head and their designee, an unrepresented employee who works on one of the designated holidays may take another day off in lieu of the holiday. Any holidays not taken within a calendar year shall be forfeited.

Whenever a specified holiday falls upon a Saturday, the preceding Friday shall be the legal holiday. Whenever a specified holiday falls on a Sunday, the following Monday shall be the legal holiday.

#### VIII. Death Benefits

The City will pay a death benefit equal to Twelve Thousand Five Hundred Dollars (\$12,500.00) to the unrepresented employee's named beneficiary or to the unrepresented employee's estate if the employee dies while employed by the City and is exempt from the mandatory overtime provisions of state or federal law. Unrepresented employees who are not exempt from the mandatory overtime provisions of state or federal law shall receive a death benefit equal to Ten Thousand Dollars (\$10,000.00). This death benefit may be funded by an insurance policy or by self-insurance.

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#### IX. Health and Welfare Insurance

The City will provide health and welfare coverage for unrepresented employees and their dependents. The City shall determine by resolution, or by adoption of a Personnel Committee report to the City Council, which insurance plans shall be offered and what portion of the premium shall be the responsibility of the employee.

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#### X. Deferred Compensation

Unrepresented employees participating in the City's Deferred Compensation Program shall receive a dollar for dollar match from the city. The City's match for FLSA exempt employees shall not exceed three percent (3%) of the employee's current range and step on the salary schedule, and two percent (2%) for unrepresented nonexempt employees. The City's match shall be in addition to the base salary of the unrepresented employee. Paid leave conversion under Article IV of this ordinance shall be included in determining the amount of the unrepresented employee's contribution under this section.

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**XI. Jury Duty**

Unrepresented employees shall be granted paid time off for jury duty.

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**XII. Vehicles**

Vehicle assignments are made solely for the benefit of the City and shall under no circumstances be deemed an employee benefit. Vehicles may be considered a taxable benefit per the Internal Revenue Services (IRS), in the event that the vehicle is a taxable benefit the City will follow IRS rules and regulations. The following positions may be assigned a vehicle:

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- Deputy Chief of Police
- Police Commander
- Assistant Fire Chief

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**XIII. Conversion Rate**

For the purpose of determining benefits available to unrepresented employees, the rate per hour shall be computed by dividing the annualized base salary by 2,080 hours.

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**XIV. Longevity Pay**

Unrepresented employees shall be entitled to longevity pay based on years of continued employment within the City. The longevity pay rate shall be as follows:

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- Starting 10<sup>th</sup> year      2%
- Starting 15<sup>th</sup> year     3%
- Starting 20<sup>th</sup> year     4%

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**XV. Program Modifications**

Upon the recommendation of the Mayor, the City Council, by majority vote, may elect to give a newly-hired or appointed unrepresented employee credit in the paid leave time schedule for prior years of work experience, or a portion thereof, outside the City of Aberdeen under such circumstances as the Council may deem appropriate.

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The City reserves the right to amend or modify the benefits provided herein so long as such modification does not affect vested or accrued rights.

**SECTION 2. PUBLICATION BY SUMMARY.** Attached hereto and incorporated herein is a summary of this ordinance for the purposes of publication. The Finance Director is authorized and directed to publish the attached summary in lieu of this ordinance, according to law.

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**SECTION 3. EFFECTIVE DATE.** This ordinance shall take effect immediately upon its passage, signing, and publication.

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PASSED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Pete Schave, Mayor

ATTESTED:

\_\_\_\_\_  
Finance Director

Bill # ~~20-19-~~

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE RELATING TO AN UNREPRESENTED EMPLOYEES AND AMMENDING ORDIANCE 6620.**

The following is a summary of the above ordinance for the purposes of publication. The full text of the ordinance will be mailed upon request.

Section 1. Includes death benefits as previously written and approved. Amended vehicles to include applicable positions. Addition of longevity benefits.

Section 2. Publication by summary authorized.

Section 3. Effective date immediately upon its passage, signing, and publication.

PASSED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2020.

