

HILARY S. FRANZ  
COMMISSIONER OF PUBLIC LANDS

## AQUATIC LANDS RIGHT OF ENTRY

### Right of Entry No. 23-092236

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

THE Parties agree as follows:

### SECTION 1 GRANT OF PERMISSION

**1.1 Permission.** Subject to the terms and conditions set forth below, State grants Licensee a revocable, nonexclusive license to enter upon the real property described in Exhibit A (the "Property"). In this agreement, the term "Right of Entry" means this agreement and the rights granted.

**1.2 Other Interests and Rights.** This Right of Entry is subject to all valid interests of third parties noted in the records of King County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington. Licensee is responsible for obtaining approvals from other persons, if any, who have an interest in the Property. This Right of Entry is subject to the rights of the public under the Public Trust Doctrine or federal navigation servitude and treaty rights of Indian Tribes.

### SECTION 2 USE

**2.1 Authorized Activities.** Licensee shall enter the Property only for the purpose of conducting the activities described in Exhibit B (the "Activities") and for no other purpose. Licensee shall not conduct any other activities on the Property without the prior written permission of State.

**2.2 Restrictions on Activities.**

- (a) The limitations in this Paragraph 2.2 apply to the Property and adjacent state-owned aquatic land. Licensee's compliance with this Paragraph 2.2 does not limit Licensee's liability under any other provision of this License.
- (b) Licensee shall not cause or permit:
  - (1) Damage to natural resources,
  - (2) Waste, or

- (3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.
- (c) State may take any steps reasonably necessary to remedy any failure of Licensee to comply with the restrictions on activities under this Subsection 2.2. Upon demand by State, Licensee shall pay all remedial costs and natural resources damages.

**2.3 Conformance with Laws.** Licensee 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 its activities on the Property.

**2.4 Interference with Other Uses.**

- (a) Licensee shall exercise Licensee's right of entry under this Right of Entry 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 Property or surrounding lands and water.
- (b) Licensee and its agents, contractors, and subcontractors shall provide State with at least two (2) weeks' notice before commencing any Activities. Licensee shall promptly notify State of any modifications in the schedule.

**SECTION 3 TERM**

**3.1 Term Defined.** This right of entry is effective on the 1st day of March, 2018 ("Effective Date"), and terminates on the 28th day of February, 2019 ("Termination Date"), unless terminated sooner under the terms of this Right of Entry.

**3.2 End of Term.** Upon termination of this Right of Entry and except as otherwise provided in Exhibit B, Licensee shall restore the Property to a condition substantially like its natural state before Licensee's Activities.

**SECTION 4 CONSIDERATION**

The consideration is a fee in the amount of One Thousand Dollars (\$1,000.00), which is due and payable on or before the Effective Date.

**SECTION 5 ENVIRONMENTAL LIABILITY**

**5.1 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, including oil and petroleum products.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any Hazardous Substance law.

**5.2 General Conditions.** Licensee shall exercise the utmost care with respect to Hazardous Substances, including the foreseeable acts or omissions of third parties affecting Hazardous Substances, consistent with the standard of care applicable under the Model Toxics Control Act, RCW 70.105D.040.

**5.3 Use of Hazardous Substances.**

- (a) Licensee, its contractors, agents, employees, guests, invitees, or affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances on the Property or adjacent state-owned aquatic lands, except in accordance with all applicable laws.
- (b) Licensee shall not undertake, or allow others to undertake by Licensee's permission, acquiescence, or failure to act, activities on the Property or adjacent state-owned aquatic lands that:
  - (1) Result in a release or threatened release of Hazardous Substances, or
  - (2) Cause, contribute to, or exacerbate any contamination exceeding regulatory cleanup standards whether the regulatory authority requires cleanup before, during, or after Licensee's activities on the Property.

**5.4 In the Event of a Release or Threatened Release.**

- (a) Licensee shall immediately notify State if the Licensee becomes aware of any release or threatened release of Hazardous Substance on the Property.
- (b) If a Licensee's act or omission results in a release of Hazardous Substances, Licensee, at its sole expense, shall promptly take all actions necessary or advisable to clean up, contain, and remove the Hazardous Substances in accordance with applicable laws.

## **SECTION 6 ASSIGNMENT**

Licensee shall not assign this Right of Entry.

## **SECTION 7 INDEMNITY AND INSURANCE**

**7.1 Indemnity.**

- (a) Licensee shall indemnify, defend, and hold State, its employees, officers, and agents harmless from Claims arising out of the use, occupation, or control of the Property by Licensee, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.
- (b) "Claim" as used in this Paragraph 7.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Property and damages resulting from loss of use of the Property.
- (c) State shall not require Licensee to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.

- (d) Licensee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.
- (e) Section 5, Environmental Liability/Risk Allocation, exclusively shall govern Licensee's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.
- (f) Licensee's obligations under this indemnity provision shall not exceed the appropriation authorized at the time Licensee must fulfill its indemnity obligations and nothing in this Right of Entry may be considered as insuring that Licensee will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include, but are not limited to, funds in the Licensee's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

## 7.2 Insurance Terms.

- (a) Insurance Required.
  - (1) Licensee certifies that it is self-insured for all the liability exposures, including but not limited to employers' liability and business auto liability, and its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Paragraph 7.2 and by Paragraph 7.3, Insurance Types and Limits. Licensee shall provide to State evidence of its status as a self-insured entity. Upon request by State, Licensee shall provide a written description of its financial condition and/or the self-insured funding mechanism. Licensee shall provide State with at least thirty (30) days' written notice prior to any material changes to Licensee's self-insured funding mechanism.
  - (2) All self-insurance provided in compliance with this Right of Entry must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
  - (1) Licensee waives all rights against State for recovery of damages to the extent self-insurance maintained pursuant to this Right of Entry covers these damages.
  - (2) Except as prohibited by law, Licensee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by self-insurance maintained pursuant to this Right of Entry.
- (c) Proof of Insurance
  - (1) Licensee shall provide State with a certification of self-insurance executed by a duly authorized representative of Licensee, showing compliance with insurance requirements specified in this Right of Entry.
  - (2) The certification of self-insurance must reference the Right of Entry number.
  - (3) Receipt of such certification of self-insurance or policies by State does not constitute approval by State of the terms of such self-insurance or policies.
- (d) Licensee must provide State no less than 30 days' notice if Licensee's self-insurance program is cancelled or materially reduced.
- (e) Adjustments in Insurance Coverage.

- (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
- (2) Licensee shall provide a certification that meets the requirements of Section 7.2(c)(1) and demonstrates coverage in compliance with the Right of Entry within thirty (30) days after State requires changes in the limits of liability.
- (f) If Licensee fails to provide the certification described above within fifteen (15) days after Licensee receives a notice to comply from State, State may either:
  - (1) Terminate the Right of Entry under Section 8, or
  - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Licensee shall pay to State the full amount paid by State, together with interest at the rate provided in RCW 43.17.240 from the date of State's notice of the expenditure until Licensee's repayment.
- (g) General Terms.
  - (1) State does not represent that coverage and limits required under this Right of Entry are adequate to protect Licensee.
  - (2) Coverage and limits do not limit Licensee's liability for indemnification and reimbursements granted to State under this Right of Entry.
  - (3) The Parties shall use any self-insurance or other insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Right of Entry, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Licensee.

**7.3 Insurance Types and Limits.**

- (a) General Liability Insurance.
  - (1) Licensee shall maintain self-insurance with a limit of not less than Two Million Dollars (\$2,000,000) per each occurrence and an aggregate limit of not less than twice any limit established for each occurrence.
- (b) Workers' Compensation.
  - (1) State of Washington Workers' Compensation.
    - (i) Licensee shall comply with all State of Washington workers' compensation statutes and regulations. Licensee shall provide workers' compensation coverage for all employees of Licensee. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Licensee's use, occupation, and control of the Property.
    - (ii) If Licensee fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Licensee shall indemnify State. Indemnity shall include all fines; payment of benefits to Licensee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
  - (2) Longshore and Harbor Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Licensee to provide insurance coverage in some circumstances. Licensee shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Licensee is

responsible for all civil and criminal liability arising from failure to maintain such coverage.

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

## SECTION 8 TERMINATION

**8.1 Termination by Revocation.** State may terminate this Right of Entry at any time upon thirty (30) days' notice to the Licensee.

**8.2 Termination by Completion of Activities.** If Licensee completes Activities prior to the Termination Date, this Right of Entry terminates upon Licensee's completion of all Activities, including restoration of the Property under Subsection 3.2.

## SECTION 9 NOTICE

Following are the locations for delivery of notice and the Contact Person. Any Party may change the location of notice and/or the Contact Person upon reasonable notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES  
Aquatic Resources Division, Shoreline District  
950 Farman Avenue North  
Enumclaw, WA 98022-9282

Licensee: CITY OF SEATTLE  
Department of Construction and Inspections  
700 5th Avenue, Suite 2000  
Seattle, WA 98124-4019

## SECTION 10 MISCELLANEOUS

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

**10.2 Invalidity.** The invalidity, voidness, or illegality of any provision of this Right of Entry does not affect, impair, or invalidate any other provision of this Right of Entry.

**10.3 Applicable Law and Venue.** This Right of Entry 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 Right of Entry is in the Superior Court for Thurston County, Washington.

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

**10.5 Survival.** Any obligations of Licensee not fully performed upon termination of this Right of Entry do not cease, but continue as obligations of the Licensee until fully performed.

**10.6 Exhibits.** All referenced exhibits are incorporated in this Right of Entry unless expressly identified as unincorporated.

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

CITY OF SEATTLE  
DEPARTMENT OF CONSTRUCTION AND  
INSPECTIONS

Dated: 2-16, 2018

  
By: NATHAN TORGELSON

Title: Director

Address: 700 5th Avenue, Suite 2000  
Seattle, WA 98124-4019  
Phone: 206-684-8372

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

Dated: 3/8, 2018

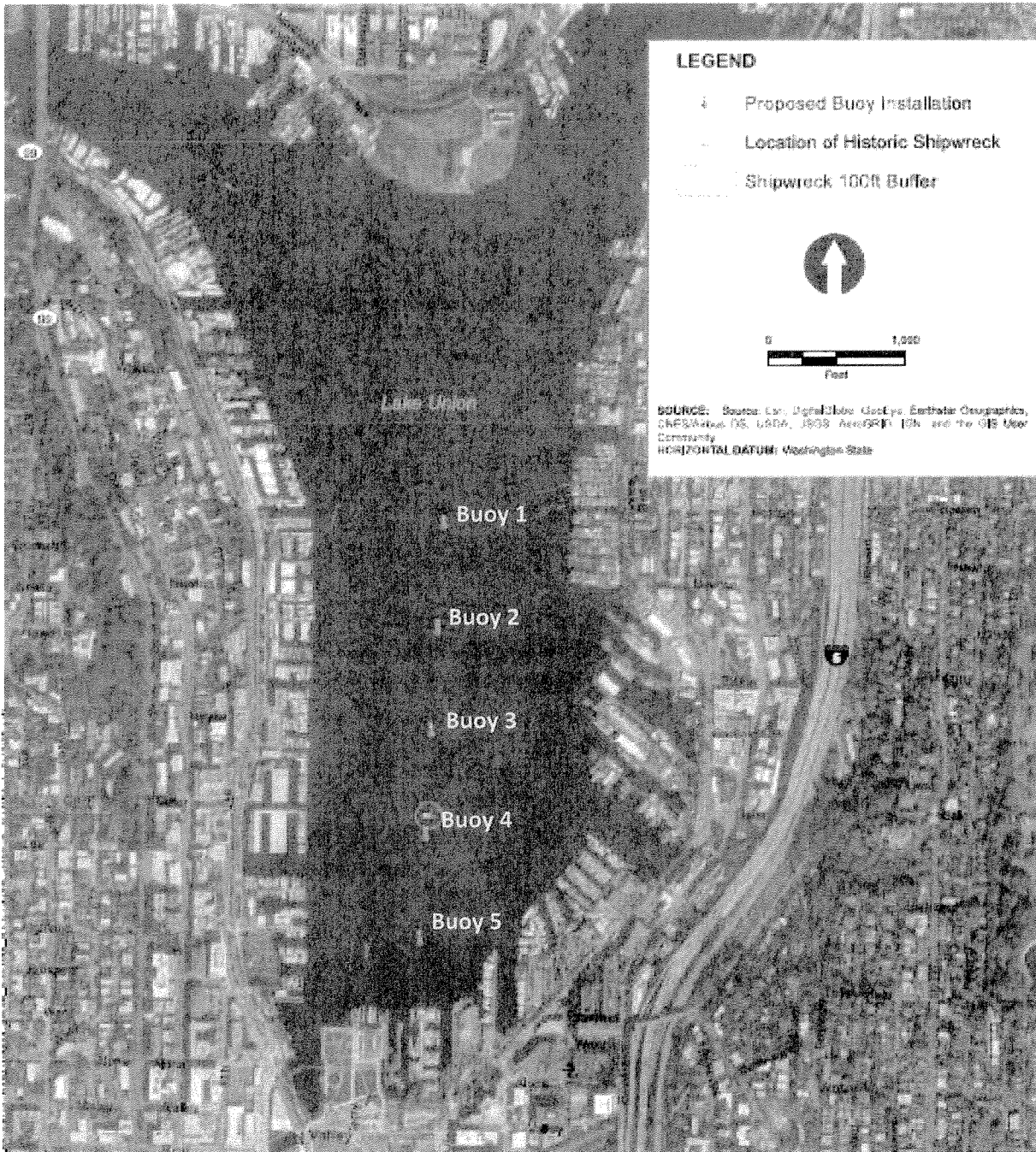
  
By: MICHAL RECHNER

Title: Acting Aquatic Resources  
Division Manager

Address: Shoreline District  
950 Farman Avenue North  
Enumclaw, WA 98022-9282

Approved as to form this  
1 day of November 2010  
Janis Snoey, Assistant Attorney General

**EXHIBIT A  
THE PROPERTY**



Buoy 1: 47°38'17.546"N 122°20'5.286"W; Radius 21-foot High Water, 25-foot Low Water
Buoy 2: 47°38'10.149"N 122°20'5.708"W; Radius 21-foot High Water, 25-foot Low Water
Buoy 3: 47°38'02.753"N 122°20'6.130"W; Radius 21-foot High Water, 25-foot Low Water
Buoy 4: 47°37'55.356"N 122°20'6.551"W; Radius 21-foot High Water, 25-foot Low Water
Buoy 5: 47°37'47.959"N 122°20'6.973"W; Radius 21-foot High Water, 24-foot Low Water



**EXHIBIT B  
PLAN OF OPERATIONS**

**1. DESCRIPTION OF ACTIVITIES**

- A. Existing Conditions.** The middle of Lake Union has substantial recreational uses, which peaks during warm weather conditions. The most frequent uses include boats, sailboats, kayaks, canoes, and seaplanes (including landings and takeoffs). Aquatic vegetation at the depths of the proposed work include coontail (*Ceratophyllum demersum*) and Eurasian watermilfoil (*Myriophyllum spicatum*).
- B. Proposed Conditions.** Licensee proposes to install five, 5CFR navigational warning buoys, in a north-south line, in the southern portion of Lake Union, as shown in Exhibit A. Buoys will be attached to a helical anchor via a galvanized metal chain. Buoys are to be deployed approximately one week prior to Memorial Day and removed approximately one week after Labor Day. Public education and outreach will be conducted prior to the buoy installation.

Licensee has secured the following permits:

- Department of the Army Corps of Engineers, Permit NWS-2014-01186-WRD, Issued 07/17/2017
- Department of Homeland Security, U.S. Coast Guard – Private Aids to Navigation Application (PATON) CG-2554, Issued 05/23/2017
- State of Washington Department of Ecology, Coastal Zone Consistency Conditional Concurrence, Issued 02/11/2016
- Washington Department of Fish and Wildlife, Hydraulic Project Approval Permit 2015-4-200+01, Issued 04/1/2015
- City of Seattle Department of Planning and Development, Shoreline Exemption, Project #6451774, Issued 01/23/2015

State grants its consent to this Work, except that Licensee shall conform all Work to all other requirements of Section 5 of this License.

**2. ADDITIONAL OBLIGATIONS**

- A.** Licensee shall use embedded anchors and attach midline floats on all buoy lines to minimize impacts to sediments.
- B.** If buoys are temporarily removed, Licensee shall also remove anchor chains.
- C.** Licensee shall use the lowest intensity of LED lights needed to maintain the safety function of the buoys and meet Coast Guard requirements.