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PETER GOLDMARK
COMMISSIONER OF PUBLIC LANDS

AQUATIC LANDS LEASE

Lease No. 22-A02664

Grantor: Washington State Department of Natural Resources
Grantee(s): City of Anacortes
Legal Description: Section 30, Township 35 North, Range 2 East, W.M.
Assessor's Property Tax Parcel or Account Number: P33185
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this lease: Various

THIS LEASE is between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and CITY OF ANACORTES, a government agency ("Tenant").

BACKGROUND

Tenant desires to lease the aquatic lands commonly known as Fidalgo Bay, which is a harbor area located in Skagit County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease. State has authority to enter into this Lease under Chapter 43.12, Chapter 43.30 and Title 79 of the Revised Code of Washington (RCW).

THEREFORE, the Parties agree as follows:

SECTION 1 PROPERTY

1.1 Property Defined.

(a) State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property").

(b) This Lease is subject to all valid interests of third parties noted in the records of Skagit County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.

(c) This Lease does not include a right to harvest, collect or damage natural resources, including aquatic life or living plants; water rights; mineral rights; or a right to excavate or withdraw sand, gravel, or other valuable materials.

(d) State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not interfere unreasonably with the Permitted Use.

1.2 Survey and Property Descriptions.

(a) Tenant prepared Exhibit A, which describes the Property. Tenant warrants that Exhibit A is a true and accurate description of the Lease boundaries and the improvements to be constructed or already existing in the Lease area. Tenant's obligation to provide a true and accurate description of the Property boundaries is a material term of this Lease.

(b) State's acceptance of Exhibit A does not constitute agreement that Tenant's property description accurately reflects the actual amount of land used by Tenant. State reserves the right to retroactively adjust rent if at any time during the term of the Lease State discovers a discrepancy between Tenant's property description and the area actually used by Tenant.

1.3 Inspection. State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property, or the existence of hazardous substances on the Property. Tenant inspected the Property and accepts it "AS IS."

SECTION 2 USE

2.1 Permitted Use. Tenant shall use the Property for: a marina, boat launch facility, docks, concrete panel breakwater, rock jetty, fill with riprapped armoring, and boat yard (the "Permitted Use"), and for no other purpose. This is a water-dependent use. Exhibit B describes the Permitted Use in detail. The Permitted Use is subject to additional obligations in Exhibit B.

2.2 Restrictions on Permitted Use and Operations. The following limitations apply to the Property and adjacent state-owned aquatic land. Tenant's compliance with the following does not limit Tenant's liability under any other provision of this Lease.

(a) Tenant shall not cause or permit:
  (1) Damage to natural resources,
  (2) Waste, or
  (3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.

(b) Tenant shall not cause or permit scour or damage to aquatic land and vegetation. This prohibition includes the following limitations:
  (1) Tenant shall not use or allow use of a pressure washer to clean underwater surfaces unless the water is deeper than seven (7) feet at the time.
  (2) Tenant shall not allow moorage or anchorage of vessels in water more shallow than seven (7) feet.

(c) Tenant shall not construct new bulkheads or place hard bank armoring.

(d) Tenant shall not install fixed breakwaters.

(e) Tenant shall not construct or install new covered moorage or boat houses.

(f) Unless approved by State in writing, Tenant shall not cause or permit dredging on the Property. State will not approve dredging unless (1) required for flood control, maintenance of existing vessel traffic lanes, or maintenance of water intakes and (2) consistent with State's management plans, if any. Tenant shall maintain authorized dredge basins in a manner that prevents internal deeper pockets.

(g) Floating houses, as defined by WAC 332-30-106 (23), are not allowed in Harbor Areas.

(h) Tenant shall limit the number of residential slips, and shall manage residential uses on the Property, in accordance with the provisions of WAC 332-30-171 and as specified in Exhibit B.

2.3 Conformance with Laws. Tenant shall, at all times, keep current and comply with all conditions and terms of permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Tenant's use or occupancy of the Property.

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

SECTION 3 TERM

3.1 Term Defined. The term of this Lease is seventeen (17) years (the "Term"), beginning on the 3rd day of January, 2017 (the "Commencement Date"), and ending on the 2nd day of January, 2034 (the "Termination Date"), unless terminated sooner under the terms of this Lease.

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

3.3 End of Term.

(a) Upon the expiration or termination of this Lease, Tenant shall remove Improvements in accordance with Section 7, Improvements, and surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.

(b) Definition of Reasonable Wear and Tear.

(1) Reasonable wear and tear is deterioration resulting from the Permitted Use that has occurred without neglect, negligence, carelessness, accident, or abuse of the Property by Tenant or any other person on the premises with the permission of Tenant.

(2) Reasonable wear and tear does not include unauthorized deposit of material prohibited under Paragraph 2.2 regardless of whether the deposit is incidental to or the byproduct of the Permitted Use.

(c) If Property is in worse condition, excepting for reasonable wear and tear, on the surrender date than on the Commencement Date, the following provisions apply.

(1) State shall provide Tenant a reasonable time to take all steps necessary to remedy the condition of the Property. State may require Tenant to enter into a right-of-entry or other use authorization prior to the Tenant entering the Property if the Lease has terminated.

(2) If Tenant fails to remedy the condition of the Property in a timely manner, State may take steps reasonably necessary to remedy Tenant's failure. Upon demand by State, Tenant shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of material deposited improperly on the Property, lost revenue resulting from the condition of the Property, and administrative costs associated with the State's remedy.

3.4 Holdover.

(a) If Tenant remains in possession of the Property after the Termination Date, the occupancy will not be an extension or renewal of the Term. The occupancy will be a month-to-month tenancy, on terms identical to the terms of this Lease, which either Party may terminate on thirty (30) days' written notice.

(1) The monthly rent during the holdover will be the same rent that would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms.

(2) Payment of more than the monthly rent will not be construed to create a periodic tenancy longer than month-to-month. If Tenant pays more than the monthly rent and State provides notice to vacate the property, State

shall refund the amount of excess payment remaining after the Tenant ceases occupation of the Property.

(b) If State notifies Tenant to vacate the Property and Tenant fails to do so within the time set forth in the notice, Tenant will be a trespasser and shall owe the State all amounts due under RCW 79.02.300 or other applicable law.

SECTION 4 RENT

4.1 Annual Rent.

(a) Until adjusted as set forth below, Tenant shall pay to State an annual rent of Thirty-six Thousand, Four Hundred, Twenty-eight Dollars and 56 Cents ($36,428.56).

(b) The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), is due and payable in full on or before the Commencement Date and on or before the same date of each year thereafter. Any payment not paid by State's close of business on the date due is past due.

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

4.3 Adjustment Based on Use. Annual Rent is based on Tenant's Permitted Use of the Property, as described in Section 2 above. If Tenant's Permitted Use changes, the Annual Rent shall be adjusted as appropriate for the changed use.

4.4 Rent Adjustment Procedures.

(a) Notice of Rent Adjustment. State shall provide notice of adjustments to the Annual Rent allowed under Paragraphs 4.5(b) and 4.6(b) to Tenant in writing no later than ninety (90) days after the anniversary date of the Lease.

(b) Procedures on Failure to make Timely Adjustment. If the State fails to provide the notice required in Paragraph 4.4(a), State shall not collect the adjustment amount for the year in which State failed to provide notice. Upon providing notice of adjustment, State may adjust and prospectively bill Annual Rent as if missed or waived adjustments had been implemented at the proper interval. This includes the implementation of any inflation adjustment.

4.5 Rent Adjustments for Water-Dependent Uses.

(a) Inflation Adjustment. State shall adjust water-dependent rent annually pursuant to RCW 79.105.200-.360, except in those years in which State revalues the rent under Paragraph 4.5(b) below. This adjustment will be effective on the anniversary of the Commencement Date.

(b) Revaluation of Rent. At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the water-dependent Annual Rent in accordance with RCW 79.105.200-.360.

(c) Rent Cap. State shall increase rent incrementally in compliance with RCW 79.105.260 as follows: If application of the statutory rent formula for water-dependent uses would result in an increase in the rent attributable to such uses of more than fifty percent (50%) in any one year, State shall limit the actual increase implemented in such year to fifty percent (50%) of the then-existing rent. In subsequent, successive years, State shall increase the rental amount incrementally until the State implements the full amount of increase as determined by the statutory rent formula.

4.6 Rent Adjustments for Nonwater-Dependent Uses.

(a) Inflation Adjustment. Except in those years in which State revalues the rent under Paragraph 4.5(b) above, State shall adjust nonwater-dependent rent annually on the Commencement Date. Adjustment is based on the percentage rate of change in the previous calendar year's Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Commerce, for the Seattle-Tacoma-Bremerton CMSA, All Urban Consumers, all items 1982-84 = 100. If publication of the Consumer Price Index is discontinued, State shall use a reliable governmental or other nonpartisan publication evaluating the information used in determining the Consumer Price Index.

(b) Revaluation of Rent.

(1) At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the nonwater-dependent Annual Rent to reflect the then-current fair market rent.

(2) If State and Tenant cannot reach agreement on the fair market rental value, the Parties shall submit the valuation to a review board of appraisers. The board must consist of three members, one selected by and at the cost of Tenant; a second member selected by and at the cost of State; and a third member selected by the other two members with the cost shared equally by State and Tenant. The decision of the majority of the board binds the Parties. Until the Parties agree to, or the review board establishes, the new rent, Tenant shall pay rent in the same amount established for the preceding year. If the board determines additional rent is required, Tenant shall pay the additional rent within ten (10) days of the board's decision. If the board determines a refund is required, State shall pay the refund within ten (10) days of the board's decision.

SECTION 5 OTHER EXPENSES

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

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

5.3 Right to Contest. If in good faith, Tenant may contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against loss or liability resulting from such contest.

5.4 Proof of Payment. If required by State, Tenant shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Lease requires Tenant to pay.

5.5 Failure to Pay. If Tenant fails to pay amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Failure to Pay Rent. Failure to pay rent is a default by the Tenant. State may seek remedies under Section 14 as well as late charges and interest as provided in this Section 6.

6.2 Late Charge. If State does not receive full rent payment within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the unpaid amount or Fifty Dollars ($50), whichever is greater, to defray the overhead expenses of State incident to the delay.

6.3 Interest Penalty for Past Due Rent and Other Sums Owed.

(a) Tenant shall pay interest on the past due rent at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Rent not paid by the close of business on the due date will begin accruing interest the day after the due date.

(b) If State pays or advances any amounts for or on behalf of Tenant, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance. This includes, but is not limited to, State's payment of taxes of any kind, assessments, insurance premiums, costs of removal and disposal of materials or Improvements under any provision of this Lease, or other amounts not paid when due.

6.4 Referral to Collection Agency and Collection Agency Fees. If State does not receive full payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Tenant shall pay collection agency fees in addition to the unpaid amount.

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

pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

6.6 No Counterclaim, Setoff, or Abatement of Rent. Except as expressly set forth elsewhere in this Lease, Tenant shall pay rent and all other sums payable by Tenant without the requirement that State provide prior notice or demand. Tenant's payment is not subject to counterclaim, setoff, deduction, defense or abatement.

SECTION 7 IMPROVEMENTS

7.1 Improvements Defined.

(a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, fill, structures, bulkheads, docks, pilings, and other fixtures.

(b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property or Improvements or (2) diminishing the value or utility of the Property or Improvements.

(c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Tenant.

(d) "Tenant-Owned Improvements" are Improvements authorized by State and (1) made by Tenant or (2) acquired by Tenant from the prior tenant.

(e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Tenant that do not conform to plans submitted to and approved by the State.

7.2 Existing Improvements. On the Commencement Date, the following Improvements are located on the Property: a boat yard, a covered moorage marina, boat launch facility, docks, concrete panel breakwater, rock jetty, and fill with riprapped armoring. The Improvements are Tenant-owned.

7.3 Construction, Major Repair, Modification, and Demolition.

(a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, demolition, and deconstruction of Improvements ("Work"). Section 11 governs routine maintenance and minor repair.

(b) All Work must conform to requirements under Paragraph 7.4. Paragraph 11.3, which applies to routine maintenance and minor repair, also applies to all Work under this Paragraph 7.3.

(c) Except in an emergency, Tenant shall not conduct Work, without State's prior written consent, as follows:

(1) State may deny consent if State determines that denial is in the best interests of the State or if proposed Work does not comply with Paragraphs 7.4 and 11.3. State may impose additional conditions

reasonably intended to protect and preserve the Property. If Work is for removal of Improvements at End of Term, State may waive removal of some or all Improvements.

(2) Except in an emergency, Tenant shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Tenant and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Tenant shall submit plans and specifications at least ninety (90) days before commencement of Work.

(3) State waives the requirement for consent if State does not notify Tenant of its grant or denial of consent within sixty (60) days of submittal.

(d) Tenant shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Tenant shall provide State with plans and specifications or as-builts of emergency Work.

(e) Tenant shall not commence or authorize Work until Tenant or Tenant's contractor has:

(1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Tenant shall maintain the performance and payment bond until Tenant pays in full the costs of the Work, including all laborers and material persons.

(2) Obtained all required permits.

(f) Before completing Work, Tenant shall remove all debris and restore the Property to an orderly and safe condition. If Work is intended for removal of Improvements at End of Term, Tenant shall restore the Property in accordance with Paragraph 3.3, End of Term.

(g) Upon completing work, Tenant shall promptly provide State with as-built plans and specifications.

(h) State shall not charge rent for authorized Improvements installed by Tenant during this Term of this Lease, but State may charge rent for such Improvements when and if Tenant or successor obtains a subsequent use authorization for the Property and State has waived the requirement for Improvements to be removed as provided in Paragraph 7.5.

7.4 Standards for Work.

(a) Applicability of Standards for Work.

(1) The standards for Work in Paragraph 7.4(b) apply to Work commenced in the five year period following the Commencement Date. Work has commenced if State has approved plans and specifications.

(2) If Tenant undertakes Work five years or more after the Commencement Date, Tenant shall comply with State's then current standards for Work.

(3) At Tenant's option, Tenant may ascertain State's current standards for Work as follows:

(i) Before submitting plans and specifications for State's approval as required by Paragraph 7.3 of the Lease, Tenant shall request State to provide Tenant with then current standards for Work on State-owned Aquatic Lands.

(ii) Within thirty (30) days of receiving Tenant's request, State shall provide Tenant with current standards for Work, which will be effective for the purpose of State's approval of Tenant's proposed Work provided Tenant submits plans and specifications for State's approval within two (2) years of Tenant's request for standards. .

(iii) If State does not timely provide current standards upon Tenant's request, the standards under Paragraph 7.4(b) apply to Tenant's Work provided Tenant submits plans and specifications as required by Paragraph 7.3 within two (2) years of Tenant's request for standards.

(iv) If Tenant fails to (1) make a request for current standards or (2) timely submit plans and specifications to State after receiving current standards, Tenant shall make changes in plans or Work necessary to conform to current standards for Work upon State's demand.

(b) *Standards for Work.*

(1) Tenant shall not install skirting on any overwater structure.

(2) Tenant shall not conduct in-water Work during time periods prohibited for such work under WAC 220-110-271, Prohibited Work Times in Saltwater, as amended, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW).

(3) Tenant shall not provide anchorage or moorage in water more shallow than seven (7) feet (2 meters) at the extreme low tide or water.

(4) Tenant shall orient navigation channels and entrances to facilities to avoid dredging.

(5) Tenant shall install unobstructed grating over at least 50 percent of the surface area of all new floats, piers, fingers, and docks; grating material must have at least 60 percent unobstructed open space. For gangways, Tenant shall install grating with 100 percent unobstructed open space on 100 percent of the surface area.

(6) Where Work is in or within 200 feet of spawning habitat for Surf Smelt (*Hypomesus pretiosus*), Tenant shall construct all new or expansions to existing Improvements to avoid (1) removal of shoreline vegetation within the Property that provides shading to the upper intertidal zone, (2) changes in typical spawning behavior, (3) destruction or disturbance of spawning substrate or aquatic vegetation used for spawning, and (4) interruption of existing sediment transport mechanisms such as longshore current or wave energy.

(7) For docks and marinas, Tenant shall submit for approval by State a written sewage management plan that identifies and explains the methods Tenant

will require vessels moored on the Property to use for disposing wastewater from vessel holding tanks and portable toilets and identifies available upland restroom facilities in accordance with the National Management Measures Guideline to Control Nonpoint Source Pollution from Marina and Recreational Boating, EPA 841-B-01-005 - http://water.epa.gov/polwaste/nps/marinas/mmsp_index.cfm.

(8) Tenant shall site new or expanded Improvements to avoid impacts to eelgrass (*Zostera marina*).

7.5 Tenant-Owned Improvements at End of Lease.

(a) Disposition.

(1) Tenant shall remove Tenant-Owned Improvements in accordance with Paragraph 7.3 upon the expiration, termination, or cancellation of the Lease unless State waives the requirement for removal.

(2) Tenant-Owned Improvements remaining on the Property on the expiration, termination or cancellation date shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership. If RCW 79.125.300 or 79.130.040 apply at the time this Lease expires, Tenant could be entitled to payment by the new tenant for Tenant-Owned Improvements.

(3) If Tenant-Owned Improvements remain on the Property after the expiration, termination, or cancellation date without State's consent, State may remove all Improvements and Tenant shall pay State's costs.

(b) Conditions Under Which State May Waive Removal of Tenant-Owned Improvements.

(1) State may waive removal of some or all Tenant-Owned Improvements whenever State determines that it is in the best interests of the State and regardless of whether Tenant re-leases the Property.

(2) If Tenant re-leases the Property, State may waive requirement to remove Tenant-Owned Improvements. State also may consent to Tenant's continued ownership of Tenant-Owned Improvements.

(3) If Tenant does not re-lease the Property, State may waive requirement to remove Tenant-Owned Improvements upon consideration of a timely request from Tenant, as follows:

(i) Tenant must notify State at least one (1) year before the Termination Date of its request to leave Tenant-Owned Improvements.

(ii) State, within ninety (90) days of receiving Tenant's notification, will notify Tenant whether State consents to some or all Tenant-Owned Improvements remaining. State has no obligation to grant consent.

(iii) State's failure to respond to Tenant's request to leave Improvements within ninety (90) days is a denial of the request.

(c) Tenant's Obligations if State Waives Removal.

(1) Tenant shall not remove Improvements if State waives the requirement for removal of some or all Tenant-Owned Improvements.

(2) Tenant shall maintain such Improvements in accordance with this Lease until the expiration, termination, or cancellation date. Tenant is liable to State for cost of repair if Tenant causes or allows damage to *Improvements State has designated to remain.*

7.6 Disposition of Unauthorized Improvements.

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

(b) State may either:

(1) Consent to Tenant ownership of the Improvements, or

(2) Charge rent for use of the Improvements from the time of installation or construction and

(i) Require Tenant to remove the Improvements in accordance with Paragraph 7.3, in which case Tenant shall pay rent for the Improvements until removal, or

(ii) Consent to Improvements remaining and Tenant shall pay rent for the use of the Improvements, or

(iii) Remove Improvements and Tenant shall pay for the cost of removal and disposal, in which case Tenant shall pay rent for use of the Improvements until removal and disposal.

7.7 Disposition of Personal Property.

(a) Tenant retains ownership of Personal Property unless Tenant and State agree otherwise in writing.

(b) Tenant shall remove Personal Property from the Property by the Termination Date. Tenant is liable for damage to the Property and Improvements resulting from removal of Personal Property.

(c) State may sell or dispose of all Personal Property left on the Property after the Termination Date.

(1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Tenant to the State. State shall pay the remainder, if any, to the Tenant.

(2) If State disposes of Personal Property, Tenant shall pay for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

(a) "Hazardous Substance" means any substance that 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 70.105 RCW, as amended.

(d) "Tenant and affiliates" when used in this Section 8 means Tenant or Tenant's subtenants, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Property with the Tenant'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) Tenant's obligations under this Section 8 extend to the area in, on, under, or above

(1) The Property and

(2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.

(b) Standard of Care.

(1) Tenant shall exercise the utmost care with respect to Hazardous Substances.

(2) Tenant shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

8.3 Current Conditions and Duty to Investigate.

(a) State makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under, or above the Property.

(b) This Lease does not impose a duty on State to conduct investigations or supply information to Tenant about Hazardous Substances.

(c) Tenant 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 Tenant to meet Tenant's obligations under this Lease and utilize the Property for the Permitted Use.

8.4 Use of Hazardous Substances.

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

(b) Tenant shall not undertake, or allow others to undertake by Tenant's permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.

(c) If use of Hazardous Substances related to Tenant's use or occupancy of the Property results in violation of law:

(1) Tenant shall submit to State any plans for remedying the violations, and

(2) Tenant shall implement any remedial measures to restore the Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.

(d) At a minimum, Tenant and affiliates shall observe the following Hazardous Substances operational standards. If the Washington Department of Ecology, U.S. Environmental Protection Agency or other regulatory agency establishes different standards applicable to Tenant's activities under the Permitted Use, Tenant shall meet the standard that provides greater protection to the environment.

(1) Tenant shall not allow work on overwater structures or vessels without protective measures to prevent discharge of toxins to the water, including:

(i) Tenant shall not cause or allow underwater hull scraping and other underwater removal of paints.

(ii) Tenant shall not cause or allow underwater refinishing work from boats or temporary floats unless permitted by an industrial National Pollution Discharge Elimination System (NPDES) permit.

(iii) Tenant shall not cause or allow above the waterline boat repairs or refinishing in-water except if limited to decks and superstructures and less than 25 percent of a boat is repaired or refinished in-water per year.

(iv) Tenant shall use and require others to use tarps and other dust, drip and spill containment measures when repairing or refinishing boats in water.

(2) Tenant shall not store or allow others to store fuel tanks, petroleum products, hydraulic fluid, machinery coolants, lubricants and chemicals not in use in locations above the water surface.

(3) Tenant shall inspect all equipment using petroleum products, hydraulic fluids, machinery coolants, chemicals, or other toxic or deleterious materials on a monthly basis and immediately make all repairs necessary to stop leakage. Tenant shall submit to State an annual report documenting inspections and repair.

(4) Tenant shall maintain a supply of oil spill containment materials adequate to contain a spill from the largest vessel in use on the Property.

(5) Tenant shall not use or allow use of a pressure washer at any location above the water surface to clean any item that uses petroleum products.

(e) Tenant shall incorporate best management practices to prevent the release of chemical contaminants, wastewater, garbage and other pollutants, as specified in Resource Manual for Pollution Prevention in Marinas published by the Washington Department of Ecology, publication number 98-11, available at http://www.ecy.wa.gov/biblio/9811.html. If the Department of Ecology or other regulatory agency establishes different standards, Tenant shall meet the most protective standard.

8.5 Management of Contamination, if any.

(a) Tenant and affiliates shall not undertake activities that:

(1) Damage or interfere with the operation of remedial or restoration activities, if any;

(2) Result in human or environmental exposure to contaminated sediments, if any;

(3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.

(b) If requested, Tenant shall allow reasonable access to:

(1) Employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, health department, or other similar environmental agencies; and

(2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Tenant may negotiate an access agreement with such parties, but Tenant may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

(a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:

(1) A release or threatened release of Hazardous Substances;

(2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances;

(3) Any lien or action arising from Hazardous Substances;

(4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;

(5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property.

(b) Tenant's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a) and to any other property used by Tenant in conjunction with the Property if a release of Hazardous Substances on the other property could affect the Property.

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

8.7 Indemnification.

(a) Tenant shall fully indemnify, defend, and hold State harmless from and against Liabilities that arise out of, or relate to:

(1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property;

(2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property.

(b) Tenant shall fully indemnify, defend, and hold State harmless for Liabilities that arise out of or relate to Tenant'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 Tenant'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, Tenant shall, at Tenant's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.

(b) Tenant may undertake a cleanup of the Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Tenant cooperates with the Department of Natural Resources in development of cleanup plans. Tenant 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 Lease. Tenant's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Lease.

8.10 Sampling by State, Reimbursement, and Split Samples.

(a) State may enter the Property and conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.

(b) If such Tests, along with any other information, demonstrate a breach of Tenant's obligations regarding Hazardous Substances under this Lease, Tenant shall promptly reimburse State for all costs associated with the Tests, provided State gave Tenant thirty (30) calendar days advance notice in nonemergencies and reasonably practical notice in emergencies.

(c) In nonemergencies, Tenant is entitled to obtain split samples of Test samples, provided Tenant gives State written notice requesting split samples at least ten (10) calendar days before State conducts Tests. Upon demand, Tenant 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 Tenant 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 Tenant to conduct a Closeout Environmental Assessment ("Closeout Assessment") prior to Termination of the Lease.

(b) The purpose of the Closeout Assessment is to determine the existence, scope, or effects of Hazardous Substances on the Property and associated natural resources. The Closeout Assessment may include sediment sampling. Sediment sampling includes the sample locations and parameters reported in Attachment 1 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 Tenant 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, Tenant 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) Tenant 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 Tenant in conjunction with its use of the Property, or on associated natural resources.

(h) Tenant shall submit Closeout Assessment to State upon completion.

(i) As required by law, Tenant shall report to the appropriate regulatory authorities if the Closeout Assessment discloses a release or threatened release of Hazardous Substances.

SECTION 9 ASSIGNMENT AND SUBLETTING

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

(a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. State may refuse its consent to any conveyance, transfer, or encumbrance if it will result in a subdivision of the leasehold. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.

(b) State reserves the right to condition its consent upon:

(1) Changes in the terms and conditions of this Lease, including, but not limited to, the Annual Rent; and/or

(2) The agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.

(c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant.

(d) State's consent under this Paragraph 9.1 does not constitute a waiver of any claims against Tenant for the violation of any term of this Lease.

(e) As of the Commencement Date, State has not consented to any conveyance, transfer, or encumbrance of any part of Tenant's interest in this Lease or the Property.

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

9.3 Terms of Subleases.

(a) Tenant shall submit the terms of all subleases to State for approval.

(b) Tenant shall incorporate the following requirements in all subleases:

(1) The sublease must be consistent with and subject to all the terms and conditions of this Lease;

(2) The sublease must provide that this Lease controls if the terms of the sublease conflict with the terms of this Lease;

(3) The term of the sublease (including any period of time covered by a renewal option) must end before the Termination Date of the initial Term or any renewal term;

(4) The sublease must terminate if this Lease terminates for any reason;

(5) The subtenant must receive and acknowledge receipt of a copy of this Lease;

(6) The sublease must prohibit the prepayment to Tenant by the subtenant of more than the annual rent;

(7) The sublease must identify the rental amount subtenant is to pay to Tenant;

(8) The sublease must provide that there is no privity of contract between the subtenant and State;

(9) The sublease must require removal of the subtenant's Improvements and Personal Property upon termination of the sublease;

(10) The subtenant's permitted use must be within the scope of the Permitted Use; and

(11) The sublease must require the subtenant to meet all obligations of Tenant under Section 10, Indemnification, Financial Security, and Insurance.

(c) In the event that a sublease provides for a condominium, the sublease and the condominium declaration shall also incorporate the following requirements:

(1) The condominium association must provide each condominium unit owner with a copy of the Lease and the sublease and require acknowledgment of receipt;

(2) The condominium association must be designated as the representative of the unit owners on all matters relating to the sublease;

(3) The condominium association shall have the sole responsibility for apportioning and collecting all rents paid on the sublease by individual unit owners;

(4) There is no privity of contract between the State and the condominium association or individual unit owners. Tenant is the sole representative on matters relating to the Lease;

(5) Before conveyance of any condominium ownership or security interest in the sublease, the condominium association shall give the notice provided in Exhibit C to the intended receiver of the interest. This Lease does not incorporate Exhibit C, which is only for providing pre-purchase information. Failure to provide such notice does not alter any rights or duties under this Lease;

(6) No provision of the condominium declaration, its amendments, the by-laws, or any other document creating or defining condominium owners' relationships, rights, or obligations ("Condominium Documents") modifies the provisions of the Lease or the sublease;

(7) In case of conflict between the Lease and Condominium Documents, the terms and conditions of this Lease shall control on all matters concerning the Property;

(8) In case of conflict between the sublease and Condominium Documents, the terms and conditions of the sublease shall control on all matters concerning the Property;

(9) State is not a party to the Condominium Documents and is not charged with responsibilities imposed on declarants or unit owners under any state or local law;

(10) Condominium unit owners have no reversionary interest in the Property;

(11) Condominium unit owners have no right to re-lease any part of the Property upon termination or expiration of the Lease; and

(12) Condominium unit owners have no right to enter into a new sublease upon termination or expiration of the sublease.

(d) In the event that a sublease provides for a condominium,Tenant shall submit the terms of the conduminum declaration to State for approval.

(e) At Tenant's expense and no later than thirty (30) days after receiving a fully-executed sublease providing for a condominium, Tenant shall record the sublease in the county in which the Property is located. Tenant shall include the parcel number of the upland property used in conjunction with the Property, if any. Tenant shall provide State with recording information, including the date of recordation and file number.

9.4 Boat Yard and Marina Subleases. Tenant intends to sublease separately Tenant's interest in the Lease for operation of the boat yard and operation of the marina authorized under Section 2.1. State's consent to the proposed subleases and approval of the terms of each sublease is required under Section 9.1 and 9.3(a), respectively, and has not been provided. As soon as possible, but not later than 120 days following the Commencement Date, Tenant shall submit to State for approval a proposed sublease for the boat yard and a proposed sublease for the marina that meet the requirements of Section 9.3. State's approval of the proposed subleases shall not be unreasonably withheld, conditioned, or denied. Operation of the boat yard and marina on the Property prior to Tenant's submission of the proposed subleases to State for approval shall not constitute a waiver of Tenant's obligation to obtain State's consent pursuant to Section 9.1 and approval under Section 9.3. State shall be deemed to have consented to a proposed sublease and to have approved its terms, however, if State fails to approve or deny approval within 90 days of the date Tenant submits the proposed sublease to State.

9.5 Short-Term Subleases of Moorage Slips. Short-term subleasing of moorage slips for a term of one year or less does not require State's written consent or approval pursuant to

Paragraphs 9.1 or 9.3. Tenant shall conform moorage sublease agreements to the sublease requirements in Paragraph 9.3.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity.

(a) Tenant shall indemnify, defend, and hold State, its employees, officers, and agents harmless from Claims arising out of the use, occupation, or control of the Property by Tenant, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.

(b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Property and damages resulting from loss of use of the Property.

(c) State shall not require Tenant to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.

(d) Tenant waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.

(e) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Tenant's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.

10.2 Insurance Terms.

(a) Insurance Required.

(1) At its own expense, Tenant shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in this Paragraph 10.2 and in Paragraph 10.3, Insurance Types and Limits. State may terminate this Lease if Tenant fails to maintain required insurance.

(2) Unless State agrees to an exception, Tenant 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. Tenant may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.

(3) All general liability, excess, umbrella, property, 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.

(4) All insurance provided in compliance with this Lease must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

(b) Waiver.

(1) Tenant waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Lease covers these damages.

(2) Except as prohibited by law, Tenant waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this lease.

(c) Proof of Insurance.

(1) Tenant shall provide State with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Lease and, if requested, copies of policies to State.

(2) The certificate(s) of insurance must reference additional insureds and the Lease number.

(3) Receipt of such certificates 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 Lease, 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 thirty (30) 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) Tenant shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.

(f) If Tenant fails to procure and maintain the insurance described above within fifteen (15) days after Tenant receives a notice to comply from State, State may either:

(1) Deem the failure an Event of Default under Section 14, or

(2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Tenant shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.2 from the date of State's notice of the expenditure until Tenant's repayment.

(g) General Terms.

(1) State does not represent that coverage and limits required under this Lease are adequate to protect Tenant.

(2) Coverage and limits do not limit Tenant's liability for indemnification and reimbursements granted to State under this Lease.

(3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Tenant.

10.3 Insurance Types and Limits.

(a) General Liability Insurance.

(1) Tenant shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than Two Million Dollars ($2,000,000) 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) Tenant shall comply with all State of Washington workers' compensation statutes and regulations. Tenant shall provide workers' compensation coverage for all employees of Tenant. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Tenant's use, occupation, and control of the Property.

(ii) If Tenant fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Tenant shall indemnify State. Indemnity shall include all fines; payment of benefits to Tenant, employees, or their heirs

or legal representatives; and the cost of effecting coverage on behalf of such employees.

(2) Longshore and Harbor Workers' and Jones Acts. Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Tenant to provide insurance coverage in some circumstances. Tenant shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.

(c) Employers' Liability Insurance. Tenant shall 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 or One Million Dollars ($1,000,000) each employee for bodily injury by disease.

(d) Property Insurance.

(1) Tenant shall buy and maintain property insurance covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived. The policy must include State as an insured and a loss payee.

(2) Tenant shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State) from loss or damage caused by the explosion of boilers, fired or unfired vessels, electric or steam generators, or pipes.

(3) In the event of any loss, damage, or casualty which is covered by one or more of the types of insurance described above, the Parties to this Lease shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned by State on such proceeds, for use according to the terms of this Lease. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

(4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:

(i) Repair and restore damaged building(s) and/or Improvements to their former condition, or

(ii) Replace and restore damaged building(s) and/or Improvements with a new building(s) and/or Improvements on the Property of a

quality and usefulness at least equivalent to or more suitable than, damaged building(s) and/or Improvements.

(e) Builder's Risk Insurance.

(1) Tenant shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance must be written on a completed form and in an amount equal to the value of the completed building and/or Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Tenant, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Paragraph 10.2(a)(3).

(2) Insurance described above must cover or include the following:

(i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;

(ii) The entire work on the Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;

(iii) Portions of the work located away from the Property but intended for use at the Property, and portions of the work in transit;

(iv) Scaffolding, falsework, and temporary buildings located on the Property; and

(v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.

(3) Tenant or Tenant'(s) contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.

(4) Tenant or Tenant'(s) contractor shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Tenant, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Paragraph 10.2(a)(3).

(f) Business Auto Policy Insurance.

(1) Tenant shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance with a limit not less than One Million Dollars ($1,000,000) per accident. Such insurance must cover liability arising out of "Any Auto".

(2) Business auto coverage must be written on ISO Form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy must be endorsed to provide contractual liability coverages and

cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

(g) Protection and Indemnity Insurance (P&I). Tenant shall procure and maintain P&I insurance including hull coverage. This insurance must cover all claims with respect to injuries or damages to persons or property, including nets and fishing lines, sustained in, on, or about the Property, including while at a marina and in transit, with limits of liability not less than One Million Dollars ($1,000,000). If necessary, Tenant shall procure and maintain commercial umbrella liability insurance covering claims for these risks.

10.4 Financial Security.

(a) At its own expense, Tenant shall procure and maintain during the Term of this Lease a corporate security bond or provide other financial security that State, at its option, may approve ("Security"). Tenant shall provide Security in an amount equal to Five Hundred Dollars ($500.00), which is consistent with RCW 79.105.330, and secures Tenant's performance of its obligations under this Lease, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Tenant's failure to maintain the Security in the required amount during the Term constitutes a breach of this Lease.

(b) All Security must be in a form acceptable to the State.

(1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of Best's Reports, unless State approves an exception. Tenant may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement.

(2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*

(3) Savings account assignments, if approved by State, must allow State to draw funds at will.

(c) Adjustment in Amount of Security.

(1) State may require an adjustment in the Security amount:

(i) At the same time as revaluation of the Annual Rent,

(ii) As a condition of approval of assignment or sublease of this Lease,

(iii) Upon a material change in the condition or disposition of any Improvements, or

(iv) Upon a change in the Permitted Use.

(2) Tenant shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.

(d) Upon any default by Tenant in its obligations under this Lease, State may collect on the Security to offset the liability of Tenant to State. Collection on the Security does not (1) relieve Tenant of liability, (2) limit any of State's other

remedies, (3) reinstate or cure the default or (4) prevent termination of the Lease because of the default.

SECTION 11 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 Property, or any part thereof, during the Term.

11.2 Tenant's Repairs, Alteration, Maintenance and Replacement.

(a) Tenant shall, at its sole cost and expense, keep and maintain the Property and all improvements (regardless of ownership) in good order and repair, in a clean, attractive, and safe condition.

(b) Tenant shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any improvements on the Property which may be required by any public authority having jurisdiction over the 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 Property and to any improvements on the 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 authorization from State pursuant to Section 7.

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

(a) Tenant shall not use or install treated wood at any location above or below water, except that Tenant may use treated wood for above water structural framing.

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

(c) Tenant shall install only floatation material encapsulated in a shell resistant to ultraviolet radiation and abrasion. The shell must be capable of preventing breakup and loss of flotation material into the water.

(d) Tenant shall orient night lighting to minimize the amount of light shining directly on the water.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

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

(b) Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and Improvements as nearly as possible to its condition immediately prior to the damage or destruction in accordance with Paragraph 7.3, Construction, Major Repair, Modification, and Demolition and Tenant's additional obligations in Exhibit B, if any.

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

12.3 Insurance Proceeds. Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any Improvements on the Property is not conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

12.4 *Rent in the Event of Damage or Destruction.* Unless the Parties agree to terminate this Lease, there is no abatement or reduction in rent during such reconstruction, repair, and replacement.

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

SECTION 13 CONDEMNATION

13.1 Definitions.

(a) "Taking" means that an entity authorized by law exercises the power of eminent domain, either by judgment, settlement in lieu of judgment, or voluntary conveyance in lieu of formal court proceedings, over all or any portion of the Property and Improvements. This includes any exercise of eminent domain on any portion of the Property and Improvements that, in the judgment of the State, prevents or renders impractical the Permitted Use.

(b) "Date of Taking" means the date upon which title to the Property or a portion of the Property passes to and vests in the condemner or the effective date of any order for possession if issued prior to the date title vests in the condemner.

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

13.3 Allocation of Award.

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

(b) If Tenant and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 DEFAULT AND REMEDIES

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

(a) Failure to pay rent or other expenses when due;

(b) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;

(c) Failure to comply with any other provision of this Lease;

(d) Commencement of bankruptcy proceedings by or against Tenant or the appointment of a trustee or receiver of Tenant's property.

14.2 Tenant's Right to Cure.

(a) A default becomes an "Event of Default" if Tenant fails to cure the default within the applicable cure period following State's written notice of default. Upon an Event of Default, State may seek remedies under Paragraph 14.3.

(b) Unless expressly provided elsewhere in this Lease, the cure period is sixty (60) days.

(c) For nonmonetary defaults not capable of cure within sixty (60) days, State will not unreasonably withhold approval of a reasonable alternative cure schedule. Tenant must submit a cure schedule within thirty (30) days of a notice of default. The default is not an Event of Default if State approves the schedule and Tenant works diligently and in good faith to execute the cure. The default is an Event of Default if Tenant fails to timely submit a schedule or fails to cure in accordance with an approved schedule.

14.3 Remedies.

(a) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise.

(b) If the Event of Default (1) arises from Tenant's failure to comply with restrictions on Permitted Use and operations under Paragraph 2.2 or (2) results in damage to natural resources or the Property, State may enter the Property without terminating this Lease to (1) restore the natural resources or Property and charge Tenant restoration costs and/or (2) charge Tenant for damages. On demand by State, Tenant shall pay all costs and/or damages.

(c) Without terminating this Lease, State may relet the Property on any terms and conditions as State may decide are appropriate.

(1) State shall apply rent received by reletting: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. State shall hold and apply any balance to Tenant's future rent as it becomes due.

(2) Tenant is responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly.

(3) At any time after reletting, State may elect to terminate this Lease for the previous Event of Default.

(d) State's reentry or repossession of the Property under Paragraph 14.3 is not an election to terminate this Lease or cause a forfeiture of rents or other charges Tenant is obligated to pay during the balance of the Term, unless (1) State gives Tenant written notice of termination or (2) a legal proceeding decrees termination.

(e) The remedies specified under this Paragraph 14.3 are not exclusive of any other remedies or means of redress to which the State is lawfully entitled for Tenant's breach or threatened breach of any provision of this Lease.

SECTION 15 ENTRY BY STATE

State may enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease, to monitor impacts to habitat, or survey habitat and species. Tenant grants State permission to cross Tenant's upland and aquatic property to access the Property. State's failure to inspect the Property does not constitute a waiver of any rights or remedies under this Lease.

SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

16.1 No Guaranty or Warranty.

(a) State believes that this Lease is consistent with the Public Trust Doctrine and that none of the third-party interests identified in Paragraph 1.1(b) will materially or adversely affect Tenant's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.

(b) State disclaims and Tenant releases State from any claim for breach of any implied covenant of quiet enjoyment. This disclaimer and release includes, but is

not limited to, interference arising from exercise of rights under the Public Trust Doctrine; Treaty rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands and navigable waters.

(c) Tenant is responsible for determining the extent of Tenant's right to possession and for defending Tenant's leasehold interest.

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

SECTION 17 NOTICE AND SUBMITTALS

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

State: DEPARTMENT OF NATURAL RESOURCES
Orca-Straits District
919 N. Township St.
Sedro-Woolley, WA 98284

Tenant: CITY OF ANACORTES
PO Box 547
Anacortes, WA 98221

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Lease number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

SECTION 18 MISCELLANEOUS

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

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

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

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

18.5 Waiver.

(a) The waiver of any breach or default of any term, covenant, or condition of this Lease is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a rental payment is not a waiver of any preceding or existing breach other than the failure to pay the particular rental payment that was accepted.

(b) The renewal of the Lease, extension of the Lease, or the issuance of a new lease to Tenant, does not waive State's ability to pursue any rights or remedies under the Lease.

18.6 Cumulative Remedies. The rights and remedies under this Lease are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

18.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Lease.

18.8 Language. The word "Tenant" as used in this Lease applies to one or more persons and regardless of gender, as the case may be. If there is more than one Tenant, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Tenant in the collective. The word "Party" means either or both State and Tenant, depending on the context.

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

18.10 Applicable Law and Venue. This Lease is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Lease is in the Superior Court for Thurston County, Washington.

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

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

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

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

18.15 Exhibits. All referenced exhibits are incorporated in the Lease unless expressly identified as unincorporated.

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

CITY OF ANACORTES

Dated: 11-29, 2016

By: LAURIE GERE
Title: Mayor
Address: PO Box 547
Anacortes, WA 98221
Phone: 360-293-1900

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: 11 Dec 21, 2016

By: Peter Goldmark
Title: Commissioner of Public Lands
Address: 1111 Washington St. SE
Olympia, WA 98504-7000

Approved as to form this
21 day of October 2016
Terry Pruit, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of Skagit)

I certify that I know or have satisfactory evidence that LAURIE GERE is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Anacortes to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 11-29-16

(Seal or stamp)

JOANN K STEWART
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
SEPTEMBER 29, 2020

Joann K Stewart
(Signature)

Joann K. Stewart
(Print Name)

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

My appointment expires 9-29-2020

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of Thurston)

I certify that I know or have satisfactory evidence that PETER GOLDMARK is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Commissioner of Public Lands, and ex officio administrator of the Department of Natural Resources of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12.21.16

(Signature)

(Seal or stamp)

AMY LYN RIBERA NOTARY PUBLIC 12-17-20 STATE OF WASHINGTON

~~Amy~~ Amylyn Ribera
(Print Name)

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

My appointment expires 12.17.20

EXHIBIT A

Agreement Number 22-A02664

Recording number of final DNR approved survey in Skagit County: 201609300174

Legal description of the Property:

COMMENCING at the meander corner common to Sections 19 and 30, Township 35 North, Range 2 East of the Willamette Meridian;
thence South 88° 03' 11" East along the easterly projection of the line common to said Sections 19 and 30 for a distance of 606.69 feet to the Anacortes Inner Harbor Line, as depicted by that survey performed by the Washington State Department of Natural Resources and recorded under Skagit County Auditor's File No. 200110030106, and the POINT OF BEGINNING of this description;
thence South 28° 28' 51" East along said inner harbor line for a distance of 303.42 feet to the northeasterly corner of that property delineated as Tract 2 of Anacortes Short Plat No. 94-005, as approved January 26, 1995, and recorded February 16, 1995, in Volume 11 of Short Plats, pages 183 and 184, under Auditor's File No. 9502160015, records of Skagit County, Washington;
thence South 88° 08' 26" East 35.99 feet to the northerly projection of the westerly margin of "W" Avenue as delineated by said Short Plat No. 94-005;
thence North 14° 39' 21" East 102.80 feet;
thence North 3° 54' 55" West 134.29 feet;
thence North 8° 32' 52" West 67.38 feet;
thence North 88° 03' 11" West 208.92 feet to said inner harbor line;
thence South 28° 28' 51" East along said inner harbor line for a distance of 171.70 feet to the POINT OF BEGINNING.

Situate in the County of Skagit, State of Washington.

And

COMMENCING at the meander corner common to Sections 19 and 30, Township 35 North, Range 2 East of the Willamette Meridian;
thence South 88° 03' 11" East along the easterly projection of the line common to said Sections 19 and 30 for a distance of 606.69 feet to the Anacortes Inner Harbor Line, as depicted by that survey performed by the Washington State Department of Natural Resources and recorded under Skagit County Auditor's File No. 200110030106;
thence South 28° 28' 51" East along said inner harbor line for a distance of 584.39 feet to the easterly margin of "W" Avenue as delineated by Anacortes Short Plat No. 94-005, as approved January 26, 1995, and recorded February 16, 1995, in Volume 11 of Short Plats, pages 183 and 184, under Auditor's File No. 9502160015, records of Skagit County, Washington, and the POINT OF BEGINNING of this description;

thence North 4° 08' 37" West, along the northerly projection of said easterly margin, for a distance of 300.88 feet;
thence South 85° 51' 23" West 11.07 feet;
thence North 3° 54' 55" West 206.98 feet to the easterly projection of the line common to said Sections 19 and 30;
thence South 88° 03' 11" East 463.94 feet to the Anacortes Outer Harbor line, as depicted by that survey performed by the Washington State Department of Natural Resources and recorded under Skagit County Auditor's File No. 200110030106;
thence South 28° 28' 51" East along said outer harbor line for a distance of 1229.32 feet;
thence North 88° 03' 11" West, and parallel with the line common to said Sections 19 and 30, for a distance of 695.84 feet to the inner harbor line;
thence North 28° 28' 51" West along said inner harbor line for distance of 644.93 feet to the POINT OF BEGINNING.

Situate in the County of Skagit, State of Washington.

Acreage or Square footage of each of these Use classifications:

Water-dependent	719,454 square feet
Nonwater-dependent	0
Public Access	0
Total square feet	719,454 square feet

EXHIBIT B

1. DESCRIPTION OF PERMITTED USE.

A. Existing Facilities

The facilities include one marina consisting of a large area of covered moorage that uses concrete floats, an outer line of concrete floats, four small concrete floats, four treated wood floats with polytub floatation, and a fixed concrete breakwater. The covered moorage concrete floats are secured with concrete piles. Other floats are secured with steel or creosote piles. A 50-ton concrete traveling boatlift pier with two concrete boarding floats secured with creosote piles is present. A stone jetty is located in the southern portion of the leasehold and includes an extension constructed in 2013 as part of a sediment remediation.

In the marina, there are currently zero slips or moorage spaces out of 55 slips that have residential uses. In accordance with the marina rules, a maximum of zero slips or moorage spaces can have residential uses.

Fixed and mobile pumpout facilities are available at the leasehold with clear signage.

A portion of the leasehold includes fill placed in the mid-1970s and riprap armoring. At the northwest corner of the leasehold, on the filled land, is a boat yard.

B. Proposed Facilities.

Tenant proposes no new facilities.

2. ADDITIONAL OBLIGATIONS.

A. Tenant shall replace existing treated wood (decking, timbers, pilings, etc.) with non-toxic materials such as untreated wood, steel, concrete, or recycled plastic, or encased in a manner that prevents leaching of contaminants into surface water. Tenant may use non-creosote treated wood to replace above water structural framing. Replacement may occur under an ordinary maintenance or repair schedule, but all treated wood must be replaced by January 2, 2026.

B. Tenant shall renovate or replace existing docks, rafts, floats, wharves and piers to provide 50 percent grated surface; grating material must have at least 60 percent functional open space. Tenant shall renovate or replace existing gangways to provide 100 percent unobstructed open space on 100 percent of the surface area. Replacement may occur under an ordinary maintenance or repair schedule, but replacement must be complete by:

- January 2, 2026 for all floats with treated wood decking;
- January 2, 2026 for all gangways; and

- January 2, 2034 for the marina maintenance float and the floats associated with the boatlift pier.

C. Tenant shall renovate the existing covered moorage roofs to provide translucent material (providing at least 85% ambient light transmission) over at least 50 percent of the roof. Replacement may occur under an ordinary maintenance or repair schedule, but replacement must be complete by January 2, 2034.

D. Tenant shall orient night lighting to minimize the amount of light shining directly on the water by January 2, 2021.

E. By October 1, 2017, Tenant shall remediate minor soil contamination found at site/sample 2 as described in "Environmental Site Assessment: Phase II Baseline Soil Investigation, Banana Belt Boats Proposed Dry Storage Facility, DNR Lease Site Anacortes, WA" by the Stratum Group dated March 23, 2011. Remediation shall consist of characterization of nature and extent of contamination, which includes but may not be limited to cadmium, copper, and lead, from the ditch at Site 2. Full removal must be verified with confirmation samples taken from bottom and sides of the excavation. Dispose of contaminated material in an approved disposal facility off-site. Submit to DNR and Washington Department of Ecology a cleanup final report within three (3) months of completion of the remediation.

F. Tenant shall sample sediments and submit sediment sampling reports as specified in Attachment 1 by January 2, 2018.

EXHIBIT C
NOTICE OF STATE-OWNED AQUATIC LANDS LEASE

A portion of the property occupied by the ***[insert name of condominium association or marina]*** is state-owned aquatic lands. The state owned aquatic lands are subject to a lease granted by the Washington State Department of Natural Resources ("DNR") to the City of Anacortes under DNR lease number 22-A02664 ("Lease") and a sublease granted by The City of Anacortes to ***[insert name of condominium association]*** ("Sublease"). Any interest you acquire in ***[insert name of condominium association or marina]*** is subject to the terms of the Lease and the Sublease.

You can inspect the Lease and the Sublease at ***[insert Tenant location and time]***.

The Lease is scheduled to expire on January 2, 2034. The Sublease will expire on ***[insert date, which is at least one day prior to expiration of the Lease]***. Expiration or termination of the Lease or Sublease will eliminate the state owned aquatic lands from the Condominium Property. Neither the the Lease nor the Sublease is subject to renewal. Solely at its discretion, DNR may issue a new Lease to the current tenant, the City of Anacortes, and consent to a new sublease between the City of Anacortes and ***[insert name of condominium association]***. DNR has no obligation to re-lease the state owned aquatic lands to the City of Anacortes or to consent to a new sublease from the City to ***[insert name of condominium association]***, its successors, or assigns. Unit owners, either individually or collectively, have no reversionary interest in the leasehold. Unit owners, either individually or collectively, have no right to lease the state owned aquatic lands upon termination or expiration of the Lease or to sublease any portion of the state owned aquatic lands under lease upon termination or expiration of the Sublease.

Attachment 1
Sediment Sampling

Tenant shall conduct sediment sampling at three locations within the marina's breakwater, preferably split between locations close to the shoreline, and in between the outer north-south breakwater and the covered moorage.

Samples shall be analyzed for the 47 Sediment Management Standard (SMS) chemical, dioxins/furans, and conventionals analytes.

Prior to any work being carried out, Tenant shall submit to State for approval a sampling and analysis plan (SAP). Attachment 2, which is not part of this Lease, provides a template for the SAP that Tenant may follow.

Attachment 2
Lease 22-A02664

State-Owned Aquatic Lands Sediment Sampling and Analysis Guide

Washington Department of Natural Resources
1111 Washington Street SE
Olympia, WA 98502-4670

CONTENTS

ACRONYMS AND ABBREVIATIONS

CSL	cleanup screening level
COC	chain-of-custody
DNR	Department of Natural Resources
Ecology	Washington State Department of Ecology
EIMS	environmental information management system
PSEP	Puget Sound Estuary Program
QA/QC	quality assurance and quality control
SAP	sampling and analysis plan
SMS	Sediment Management Standards
SOAL	state-owned aquatic lands
SOP	standard operating procedures
SQS	sediment quality standard
SQV	sediment quality value
TOC	total organic carbon
VOC	volatile organic compounds

1 INTRODUCTION

This abbreviated guide covers the minimum requirements to ensure quality control and consistency of the field aspects of marine and freshwater sediment data collection, laboratory methods, and reporting. This document is intended solely as guidance, and does not contain any mandatory requirements (except where requirements found in administrative rules are referenced). The essential tasks in sediment sampling are to collect representative, undisturbed samples that meet the requirements of the aquatic sampling project, and to prevent deterioration and contamination of the samples before analyses. The essential analysis task is for an analytical laboratory to generate defensible data. The procedures outlined in this guide are oriented primarily toward qualified environmental consulting firms (see Section 3.1 below) that are assisting the applicant with their sediment sampling and analysis requirements. This guide does not address laboratory QA programs, permitting, or other major frameworks for sediment management, such as the Dredged Material Management Program or Washington Department of Ecology's (Ecology) Sediment Source Control Program or Sediment Cleanup Program.

Where needed, supporting resource websites are referenced at the end of each section. Attachment A contains a resource toolkit for sediment data collection, including a template for a sampling and analysis plan, tables of Washington State sediment standards, and a table of laboratory methods, approximate costs, holding times, preservation methods, and sample sizes.

1.1 WHAT ARE STATE-OWNED AQUATIC LANDS?

The Washington Department of Natural Resources (DNR) Aquatic Resources Program serves as the proprietary manager of 2.4 million acres of state-owned aquatic lands (SOAL). Aquatic land is the all-encompassing term used in Washington to describe submerged lands. Aquatic lands are subdivided into the following four categories: 1) *bedlands* (below the extreme low tide, submerged at all times within navigable fresh and salt water bodies), 2) *tidelands* (within navigable waters between the ordinary high tide line and the extreme low tide line, corresponding with the ebb and flow of tides), 3) *shorelands* (within navigable waters along the edge of rivers and lakes) and 4) *non-navigable waters* (small lakes and streams). As the boundary between state-owned and private aquatic lands varies depending on local history and several legal concepts, the DNR has developed a pamphlet, *Boundaries of State-owned Aquatic Lands*, to guide public understanding of this complex subject.[1]

[1] The Boundaries of State-owned Aquatic Lands can be found at http://www.dnr.wa.gov/Publications/aqr_aquatic_land_boundaries.pdf

1.2 DNR AQUATIC LANDS MANAGEMENT AND STEWARDSHIP

As the propriety manager, DNR acts as a trustee for aquatic land and not as a regulator. The agency authorizes a variety of aquatic land uses through mechanisms such as use authorizations, licenses, easements, and permits (RCW 79.90). The DNR strives to provide a balance of public benefits from its management of aquatic lands, such as encouraging direct public use and access, fostering navigation and commerce, ensuring environmental protection, utilizing renewable resources, and, in a manner consistent with these mandates, generating revenue.

DNR also has the proprietary authority to identify and withdraw lands from leasing when there are potentially conflicting uses (RCW 79.10.210). This could include instances such as choosing to withdraw a site from leasing and managing the site for the conservation of important native habitat and species.

Many other natural resource managers and citizens play important roles in the stewardship of aquatic resources in Washington State. The Aquatic Reserves Program works with landowners, citizens, stakeholder groups, tribes, and regulatory agencies to develop management plans for individual sites that maximize the benefits for the ecosystem.

1.3 WHY SHOULD WE CARE ABOUT SOAL USE AUTHORIZATION POLICIES?

Most of the SOAL use authorizations are located in the marine nearshore zone, which is the area from the top of the coastal bank or bluffs to a water depth of about 10 meters below mean lower low water. Also called the intertidal area, the nearshore zone supports a diverse habitat for species of biological and economic importance, including shellfish, salmon, groundfish, aquatic plants and birds, and marine mammals. Nearshore plants provide fish species with food, shelter, refuge from predators, and a safe place to mature. Plants create oxygen, recycle nutrients, and establish roots that hold the sediments in place.

This critical and sensitive habitat is the same area where most human activities occur including docks, marinas, mooring buoys, boat ramps, and shellfish farms. These structures and activities can seriously affect nearshore communities by:

- Blocking sunlight that plants and algae need to grow
- Disrupting the movement of water and sediment along the shore that provides nourishment, places for fish to spawn or plants to take root, and shelter for clams and insects
- Degrading the quality of the water through the release of human waste and contaminants

- Disrupting habitat when floating structures drag across the sediment or 'ground out'
- Creating noise that may cause species to avoid the area or abandon their nests.

As part of DNR's stewardship role for aquatic lands, land managers overseeing the leasing of SOALs will require stewardship measures and best management practices to reduce these potential impacts as part of the use authorization. Examples of these practices include observing work windows to minimize impacts to native species during vulnerable times of their life cycles, posting no-wake signs to reduce wave heights along the shore, and placing structures in deeper water where they will not shade aquatic vegetation.

2 RATIONALE FOR BOOKEND SEDIMENT SAMPLING

As part of the SOAL leasing application process, the applicant will be recommended by the DNR land manager to perform "bookend" sediment sampling of the proposed use authorization site. Bookend sampling establishes baseline sediment conditions at the initiation of the use authorization and assesses conditions at the termination of the use authorization. Agreements that are renewed will be evaluated for sampling requirements based on priority. Low and some medium risk sites under the current 12 year cycle may be requested to sample every other issuance of use authorization but should sample no less than once every thirty years. DNR recommends bookend sampling for two reasons: 1) to differentiate sediment conditions from impacts caused by the applicant, and 2) to evaluate long-term trends in sediment conditions over the use authorization period and introduce best management practices or other use authorization conditions to reverse any negative trends. By following the sampling procedures outlined in this guide, the applicant can be assured that representative samples are collected, that sample integrity is maintained, and that sampling is cost-effective, consistent, and efficient.

2.1 MARINE AND FRESHWATER SEDIMENT STANDARDS PRIMER

Promulgated in 1991, the Washington State Sediment Management Standards (SMS) for marine sediment are found in Chapter 173-204 of the Washington Administrative Code. The purpose of the standards is to "reduce and ultimately eliminate adverse effects on biological resources and significant health threats to humans from surface sediment contamination." The SMS include two sets of chemical standards: a lower sediment quality standard (SQS), which provides for "no adverse effects" to marine organisms, and an upper cleanup screening level (CSL), which allows for "minor adverse effects" to marine organisms. This upper level is used as a regulatory guide for source control and cleanup decision making.

There are currently SQS and CSL numerical criteria for several chemicals, including metals, polycyclic aromatic hydrocarbons, chlorinated benzenes, phthalates, polychlorinated biphenyls,

and ionizable organic compounds; no standards exist for pesticides, volatile organic compounds, and dioxins or furans. These criteria are listed in Table B-1.

Sediment chemical data collected from a freshwater or brackish water SOAL leasing site will be addressed by DNR on a site-specific basis using best professional judgment. Chemical criteria for freshwater and brackish water sediment are reserved in the SMS rule and are currently being developed in a framework consistent with the SMS. Meanwhile, freshwater numerical sediment quality values (SQVs) proposed by Avocet Consulting (2011) are being used as guidelines. These guidelines, based on biological effects endpoints, are listed in Table B-2.

The SOAL applicant will compare the sediment data collected from the leasing site to either Table A-1 for marine sediment or to Table B-2 for freshwater sediment to determine if there are exceedances of numerical chemical criteria (see Section 8.2). If one or more sample results exceed the chemical concentrations listed in Tables B-1 or B-2, or the practical quantitation limit (i.e., the lowest concentration that can be measured by a laboratory) is above the SQS or SQS//SL1 criteria, then the applicant will need to consult with their DNR land manager.[2]

2.2 SELECTION OF CHEMICAL ANALYTES

The analyte list for bookend sampling will include those chemicals for which there are numerical criteria under the SMS or, in the case of freshwater, guidelines listed in Avocet Consulting (2011). Depending on the proposed use and historical use of the site, bookend marine sediment sampling may also include the measurement of conventional variables such as total organic carbon, sediment grain size, total solids, ammonia, and total sulfides. Bookend freshwater sediment sampling may include the measurement of percent fines and total organic carbon. Some sites may be required to analyze chemicals for which there are presently no known criteria. For example, a proposed use authorization of a former shipyard site or marina may require the analysis of the full suite of organotin complexes.

An applicant may opt out of the analysis of certain chemicals based on proposed site use or documented historical use, but they must provide sufficient rationale for excluding these chemicals to DNR Management. Keep in mind that most laboratories have a set price for various organic and inorganic analyte groups, and the exclusion of certain chemicals may not affect the cost.

[2] For further information, go to http://apps.leg.wa.gov/wac/default.aspx?cite=173-204-320

2.3 WOOD DEBRIS GUIDANCE

A large number of SOAL use authorizations are related to log storage and handling due to the prevalence of log exports and lumber, pulp, and paper industries in Puget Sound. Log rafting, bark stripping, and log handling can result in the deposition of wood debris on aquatic lands. Wood debris may include bark, branches, submerged logs, sawdust, wood chips, and woody fibrous materials. Wood debris may range from thin to thick deposits on the sediment surface and can have both physical and chemical adverse impacts on aquatic life. In small quantities, uncontaminated wood debris may actually benefit the aquatic environment by providing an influx of organics and physical shelter. However, large accumulations of wood debris, which can persist for years, can smother plants and benthic organisms and provide inappropriate substrate for benthic colonization or spawning habitat. In addition, an overabundance of wood debris can result in a reduced or nonexistent aerobic zone in sediments due to increased biological oxygen demand from wood decomposition. Compounds, such as sulfides, ammonia, and methane, can build up to toxic levels in anaerobic sediments. Wood debris degradation products (phenols, benzoic acid, benzyl alcohol, terpenes, and tropolenes) can also be toxic to aquatic organisms (DMMP 1997).

For these reasons, wood debris is considered a deleterious substance under the SMS as defined in WAC 173-204-200(17). Ultimately, the severity of wood debris impacts on submerged lands depends on its physical form, its degree of incorporation into sediments, the volume and spatial coverage of wood debris present, the amount of local "flushing", the habitat, and the type of wood from which the debris is derived (DMMP 1997).

- Potential adverse impacts associated with wood debris vary considerably from site to site given the factors described above. Bookend sampling of SOAL use authorization areas used for log rafting and handling should involve both physical mapping methods as well as conventional and limited contaminant chemistry. A tiered approach is generally undertaken for the wood waste survey. For sites that are considered to be at risk for contamination, SMS chemical analysis would be required in addition to the wood waste survey. SMS review may be waived if sufficient evidence, meeting due diligence requirements, is presented to demonstrate that no potential for contamination exists. Any exceedence of SMS would be reported to Ecology.

Some general guidance follows:

- For the first tier of the wood waste survey, collect sufficient number of sediment core samples to spatially cover the use authorization area in order to determine the physical presence or absence of wood debris. A core sampler capable of penetrating wood debris is recommended. Type and depth of wood debris should be recorded. Excessive accumulations of wood waste would be considered waste or refuse material per the language of the individual lease. In addition, at large, industrial wood debris sites that

cover several acres, additional mapping tools may be utilized to delineate the area covered by wood debris. Some of these technologies include sediment profile imaging (SPI) cameras, diver- or remotely-deployed video cameras, and side-scan sonar.

- In cases where wood waste accumulation is excessive, removal of the wood waste may be required unless demonstrated to not impact habitat quality through second tier testing. The second tier, consisting of sediment conventional sampling including TVS, TOC, sulfides (pore water and bulk), ammonia, and grain size will be required to determine if the presence and decomposition of wood waste is impacting habitat quality. Additionally, if a determination of excessive accumulation cannot be made, conventional sediment sampling may be required. The results of these tests, together with physical observations, provide a second-tier level of investigation indicating potential negative adverse impacts associated with wood deposition. DNR is currently utilizing a scoring process to evaluate the analytical results (see Table BA-3). This scoring system is for DNR use authorization- related screening purposes only and does not establish whether a site is or is not in compliance with MTCA, SMS, or other applicable standards. Some parameters are used directly in the scoring process (total organic carbon, total volatile solids, total solids, ammonia, total sulfides, and phenol), while other parameters (grain size and porewater sulfides) provide additional information to aid in the evaluation process.For some sites, it may be necessary to conduct further testing in consultation with DNR. This third tier analysis typically consists of bioassays or benthic infaunal evaluations in line with SMS guidance.

2.4 SELECTION OF SAMPLING LOCATIONS, NUMBER OF SAMPLES, AND DEPTH OF SAMPLES

The selection of appropriate sampling locations at the proposed SOAL use authorization site will consider all available information on the site such as existing sediment sampling data, potential sources, and intended uses. Where there is no prior information available on sediment quality conditions, the location of sampling stations will depend on site characteristics. Refer to the following guidelines when selecting sampling locations:

- Place stations in depositional areas and avoid gravel or cobble substrate.
- Place stations in the vicinity of current or historic point source discharges such as wastewater outfalls, storm drain outfalls, loading docks, and fueling docks. If point sources are located in high-flow areas (e.g., rivers), then place the sampling stations in adjacent downstream areas where sediment deposition is more likely to occur.
- Place stations along the shoreline where boats were refueled, sandblasted, or maintained.

- Place stations in any areas where it is known or suspected that hazardous wastes were discharge or spilled.
- Place stations along use authorization site boundaries if general area-wide contamination is suspected.
- Do not place stations in areas that have been dredged or capped within the past 5 years.

The selection of station locations for baseline sediment sampling is site-specific and will depend on site characteristics, existing sediment quality data, and intended uses. The number of stations is not fixed, but DNR has found that three stations will generally characterize baseline conditions at most sites. Site-specific structures or point sources should be considered in the development of the sampling plan.

The depth of sediment to be sampled should be the uppermost 10 cm of sediment, which is generally considered the biologically active zone.

Finally, if the applicant feels that a portion or all of the use authorization area should be considered for cleanup or dredging, plans for sampling and testing should be coordinated with the appropriate regulatory agencies using appropriate guidance documents. The following agencies may need to be involved:

1) Dredged Material Characterization

   a) Seattle District for all of Washington State – http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=dmmo&pagename=home

   b) Portland District for Washington ports on the Columbia River – http://www.nwp.usace.army.mil/environment/sediment.asp

2) Voluntary Cleanup

   a) Washington State Departement of Ecology – http://www.ecy.wa.gov/programs/tcp/smu/sediment.html

2.5 TIMING OF SAMPLING

In most cases, the time of the year when sampling takes place is not a concern. However, tidal stage may be factored into the time when sampling is conducted. For coastal areas, it may be preferable and less expensive to sample during low spring and summer tides when sediments can be collected by personnel on foot rather than by boat.

3 ESTIMATED COST OF SAMPLING AND ANALYSIS

Many factors contribute to the overall cost of an aquatic sampling project, including number of samples, selection of analytes, field and analytical methods, water depth, quality assurance and quality control (QA/QC) requirements, and project personnel.

3.1 SELECTION OF QUALIFIED AQUATIC SAMPLING CONSULTANTS

The Washington State Department of General Administration maintains a master list of pre-qualified environmental consulting firms that meet the requirements for this type of work. These firms are established leaders in their field and have achieved a level of excellence to participate in the contract. Qualified consulting firms and contact information are provided in Table A-4. The state's master list changes yearly, and may not include all qualified firms. For firms not on the list, DNR requires a minimum of five years' experience in sediment sampling to be approved for this work.

Please contact Jeri Brown at the General Administration office (email: jbrown@ga.wa.gov; phone: 360-902-7404) for questions regarding this list.

3.2 SELECTION OF QUALIFIED ANALYTICAL LABORATORIES

Ecology maintains a list of analytical laboratories that have met the rigorous standards of accreditation in the state of Washington. By being on this list, these laboratories demonstrate that they have the personnel competence, performance standards, operational support, QA/QC oversight, and data management capabilities to generate accurate and defensible analytical data. Qualified, accredited analytical laboratories can be located on the Ecology website[3].

4 DEVELOPMENT OF SAMPLING AND ANALYSIS PLAN

Before the initiation of sediment sampling at a SOAL use authorization site, the applicant must prepare a sampling and analysis plan (SAP) that describes the sample collection, handling, and analysis procedures to be used at the site. The level of detail required in the SAP may vary depending on the scope of the sampling activity, but it must contain certain basic elements. A template for a streamlined SAP, with cross-references to guidance in this document, is provided in Attachment A-1.

Basic elements of a SAP include a brief discussion of site history (bulleted list), objectives of the sampling activity (bulleted list) , field sampling methods, sample handling procedures,

[3] http://www.ecy.wa.gov/programs/eap/labs/documents/AllAccreditedLabListInternet.pdf

analytical methods, QA/QC procedures, and data analysis and reporting requirements. A health and safety plan covering field operations is recommended.

Background information on the site, including site history and potential contaminant sources, is an important component of the SAP because it helps determine the areas to sample and the types of analytes. Resources for obtaining this type of background information are provided in Attachment B-2.

5 RECOMMENDED SAMPLING PROTOCOLS

The importance of using standardized methods and reporting techniques in environmental sampling of marine and freshwater environments cannot be underestimated. In the late 1980s, the U.S. Environmental Protection Agency Region 10 developed standardized guidelines for marine environmental sampling, referred to as the Puget Sound Estuary Program (PSEP) guidelines. DNR encourages the use of the PSEP guidelines to ensure that the highest quality, most representative data are collected, and that these data are comparable to data collected by different programs that follow the same guidelines. Many consulting firms have incorporated the PSEP protocols into their standard operating procedures (SOPs).

These PSEP-based SOPs will dictate decontamination procedures, types of sampling equipment, sampling procedures, field QC, sample preservation, chain-of-custody requirements, documentation, and reporting, and are not discussed further here. Additional equipment may be required depending on specific project needs.

An introduction to the guidelines developed under this interagency effort can be found on the Puget Sound Partnership website[4].

A synopsis of individual guidelines is provided below.

- Recommended Guidelines for Station Positioning in Puget Sound
  http://www.psparchives.com/publications/our_work/science/protocals_guidelines/position.pdf
- Recommended Quality Assurance and Quality Control Guidelines for the Collection of Environmental Data in Puget Sound
  http://www.psparchives.com/publications/our_work/science/protocals_guidelines/qaqc.pdf
- Recommended Protocols for Measuring Conventional Sediment Variables in Puget Sound
  http://www.psparchives.com/publications/our_work/science/protocals_guidelines/sed_conv.pdf
- Recommended Guidelines for Sampling Marine Sediment, Water Column, and Tissue in Puget Sound
  http://www.psparchives.com/publications/our_work/science/protocals_guidelines/field.pdf
- Recommended Guidelines for Measuring Metals in Puget Sound Marine Water, Sediment, and Tissue Samples

[4] http://www.psparchives.com/publications/our_work/science/protocals_guidelines/introduction.pdf

http://www.psparchives.com/publications/our_work/science/protocals_guidelines/metals.pdf

- Recommended Guidelines for Measuring Organic Compounds in Puget Sound Water, Sediment, and Tissue Samples
  http://www.psparchives.com/publications/our_work/science/protocals_guidelines/organics.pdf
- Recommended Protocols for Measuring Conventional Water Quality Variables and Metals in Fresh Water of the Puget Sound Region
  http://www.psparchives.com/publications/our_work/science/protocals_guidelines/freshwater.pdf

6 MAINTAINING SAMPLE INTEGRITY

The PSEP protocols and respective company SOPs contain guidance on ensuring sample integrity between the time of field collection and the time of laboratory analysis. This includes making sure that samples are properly handled and prepared, holding times are adhered to, chain-of-custody (COC) procedures are used, and samples are delivered to the laboratory in a timely manner.

6.1 FIELD QA/QC

Field QC samples should be prepared at least once per sampling event. The DNR-recommended QC samples are an equipment rinsate blank, a field duplicate, and trip blanks if samples are to be analyzed for volatile organic compounds (VOCs). These QC samples, while recommended to improve the reliability of the data, are not required by DNR.

- **Field Duplicates (Split).** These samples are collected to assess the homogeneity of the samples collected in the field and the precision of the sampling process.
- **Rinsate Blanks.** Equipment rinsate blanks will be used to help identify possible contamination from the sampling environment and/or from decontaminated sampling equipment.
- **Trip Blanks.** Trip blanks will be used to help identify whether contaminants may have been introduced during the shipment of the sediment samples from the field to the laboratory for VOC analyses only.

Field duplicates and rinsate blanks can be archived for bookend sampling and only analyzed if QA issues arise.

6.2 CHAIN-OF-CUSTODY PROCEDURES

A stringent program of sample COC must be followed during sample storage and shipping activities to account for each sample collected in the field. The COC form is critical because it documents sample possession from the time of collection through processing and analysis to final disposition. The form also provides information to the laboratory regarding what analyses are to be performed on the samples that are shipped. COC also applies to sample packaging and shipping, field logbooks, and sample labeling, which are discussed further in the PSEP protocols.

7 ANALYTICAL METHODS

Table B-5 summarizes the analytical methods, typical per-sample costs, sample holding times, and sample sizes for both the standard suite of analyses and additional site-specific parameters that may be required based on-site history or usage. The per-sample costs listed in Table B-5 are typical costs for a standard turnaround of three weeks and include the generation of an environmental information management system (EIMS)-compatible electronic data deliverable and a fully validatible data package (faster turnaround times may be available at additional cost). Costs for analyses and deliverables should be negotiated with the laboratory prior to sampling. The laboratory should also be consulted for the necessary sample sizes and container types because containers for some analyses may be combined or require greater sample volumes. The recommended sample sizes listed in Table B-5 are generally the minimum required for analysis, and additional volume is recommended to provide a margin of error and to allow for re-analyses.

8 DATA VALIDATION

Data validation is the process of determining whether the data are of sufficient quality to be used in regulatory decision-making. Data review and validation is a systematic process that compares a group of data to the requirements in a set of documented acceptance criteria. Validation of data requires that appropriate QA/QC procedures are followed, and that adequate documentation is included for all data generated both in the laboratory and in the field.

A QA Level 1 Validation per U.S. Environmental Protection Agency's *Guidance on Environmental Data Verification and Data Validation*[5] or PTI (1989) is recommended, at a minimum, for SQAL sediment data. This review evaluates the completeness, correctness, and

[5] Further information on data validation can be found at http://www.epa.gov/quality/qs-docs/g8-final.pdf

conformance/adherence of a specific data set against the method or procedural requirements. Data qualifiers are assigned, when appropriate, and the usability of the data is determined.

Data validation can be performed by several different entities. The analytical laboratory that provides the data can do a limited scope data validation; however, data validation performed by a party independent of the laboratory is the preferred option because it ensures an unbiased review.

9 DATA REVIEW AND REPORTING

The data should be tabulated and include separate tables for dry-weight and total organic carbon (TOC) normalized concentrations. The TOC-normalized concentrations will allow direct comparison with the SMS criteria, whereas the dry-weight concentrations may be useful when TOC values are either very high or very low. Additional data to include in the table are station numbers, sample identification numbers, date of sample collection, appropriate sediment criteria, and the sediment sampling depth.

Validated data need to be compared to the numerical SQS and/or CSL criteria (or SQVs for freshwater) to determine if there are exceedances of criteria or exceedances of detection limits over chemical SQS and/or CSL criteria when the laboratory reports chemicals as undetected. If the data are below the SQS criteria, then the site can be considered clean. If the data are above the SQS and/or CSL, then the applicant should consult with DNR to determine next steps.

Final reporting for DNR includes, at a minimum, a letter report describing the sampling results, tables of all analytical data and identifying exceedances, and a map showing the locations of all samples with those exceeding SQS and/or CSL criteria identified uniquely.

10 SUBMITTING DATA TO THE EIMS DATABASE

The final step in this process is for the applicant to submit the chemical data electronically to EIMS database for environmental monitoring data. EIMS contains records on physical, chemical, and biological analyses and measurements. Supplementary information about the data (metadata) is also stored, including information about the specific study for which the data were collected, sampling locations, and data quality.

If your consultant does not have previous experience uploading data to EIMS they should attend a training session periodically offered by Ecology[6].

[6] The current contact at Ecology for training is Jenna Durkee (email: Jenna.Durkee@ecy.wa.gov; phone: 509-454-7865).

11 REFERENCES

Avocet Consulting. 2011. Development of Benthc SQVs for Freshwater Sediments in Washington, Oregon, and Idaho. Prepared for the Washington Department of Ecology, Olympia, WA and Oregon Department of Environmental Quality, Portland, OR. Avocet Consulting, Inc., Olympia, WA.

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PTI. 1989. Data Validation Guidance Manual for Selected Sediment Variables. Prepared for the Washington Department of Ecology, Sediment Management Unit, Olympia, WA. PTI Environmental Services, Bellevue, WA.