



## LICENSE FOR USE OF LAKE TAPPS RESERVOIR

This LICENSE FOR USE OF LAKE TAPPS RESERVOIR (“**License**”), made as of the last date written below (the “**Effective Date**”), is by and between the CASCADe WATER ALLIANCE, a Washington municipal corporation under Chapter 39.106 RCW (“**Cascade**”) and \_\_\_\_\_ **[insert name(s) of Licensee]** (the “**Licensee**”).

### 1. GRANT OF LICENSE

1.1. **License Term.** Cascade hereby grants to Licensee a nonexclusive license to use a portion of the Premises (defined in Section 1.2) for the purposes and under the terms and conditions set forth below. The License shall become effective as of the Effective Date, and shall continue unless terminated pursuant to Section 4.4.1.

1.2. **Premises.** Cascade owns certain real property commonly known as the Lake Tapps Reservoir, including, but not limited to, the lands surrounding the shore of the Lake Tapps Reservoir and the islands therein, from the waterline up to the 545-foot contour line (collectively, “**Lake Tapps Reservoir**”), said real property being more particularly described by reference to the reservation of fee ownership therein set forth in that certain Deed dated June 22, 1954, recorded under Auditor’s No. 1686523, Volume 1063 of Deeds, Pages 485-495, records of Pierce County, Washington (the “**Deed**”). The area subject to this License (the “**Premises**”) is that portion of Lake Tapps Reservoir as may abut the Licensee Property (defined in Section 1.3), which lies between the 545-foot contour line and the 543-foot contour line (as said contour lines may be determined by reference to the bronze plaque embedded in the concrete floor of the gate house more particularly described in the Deed). The Premises is further defined by extension of the lot lines of the Licensee Property to the point of intersection with said 543-foot contour line. **[if project is for improvement other than bulkhead and Licensee’s rights fall below the 543-foot contour line, revise accordingly]**

1.3. **Licensee Property.** The License is for the benefit of the following described real property (the “**Licensee Property**”): **[insert legal description and tax parcel number]**

1.4. **Compensation; Leasehold Excise Tax.** No compensation or leasehold excise tax is due at this time. Cascade reserves the right in the future to charge fair market value and/or leasehold excise tax if Cascade determines, in its sole discretion, that (i) the rights granted under this License prevent Cascade from using the Premises, or (ii) Licensee is not being assessed for the improvements as part of Licensee’s local property

taxes. If payment is required, payment shall be sent to Cascade at the address set forth in Section 4.1.

#### 1.5. Approved Use; Initial Construction; Conditions and Limitations.

- 1.5.1. Subject to Cascade's right of approval, the Licensee shall have the nonexclusive right to use the Premises, during the term of this License, for the construction, maintenance and use of ***[insert description of improvements to be built]***, together with the right to deposit fill material behind said improvements and to conform such area to be filled, as nearly as practicable, to the existing contours of Lake Tapps Reservoir and of Licensee's Property in the area as shown on Attachment A; together with the right to establish landscaping thereon consistent with the character of the area; together with the right to make recreational use thereof as such use is normal and incidental to the use of Licensee's Property for residential purposes (collectively, the "Approved Use"). ***[modify if not a bulkhead]***
- 1.5.2. No other improvements are approved without an additional license from Cascade. This License is not to be construed to allow any use of the Premises not related to the Approved Use described in Section 1.5.1.
- 1.5.3. The Licensee is responsible for meeting all applicable Federal, State and local safety and other codes. This License is valid so long as Licensee obtains and continues to maintain all applicable Federal, State and local permits, licenses, or other authorizations required for the construction and use of the improvements on the Premises (including, but not limited to, such laws or permits as may pertain to building, zoning, shoreline regulation, environmental protection or other matters pertaining to the general public health, safety and welfare). **Cascade makes no representation or warranty as to any other permits, licenses or other authorizations that may be required for the Approved Use.**
- 1.5.4. Licensee shall provide Cascade with ten (10) days' advance written notice before undertaking the initial construction of the improvements or the initial placement of any fill materials upon the Premises. During such ten (10) day period, Cascade may inspect the area where the work is to be done and review Licensee's plans and specifications therefor to ensure that the plans and specifications are consistent with Attachment A, and do not interfere with Cascade's use of Lake Tapps Reservoir as an operating utility property. **Cascade makes no warranty, express or implied, as to the suitability for the Premises for the Licensee's intended use or purpose, or the correctness or accuracy of Licensee's plans, and expressly disclaims any such warranties.** Cascade reserves the right to require Licensee, now or in the future, to provide

Cascade with any professional opinions, at Licensee's expense, to evidence that the Approved Use does not create an operational danger or other concern for Cascade (e.g. issues relating to dike integrity, water quality, recreational safety).

1.5.5. Licensee shall cause all construction and fill activities upon or within the Premises to be done in a safe, careful and workmanlike manner so as to prevent bodily harm to persons and damage to property. Licensee shall ensure that all labor, services, materials, equipment, supplies or other items employed or provided in connection with the Approved Use are of good quality and suitable for the intended purpose. Licensee shall maintain the Premises and any improvements located thereon in good repair and in a neat, clean and safe condition. Licensee shall promptly pay (and shall secure the discharge of any liens asserted by) all persons or entities furnishing any labor, services, materials, equipment, supplies or other items to or upon the Premises for the benefit of Licensee.

1.5.6. **[add if applicable; if not, delete provision and write N/A]** The bulkhead shall not extend beyond the Premises and the vertical height of the bulkhead shall, at all points along the bulkhead, be constructed and maintained to an elevation of not less than 544 to 545 feet (said elevation being determined by reference to the 545-foot contour line above-described).

1.5.7. **[add if applicable; if not, delete provision and write N/A]** In connection with the initial construction of the improvements and placement of fill materials (and not thereafter, without separate written authorization from Cascade), Licensee shall take any and all fill material required by Licensee in connection with construction of the improvements and filling of the Premises from that portion of Lake Tapps Reservoir which is adjacent to the Premises and lying below the 543-foot contour line, and from no other area, including an offsite source, without Cascade's prior written authorization. Prior to removing such fill, Licensee shall consult with Cascade to confirm the location and amount of fill to be taken. Upon removal of such fill material, Licensee shall cause the portion of Lake Tapps Reservoir disturbed by the removal of such fill to be leveled and graded so as to leave no depressions or water retention areas. If for any reason Licensee shall be unable to utilize such fill material for construction of the improvements and for filling the Premises, Licensee shall obtain Cascade's written permission and approval prior to depositing any other fill material upon the Premises. Cascade's approvals described herein are in addition to any other jurisdictional approvals or authorizations that may be required for the removal or placement of fill material within Lake Tapps Reservoir.

1.5.8. Licensee acknowledges that the Premises is an operating utility property of Cascade and the use thereof includes, but is not limited to, the operation of a reservoir to serve Cascade's municipal water supply. Notwithstanding the rights granted to Licensee hereunder, Cascade may use the Premises during the term of this License for purposes of its utility operations as fully as if this License had not been given. Licensee shall not, at any time, undertake any activities which interfere with or otherwise impair the safe and reliable operation of the Premises as an operating utility property.

1.5.9. Licensee acknowledges that this License and the Premises are further subject to any and all restrictions, reservations, limitations or other matters of record, including, but not limited to, those matters set forth in the Deed. Licensee acknowledges that Cascade's rights under the Deed are in no way affected by the granting of this License, including, but not limited to, the right to raise the waters within Lake Tapps Reservoir at any time and from time to time up to the 545-foot contour line.

## 2. LICENSEE'S OBLIGATIONS

2.1. **Licensee Authority.** Licensee warrants and covenants that: (a) Licensee has the power and the right to enter into this License and that Licensee shall peaceably and quietly enjoy the use of the Premises upon the terms, covenants, and conditions set forth in this License throughout the term of the License; and (b) no other person, other than the individual(s) executing this License, have a fee ownership interest in the Licensee Property.

2.2. **Costs and Expense.** Except as otherwise provided herein, Licensee shall be solely responsible for all of its costs incurred by or associated with the Approved Use.

2.3. **Insurance.** During the time of construction of the improvements, Licensee shall require its contractor and subcontractors to carry appropriate and customary insurance coverages and amounts. In addition, Licensee shall procure and maintain for the duration of the License insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise by Licensee, its agents, representatives, employees or subcontractors, of the rights granted hereunder or its presence on the Premises. Licensee shall maintain coverages and limits no less than:

**\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Premises or the general aggregate limit shall be twice the required occurrence limit. Such coverage shall not exclude, or separate coverage shall

be provided, for any construction activities. Cascade must approve coverage and limits for such construction activities.

2.3.1. The policy is to contain, or be endorsed to contain, the following provisions:

2.3.1.1. Cascade, its members, and its elected or appointed officers, officials, employees, and volunteers are to be covered as insureds. Coverage can be provided in the form of an endorsement to the Licensee's insurance, or as a separate policy.

2.3.2. Insurance is to be placed with insurers with a current A.M. best rating of no less than A:VII, unless otherwise acceptable to Cascade.

2.3.3. Licensee shall furnish Cascade with certificates of insurance and applicable endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf. The endorsements are to be on forms provided by Cascade, unless the insurance company will not use Cascade's forms. All endorsements are to be received and approved by Cascade before the Effective Date, and updated once a year on the anniversary of the Effective Date. However, failure to do so shall not operate as a waiver of these insurance requirements. As an alternative to Cascade's forms, Licensee's insurer may provide complete copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

2.4. **Non-Assignment.** Licensee shall not sublet or assign any rights or obligations under this License; provided, however, this License shall inure to the benefit of any purchaser or tenant of the Licensee Property.

2.5. **Hazardous Substances.** Licensee agrees that it will not use, generate, store, or dispose of any hazardous substances on, under, about, or within the Premises in violation of any law or regulation.

2.6. **Water Quality.** Licensee agrees that it will use best management practices regarding its presence on the Premises, which, in Cascade's sole determination, may affect water quality, including, but not limited to, meeting all regulatory requirements applicable to Licensee's activities.

### 3. **LIABILITY**

3.1. **Own Risk.** Licensee or anyone pursuant to Licensee's permission, hereby undertakes the Approved Use of, or any other activities upon, the Premises or Lake Tapps Reservoir at its own risk. Licensee hereby releases Cascade from any and all

liability for damage or injury arising from or in connection with the Approved Use and any improvements located on the Premises, including, but not limited to, any flooding damage or destruction, or damage or destruction caused by wave action on Lake Tapps Reservoir.

3.2. **Indemnification.** Licensee hereby agrees to release, indemnify, defend and hold Cascade, its members, and its elected or appointed officers, officials, employees, agents and volunteers harmless from and against any and all demands, claims, suits, risks, liabilities and obligations of any nature and any and all costs or expenses of any nature including, but not limited to, all losses, damages, judgments, and reasonable attorney's fees arising from injury to or death of any and all persons and/or all property damage of any kind, whether tangible or intangible, including loss of use, and including any regulatory fines or other liability, in connection with or related to the Approved Use or the actions or inactions of Licensee, its agents, employees, contractors, guests, or other invitees upon the Premises and/or the presence of Licensee, its employees, agents, employees, contractors, guests, or other invitees or their property upon or in proximity to the Premises, except only those losses resulting solely from the negligence or willful misconduct of Cascade, its elected or appointed officers, employees, volunteers, contractors or agents. Without limiting the generality of the foregoing, Licensee hereby waives any immunity, defense or other protection that may be afforded by any workers' compensation, industrial insurance or similar laws (including, but not limited to, the Washington Industrial Insurance Act, Title 51 of the revised Code of Washington), and acknowledges that this waiver was mutually negotiated by the parties hereto.

3.3. **Attorneys' Fees.** In the event that either party shall be required to bring any action to enforce any of the provisions of this License, or shall be required to defend any action brought by the other party with respect to this License, and in the further event that one party shall prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorneys' fees in the trial court and in any appellate courts.

#### 4. **OTHER TERMS**

4.1. **Notices.** Any notice required by this License, or by law, shall be given by registered or certified mail, express or overnight mail or other comparable service, or delivered by hand. If notice is given by registered or certified mail, such notice shall be deemed to have been given deposited in the United States mail, properly addressed, with postage prepaid. Notices shall be given, and any payments shall be sent, as follows:

If to Cascade:

Cascade Water Alliance  
520 112<sup>th</sup> Ave. NE  
Suite 400  
Bellevue, WA 98004  
Attn: Michael Gagliardo

If to Licensee:


4.2. **Modification.** This License may be modified only in a writing executed by both parties.

4.3. **Non-Waiver.** A failure by Cascade to insist upon the strict performance of any provision of this License or to exercise any right or remedy consequent upon a breach thereof, and an acceptance of other performance by Licensee during the continuance of such breach shall not constitute a waiver of any such breach of such provision.

4.4. **Termination.**

4.4.1. In the event of (i) a breach of this License by Licensee, or (ii) a determination by Cascade, in its sole discretion, that termination of this License is necessary for the use of the Lake Tapps Reservoir for the operation as a municipal water supply, then Cascade may terminate this License upon sixty (60) days written notice pursuant to the notice provision in Section 4.1. For a termination because of operational reasons as described in Section 4.4.1(ii), Cascade may exercise its right of termination notwithstanding Licensee's full compliance with the terms and conditions of this License. In the event Cascade elects to exercise its right of termination in connection with the failure of Licensee to fully comply with the terms and conditions of this License as described in Section 4.4.1(i), such right of termination shall be in addition to (and not a limitation of) any and all other rights and remedies afforded to Cascade for such noncompliance arising under this License or otherwise by law.

4.4.2. Unless otherwise instructed by Cascade to leave the improvements in place, prior to the expiration of sixty (60) days from the date of the termination notice described herein (the "**Termination Date**"), Licensee shall remove or otherwise dispose of any improvements constructed on the Premises pursuant to this License, and the Licensee shall conduct its removal of such improvements in a reasonable and safe manner. In addition, prior to the Termination Date, Licensee shall restore the Premises to the condition it existed prior to the construction of any improvements thereon. If by the Termination Date, Licensee shall not have restored the Premises to the condition it was in prior to the construction of any improvements thereon, then Licensee shall be deemed to have abandoned any and all improvements made to the Premises. Cascade shall thereafter have the right to

keep, remove or otherwise dispose of such improvements as Cascade shall determine, in its sole judgment, and Licensee shall reimburse Cascade for any expenses it incurs relating to such removal or disposal.

4.4.3. All of Licensee's obligations arising under this License which may reasonably be deemed to survive the termination of this License (including, but not limited to, those obligations arising under Sections 3.1 and 3.2) shall survive the termination of this License.

4.5. **Binding Agreement.** This License, subject to Cascade's termination rights under Section 4.4, shall run with the Licensee Property and the Premises, and shall bind, and inure to the benefit of, the parties and their respective successors and assigns.

4.6. **Severability.** If any term or provision of this License is held invalid or unenforceable, the remainder of this License shall not be affected thereby and each term and/or provision hereof shall be valid and enforced to the fullest extent permitted by law.

4.7. **Governing Law and Stipulation of Venue.** This License shall be governed by the laws of the State of Washington. The parties stipulate that any lawsuit regarding this License must be brought in Pierce County, Washington.

4.8. **Entire Agreement.** This License and its exhibits, upon execution, contain the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of this License. Furthermore, the parties agree that this License supersedes any prior bulkhead permit or other authorization, if any, granted by Cascade or its predecessors in interest.

4.9. **Recording; Notice to Jurisdiction.** Licensee agrees that Cascade may, at its discretion, record a memorandum of this License to encumber the Licensee Property. Cascade may also provide a copy of this License to any jurisdiction having regulatory authority over the Premises or Licensee's Property.

4.10 **Counterparts.** This License may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

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**CASCADE:**

CASCADE WATER ALLIANCE,  
a Washington municipal corporation

By:

\_\_\_\_\_  
\_\_\_\_\_

Chuck Clarke,  
Chief Executive Officer

Date:

\_\_\_\_\_

**LICENSEE:**

**[if entity]**

\_\_\_\_\_  
By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**[if individual]**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

SAMPLE

STATE OF WASHINGTON        )  
                                          ) ss  
COUNTY OF KING            )

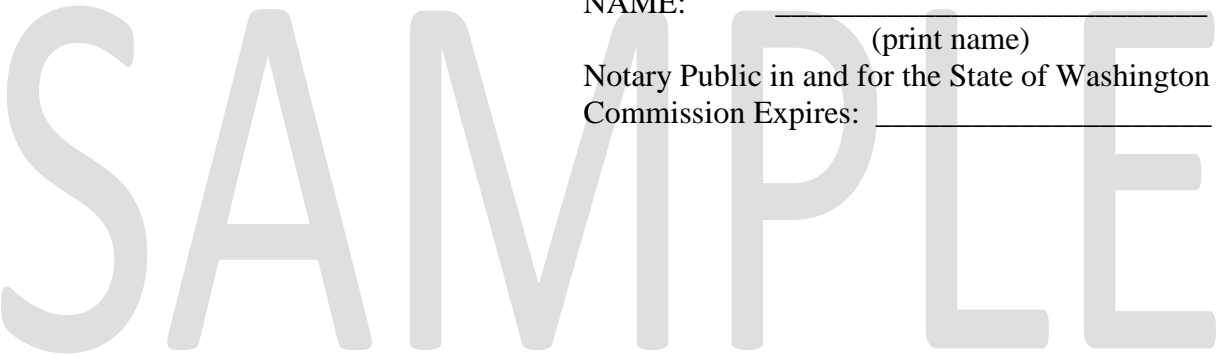
I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument, and acknowledged it as the Chief Executive Officer of CASCADE WATER ALLIANCE, a Washington municipal corporation, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_  
                                          \_\_\_\_\_

NAME: \_\_\_\_\_  
                                          \_\_\_\_\_

(print name)

Notary Public in and for the State of Washington  
Commission Expires: \_\_\_\_\_



***[If Licensee is an entity]***

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, on oath stated that s/he was authorized to execute the instrument, and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

NAME: \_\_\_\_\_

(print name)

Notary Public in and for the State of Washington

Commission Expires: \_\_\_\_\_

***[If Licensee is an individual]***

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ [and \_\_\_\_\_] [is][are] the person[s] who appeared before me, and said person[s] acknowledged that [he][she][they] signed this instrument and acknowledged it to be [his][her][their] free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

NAME: \_\_\_\_\_

(print name)

Notary Public in and for the State of Washington

Commission Expires: \_\_\_\_\_

**ATTACHMENT A**

*[insert depiction of improvements]*