

#7

Bill Craven  
FAS Port of Seattle Lease ORD  
August 9, 2013  
Version #3

**CITY OF SEATTLE**  
**ORDINANCE** \_\_\_\_\_  
COUNCIL BILL 117920

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

AN ORDINANCE authorizing the Director of Finance and Administrative Services to enter into a lease agreement with the Port of Seattle, a Washington municipal corporation, for yard space to store jet grout spoils from the Elliott Bay Seawall Project, and ratifying and confirming certain prior acts.

WHEREAS, Proposition 1 was put to the voters of the City, at an election held on November 6, 2012, for funding of the Elliott Bay Seawall Project; and

WHEREAS, 76.98% of voters approved Proposition 1; and

WHEREAS; the project will generate up to 150,000 cubic yards of jet grout spoils during the life of the project which will require testing, processing and storage; and

WHEREAS, the City does not have adequate City-owned property permitted for such use that will be ready for the project by the October 2013 start date; and

WHEREAS, the City and the Port of Seattle ("Port") have identified two alternative sites, located at 2900 Southwest Florida Street or 3235 16<sup>th</sup> Avenue Southwest; and

WHEREAS, the City and Port are continuing to work together to identify which site will best suite each agency's needs; and

WHEREAS, the City is continuing to negotiate the terms of a lease with the Port; and

WHEREAS, the City Council's approval of this lease is required under Seattle Municipal Code Section 3.127.020.C.3 because the total square footage of unimproved land for open storage purposes leased in one calendar year exceeds 18,000 square feet; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. The Director of Finance and Administrative Services, or his designee, is authorized to execute for and on behalf of the City, a lease between the City of Seattle, as tenant, and the Port of Seattle, as landlord, generally in the form of Attachment 1, attached hereto and

1 identified as "Draft Lease Agreement between Port of Seattle and City of Seattle," providing for  
2 the City of Seattle's tenancy and occupancy of up to 10 acres of Port of Seattle property.

3 Section 2. The Director is further authorized to make technical, conforming or otherwise  
4 nonmaterial changes and to negotiate material changes in the lease agreement and other ancillary  
5 agreements or documents authorized to be executed herein; and to execute pursuant to this  
6 ordinance that may benefit the City; and to execute, deliver, administer, perform, and enforce  
7 such amendments and ancillary agreements or documents, and take such other actions as the  
8 Director deems appropriate or necessary to carry out the terms and provisions of, and complete  
9 the transactions authorized by this ordinance.

10 Section 3. The maximum area to be leased under this agreement shall be limited to no  
11 more than 435,600 square feet (10 acres) at a monthly lease rate of not more than \$0.20 per  
12 square foot (\$8,712.00/acre). The maximum term of the lease shall be for a period not to exceed  
13 five years.

14 Section 4. The rental payments contemplated by the terms of the lease agreement  
15 authorized in Section 1 hereof shall be charged to the appropriate expenditure allowance or  
16 allowances in the budget of the Department of Finance and Administrative Services and shall be  
17 reimbursed to that Department by the Seattle Department of Transportation.

18 Section 5. This ordinance shall take effect and be in force 30 days after its approval by  
19 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
20 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

21 Section 6. Any act consistent with the authority of this ordinance taken after its passage  
22 and prior to its effective date is ratified and confirmed.  
23  
24  
25  
26  
27  
28

1 Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2013, and  
2 signed by me in open session in authentication of its passage this  
3 \_\_\_\_ day of \_\_\_\_\_, 2013.

4  
5 \_\_\_\_\_  
6 President \_\_\_\_\_ of the City Council

7 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2013.

8  
9 \_\_\_\_\_  
10 Michael McGinn, Mayor

11  
12 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2013.

13  
14 \_\_\_\_\_  
15 Monica Martinez Simmons, City Clerk

16 (Seal)

17  
18  
19  
20 Attachment 1: Draft Lease Agreement between Port of Seattle and City of Seattle

DRAFT LEASE AGREEMENT

Between

PORT OF SEATTLE

And

CITY OF SEATTLE

DRAFT  
WORKING DOCUMENT

## TABLE OF CONTENTS

SECTION 1 : LEASED PREMISES .....	1
SECTION 2 : TERM .....	1
SECTION 3 : RENT .....	142
SECTION 4 : SECURITY .....	3
SECTION 5 : USE OF PREMISES .....	3
SECTION 6 : UTILITIES .....	445
SECTION 7 : ALTERATIONS; OWNERSHIP OF CERTAIN INSTALLATIONS .....	5
SECTION 8 : MAINTENANCE AND REPAIR .....	556
SECTION 9 : TAXES .....	<u>Error! Bookmark not defined.</u> <u>Error! Bookmark not defined.</u> 6
SECTION 10 : COMMON AREAS .....	<u>Error! Bookmark not defined.</u> <u>Error! Bookmark not defined.</u> 7
SECTION 11 : INSURANCE AND INDEMNITY .....	7
SECTION 12 : DAMAGE OR DESTRUCTION .....	9910
SECTION 13 : ASSIGNMENT AND SUBLEASE .....	10
SECTION 14 : DEFAULT .....	11112
SECTION 15 : TERMINATION OTHER THAN FOR DEFAULT .....	121213
SECTION 16 : ACCESS; EASEMENTS .....	131314
SECTION 17 : NONWAIVER; RIGHT TO PERFORM .....	141415
SECTION 18 : SURRENDER AND HOLDING OVER .....	15
SECTION 19 : ENVIRONMENTAL STANDARDS .....	151516
SECTION 20 : MISCELLANEOUS .....	161617
SECTION 21 : SIGNATURES .....	191920
SECTION 22 : ACKNOWLEDGMENTS .....	20

WORKING DRAFT DOCUMENT

## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the PORT OF SEATTLE, a Washington municipal corporation ("the Port"), and City of Seattle, a municipal corporation ("Lessee").

For and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree as follows:

### SECTION 1: LEASED PREMISES

1.1 Premises. The Port hereby leases to Lessee, and Lessee hereby leases from the Port, the following described premises ("the Premises") located at the Port property commonly known as the C.E.M. Site, a legal description of which is attached hereto as Exhibit A:

Approximately \_\_\_\_ (-) acres which equates approximately (-) square feet of paved yard space, commonly referred to as a portion of the C.E.M. Site, all as shown on the attached Exhibit B.

Subject to the rights reserved to the Port in this Lease, the Port and Lessee agree that the Premises are, and shall be deemed for all purposes to be, square feet as set forth above.

1.2 Acceptance of the Premises. Lessee has examined the Premises, accepts the Premises in their present condition and agrees to make any changes in the Premises necessary to conform to federal, state and local law applicable to Lessee's use of the Premises.

1.3 Quiet Enjoyment. So long as Lessee is not in default under this Lease and subject to the specific provisions, covenants and agreements contained in this Lease, the Port covenants and agrees that the quiet and peaceful possession and enjoyment of the Premises by Lessee shall not be disturbed or interfered with by the Port or by any other party claiming by or through the Port.

### SECTION 2: TERM

2.1 Lease Term. This Lease shall be for a term of one (1) year, beginning October 1, 2013, and ending September 30, 2014.

2.2 Option to Extend. If Lessee is in compliance with the terms and conditions of this Lease, Lessee has, upon written notice to the Port given not less than ONE HUNDRED TWENTY (120) days in advance of expiration of the initial (or extended) Lease term, the option to renew this Lease for FOUR (4) additional ONE (1) year terms.

2.3 Possession. If the Port shall be unable for any reason to deliver possession of the Premises or any portion thereof, at the time of the commencement of the term of this Lease, the Port shall not be liable for any damage caused thereby to Lessee, nor shall this Lease thereby become void or voidable, nor shall the term specified herein be in any way extended, but in such event Lessee shall not be liable for any Rent until such time as the Port can deliver possession. If Lessee shall, in the interim, take possession of any portion of the Premises, Lessee shall pay as Rent the full rent specified herein reduced pro rata for the portion of the Premises not available for possession by Lessee. If the Port shall be unable to deliver possession of the Premises at the commencement of the term of this Lease, Lessee shall have the option to terminate this Lease by at least thirty (30) days' written notice, unless the Port shall deliver possession of the Premises prior to the effective date of termination specified in such notice. If Lessee shall, with the Port's consent, take possession of all or any part of the Premises prior to the commencement of the term of this Lease, all of the terms and conditions of this Lease shall immediately become applicable, with the exception that Lessee shall not be obligated to pay any Rent for the period prior to the commencement of the term of this Lease unless otherwise mutually agreed.

### SECTION 3: RENT

3.1 Base Rent. Commencing on the commencement date, Lessee agrees to pay as rent ("Base Rent") for the Premises the sum of \_\_\_\_ AND \_\_\_\_/100 DOLLARS (\$\_\_\_\_) per month, plus applicable taxes.

Formatted: Don't adjust space between Latin and Asian text

Formatted: Don't adjust space between Latin and Asian text

Formatted: Don't adjust space between Latin and Asian text

Base Rent is generally computed as follows:

$$\underline{\hspace{2cm}} \text{ sf @ } \$ \underline{\hspace{2cm}} / \text{sf/yr} = \$ \underline{\hspace{2cm}} / \text{yr} \div 12 = \$ \underline{\hspace{2cm}} / \text{mo.}^*$$

\*plus applicable taxes.

The Base Rent shall be paid to the Port in advance on the first day of each and every month during the term, at such place as the Port may designate, without any prior demand, and without any abatement, deduction or setoff whatsoever. If the term commences on any day other than the first day of a calendar month, Base Rent for any fractional month shall be prorated based upon the actual number of days in such fractional month.

3.2 Rent-Option to Extend. In the event that Lessee exercises the First Option to Extend set forth in Section 2.2, the Base Rent for the option term commencing on \_\_\_\_\_, 2014 thru \_\_\_\_\_, 2015 shall be \_\_\_\_\_ per month, plus applicable taxes.

Base Rent for the option period is generally computed as follows:

$$\underline{\hspace{2cm}} \text{ sf @ } \underline{\hspace{2cm}} / \text{yr} \div 12 = \$ \underline{\hspace{2cm}} / \text{mo.}^*$$

\*plus applicable taxes.

3.3 Rent-Option to Extend. In the event that Lessee exercises the Second Option to Extend set forth in Section 2.2, the Base Rent for the option term commencing on \_\_\_\_\_, 2015 thru \_\_\_\_\_, 2016 shall be \_\_\_\_\_ per month, plus applicable taxes.

Base Rent for the option period is generally computed as follows:

$$\underline{\hspace{2cm}} \text{ sf @ } \underline{\hspace{2cm}} / \text{yr} \div 12 = \$ \underline{\hspace{2cm}} / \text{mo.}^*$$

\*plus applicable taxes.

3.4 Rent-Option to Extend. In the event that Lessee exercises the Third Option to Extend set forth in Section 2.2, the Base Rent for the option term commencing on \_\_\_\_\_, 2016 thru \_\_\_\_\_, 2017 shall be \_\_\_\_\_ per month, plus applicable taxes.

Base Rent for the option period is generally computed as follows:

$$\underline{\hspace{2cm}} \text{ sf @ } \underline{\hspace{2cm}} / \text{yr} \div 12 = \$ \underline{\hspace{2cm}} / \text{mo.}^*$$

\*plus applicable taxes.

3.5 Rent-Option to Extend. In the event that Lessee exercises the Fourth Option to Extend set forth in Section 2.2, the Base Rent for the option term commencing on \_\_\_\_\_, 2017 thru \_\_\_\_\_, 2018 shall be \_\_\_\_\_ per month, plus applicable taxes.

Base Rent for the option period is generally computed as follows:

$$\underline{\hspace{2cm}} \text{ sf @ } \underline{\hspace{2cm}} / \text{yr} \div 12 = \$ \underline{\hspace{2cm}} / \text{mo.}^*$$

\*plus applicable taxes.

3.6 Late Charges.

3.6.1 Lessee hereby acknowledges that late payment by Lessee to the Port of Rent, or any portion thereof, or any other sums due hereunder will cause the Port to incur

costs not otherwise contemplated by this Lease. Accordingly, if any installment of Rent, or any portion thereof, or any other sum due from Lessee shall not be received by the Port within ten (10) days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay the Port a late charge equal to 5% of such overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs the Port will incur by reason of late payment by Lessee. Acceptance of such late charge by the Port shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent the Port from exercising any of the other rights and remedies granted hereunder.

3.6.2 In addition to the late charges provided for in this Section, interest shall accrue on any unpaid Rent and/or other remuneration, or any other sums due hereunder, at the rate of 18% per annum or the maximum rate provided by law, whichever is less, ("the Default Rate") from the date due until paid.

3.7 Use of Term Rent. The Port and Lessee agree that the term "Rent" shall mean and refer collectively to sums denominated as either Base Rent, Percentage Rent (if any), Additional Rent (if any) or any such other sums or charges otherwise payable by Lessee under the terms of this Lease. Failure by Lessee to pay any sum denominated as Rent shall entitle the Port to pursue any or all remedies specified in this Lease as well as remedies specified in RCW Chapter 59.12 or otherwise allowed by law.

#### SECTION 4: SECURITY

4.1 Security. No security will be required for this Lease.

#### SECTION 5: USE OF PREMISES

5.1 Use of Premises. Lessee shall use the Premises for stockpiling and processing of jet grouting spoils from the Alaskan Way Seawall Project (the "Use") and shall not use them for any other purpose without the written consent of the Port. No later than thirty (30) days before occupation of the Premises, the Lessee shall submit an Operating Plan to the Port for approval. The Port will respond within fifteen (15) days of the submission. Once approved, the Operating Plan shall become a condition of use. The Operating Plan may be amended at any time throughout the term of the lease through written approval by the Lessee and the Port, but without further approval by the Seattle City Council.

5.2 General Standards Regarding Use.

5.2.1 Lessee shall occupy and use the entire Premises for the purpose set forth in Section 5.1 in a first-class manner continuously during the entire term of this Lease, with the exception of temporary closures for such periods as may reasonably be necessary for repairs or for reasons beyond Lessee's reasonable control.

5.2.2 Lessee shall not use or occupy or permit the Premises or any part thereof to be used or occupied, in whole or in part, in a manner which would in any way: (i) violate any present or future Legal Requirements, (ii) violate any of the covenants, agreements, provisions and conditions of this Lease, (iii) violate the certificate of occupancy then in force with respect thereto, (iv) as will constitute a public or private nuisance, (v) impair, in the Port's reasonable judgment, with the character, reputation or appearance of the Port, or (vi) occasion discomfort, inconvenience or annoyance to either the Port or its adjoining tenants. For purposes of this Lease, the term "Legal Requirements" shall mean and refer to all laws, statutes and ordinances including building codes and zoning regulations and ordinances and the orders, rules, regulations and requirements of all federal, state, county, city or other local jurisdiction departments, agencies, bureaus, offices and other subdivisions thereof, or any official thereof, or of any other governmental, public or quasi-public authority, which may be applicable to or have jurisdiction over the Premises, or the sidewalks or streets adjacent thereto and all requirements, obligations and conditions of all instruments of record on the date of this Lease.

5.2.3 Lessee shall not conduct or permit to be conducted without the prior written consent of the Port, any auction, fire, bankruptcy, "going out of business" or other distress sales of any nature upon or from the Premises, whether voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other insolvency proceeding, unless ordered by a court of competent jurisdiction.

Formatted: Don't adjust space between Latin and Asian text

Formatted: Don't adjust space between Latin and Asian text



5.3 Continuing Compliance. Throughout the term of this Lease, Lessee shall, at its own cost and expense, promptly and diligently observe and comply with: (i) all Legal Requirements (including, without limitation, those relating to environmental matters) and the requirements of any fire insurance rating organization and all insurance companies writing policies covering the Premises or any part or parts thereof; (ii) all applicable rules and regulations of the Port pertaining to the building or other realty of which the Premises are a part now in existence or hereafter promulgated for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public; and (iii) all permits, licenses, franchises and other authorizations required for Lessee's use of the Premises or any part thereof (iv) continued monitoring of the Use and compliance in relation to the Operating Plan. Lessee shall comply with each of these whether or not they are now in force or at any time in the future may be passed, enacted, or directed.

#### 5.4 Terminal Security.

5.4.1 Without limiting the generality of either Section 5.2 or 5.3, Lessee shall comply at all times with all local, state and federal laws, rules and regulations relating to homeland security ("Security Laws") applicable to the Premises or any larger facility of which the Premises are a part. If the Premises, either directly or as a result of its location within a larger Port facility, are subject to a government-required security plan ("Security Plan"), Lessee will fully and promptly comply with the Security Plan. Lessee shall be solely responsible for all of its costs of complying with any applicable Security Laws or Security Plan as well as any fines or penalties incurred (whether by Lessee or the Port) as result of its failure to comply with such Security Laws or Security Plan.

5.4.2 Lessee shall not—without the Port's separate, express written agreement—undertake any activities or handle any cargo that would either: (i) subject the Premises, or any larger facility of which the Premises are a part, to any Security Laws to which it is not already then-subject, or (ii) require the adoption of, or any material modification to, a Security Plan applicable to the Premises, or any larger facility of which the Premises are a part (together, "Additional Security Requirement"). In addition to its own costs of complying with any Additional Security Requirement, Lessee shall further be responsible to the Port for any costs it incurs in complying with any Additional Security Requirement or any fines or penalties incurred as a result of its failure to implement, or comply with, such Additional Security Requirement.

5.5 No Liens. Lessee will not directly or indirectly create or permit to be created and/or to remain, a Lien upon the Premises, including any Alterations (as defined below in Section 7.1), fixtures, improvements or appurtenances thereto, except those Liens expressly permitted by in writing by the Port. In the event any such Lien(s) have been created by or permitted by Lessee in violation of this provision, Lessee shall immediately discharge as of record, by bond or as otherwise allowed by law, any such Lien(s). Lessee shall, to the extent of available appropriations, also defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port from any action, suit or proceeding brought on or for the enforcement of such lien(s). As used in this Section, "Lien" shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Premises, any Alteration, fixture, improvement or appurtenance thereto, or any larger building and/or property of which the Premises may be a part.

5.6 Signs. No sign, symbols or other advertising matter shall be attached to or painted on or within the Premises, including windows and doors thereof, without the prior written approval of the Port. At the expiration or sooner termination of this Lease, all signs, symbols, advertising matter or canopies placed on or in the Premises by Lessee shall be removed by Lessee at its expense, and Lessee shall repair any damage or injury to the Premises and correct any unsightly condition caused by the maintenance or removal of said signs or other advertising matter.

### SECTION 6: UTILITIES

6.1 Utilities. Lessee shall be liable for providing all utilities necessary for the permitted use and shall pay throughout the term of this Lease, all charges for all utility services furnished to the Premises, including, but not limited to, light, heat, electricity, or equivalent, natural gas, water, sewerage, recycling, garbage disposal and janitorial services. If

Formatted: Don't adjust space between Latin and Asian text

restroom/shower and/or kitchen facilities are needed for the use of the Premise, all sewage from these activities must be collected, contained and not allowed to enter the storm drainage facilities.

6.2 Utility Interruptions. Lessee is responsible for the installation of the necessary utility services. With respect to any utility service provided to the Premises as a part of any larger premises of which the Premises are a part, the Port shall have the right to shut down electrical or other utility services to the Premises when necessitated by safety, repairs, alterations, connections, upgrades, relocations, reconnections, or for any other reason, with respect to any such utility system (singularly or collectively, "Utility Work"), regardless of whether the need for such Utility Work arises in respect of the Premises, any other part of the building or larger premises. Whenever possible, the Port shall give Lessee no less than two (2) days prior notice for such utility shutdown. The Port shall not be liable to Lessee for any losses, including loss of income or business interruption, resulting from any interruptions or failure in the supply of any utility to the Premises, except when such losses result from the Port's gross negligence.

#### SECTION 7: ALTERATIONS; OWNERSHIP OF CERTAIN INSTALLATIONS

7.1 Limitation on Alterations. Lessee shall make no changes, alterations, additions, substitutions or improvements (collectively referred to as "Alterations") to the Premises, unless Lessee shall first deliver to the Port plans and specifications for, and obtain the Port's prior written approval of, such Alterations. All such Alterations shall be done at Lessee's sole cost and expense and at such times and subject to such conditions as the Port may from time to time designate.

7.2 Requirements for All Alterations. In addition to, and not in lieu of, conditions imposed by the Port pursuant to Section 7.1, any alterations or improvements permitted by the Port shall be performed: (i) in a good and workmanlike manner; (ii) in compliance with all Legal Requirements; and (iii) in a manner which will not unreasonably interfere with or disturb other tenants of the Port. In addition, prior to commencement of any Alterations, Lessee shall furnish to the Port proof of insurance for any and all contractors working on behalf of Lessee in the minimum form and limits as set forth in Sections ~~Error! Reference source not found.~~ ~~Error! Reference source not found.~~ 11.2.1 and ~~Error! Reference source not found.~~ ~~Error! Reference source not found.~~ 11.2.1.2. Any Alterations shall immediately become the property of the Port without any obligation on its part to pay therefor, and shall not be removed by Lessee unless directed to do so in connection with any consent issued under Section 7.1 or pursuant to Section 18.

7.3 Trade Fixtures. Lessee shall retain ownership of all equipment, trade fixtures, business equipment and furnishings from time to time installed by Lessee at its expense. Lessee may remove any of such fixtures, equipment or furnishings at any time during the term and shall remove all thereof prior to the expiration of the term. Any such property not removed at the expiration of the term shall, at the election of the Port, become the property of the Port without payment to Lessee, or be deemed abandoned and removed by the Port, at Lessee's expense. Upon any removal of such property, Lessee shall promptly repair any and all damage to the Premises caused thereby and reimburse the Port for its costs and expenses in removing any such property not removed by Lessee and repairing any such damage not repaired by Lessee; this covenant shall survive the termination of this Lease.

#### SECTION 8: MAINTENANCE AND REPAIR

##### 8.1 Maintenance and Repair by Lessee.

8.1.1 Lessee shall, at its sole cost and expense, keep the Premises, together with all Alterations, equipment and installations, in good order, condition and repair at all times. Lessee shall make all repairs and replacements (ordinary as well as extraordinary, foreseen and unforeseen) which may be necessary or required so that at all times the Premises are in good order, condition and repair. Without limiting the generality of the foregoing, Lessee shall perform their Use of the Premises based on to the Operating Plan and shall not permit or suffer any waste, damages, or disfigurement to or upon the Premises or any part thereof.

Formatted: Don't adjust space between Latin and Asian text

Formatted: Don't adjust space between Latin and Asian text

8.1.2 Lessee shall also keep the Premises, drive lanes and entryways neat, clean and in sanitary condition, free from infestation of pests and conditions which might result in harborage for, or infestation of pests. As used in this Section, the word "pests," as used herein, shall include without limitation, rodents, insects, and birds in numbers to the extent that a nuisance is created. Lessee shall also be responsible for all snow and ice removal related to ingress and egress to and from the Premises.

8.2 Maintenance and Repair by Port. The Port is under no obligation to undertake maintenance repairs to the Premises.

#### SECTION 9: TAXES

9.1 Payment of Taxes. Lessee shall be liable for, and shall pay throughout the term of this Lease, all license fees and all taxes payable for, or on account of, the activities conducted on the Premises and all taxes on the property of Lessee on the Premises and any taxes on the Premises and/or on the leasehold interest created by this Lease and/or any taxes levied in lieu of a tax on said leasehold interest and/or any taxes levied on, or measured by, the rentals payable hereunder, whether imposed on Lessee or on the Port. With respect to any such taxes payable by the Port which are on or measured by the Rent payments hereunder, Lessee shall pay to the Port with each Rent payment an amount equal to the tax on, or measured by, that particular payment. All other tax amounts for which the Port is or will be entitled to reimbursement from Lessee shall be payable by Lessee to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided, that Lessee shall be entitled to a minimum of ten (10) days' written notice of the amounts payable by it.

9.2 Personal Property Taxes. Lessee shall pay or cause to be paid, prior to delinquency, any and all taxes and assessments levied upon all trade fixtures, inventories and other real or personal property placed or installed in and upon the Premises by Lessee. If any such taxes on Lessee's personal property or trade fixtures are levied against the Port or the Port's property, and if the Port pays the taxes based upon such increased assessment, Lessee shall, upon demand, repay to the Port the taxes so levied.

#### SECTION 10: COMMON AREAS

10.1 Control of Common Areas by Port. The Port shall at all times have the exclusive control and management of all parking areas, access roads, driveways, sidewalks, entrances, exits, signs, drainage facilities, landscaped areas, and other areas, improvements, facilities and/or special services provided by the Port for the general use, in common, of tenants of any larger property of which the Premises are a part ("common areas and facilities"). Without limiting the Port's right of control and management, the Port specifically reserves the right to: (i) establish, modify from time to time, and enforce reasonable rules and regulations governing the use of the common areas and facilities; (ii) police the common areas and facilities; (iii) change the area, level, location and arrangement of parking and other areas or facilities within common areas and facilities; (iv) provided Lessee is not deprived of reasonable access to its Premises, close all or any portion of the common areas and facilities; and (v) do and perform such other acts in and to the common areas and facilities as, in the use of good business judgment, the Port shall determine to be advisable with a view to the improvement of the convenience and use thereof by the Port and tenants of any larger property of which the Premises are a part.

10.2 Main Gate. The property is served by a common gate off of Harbor Avenue SW, the location of which is indicated on Exhibit B (the "Main Gate"). The parties agree that the Main Gate, shall remain closed except for when it is in active use, and only Lessee, the Port (as permitted under the terms and conditions of this Lease), or a tenant of the adjacent Port owned property shall have access via the Main Gate. The Port shall be responsible for the maintenance and operations of the Main Gate.

10.3 License. All common areas and facilities which Lessee is permitted to use and occupy are used and occupied under a revocable license. If the amount of such areas or facilities is revised or diminished, such revision or diminution shall not be deemed a constructive or actual eviction, and the Port shall not be subject to any liability, nor shall Lessee be entitled to any compensation or reduction or abatement of Rent.

Formatted: Don't adjust space between Latin and Asian text

Formatted: Don't adjust space between Latin and Asian text

## SECTION 11: INSURANCE AND INDEMNITY

Formatted: Don't adjust space between Latin and Asian text

### 11.1 Indemnity.

11.1.1 The Port, its officers, employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by Lessee or by others, including but not limited to all persons directly or indirectly employed by Lessee, or any agents, contractors, subcontractors, licensees or invitees of Lessee, as a result of any condition (including existing or future defects in the Premises) or occurrence (including failure or interruption of utility service) whatsoever related in any way to Lessee's use or occupancy of the Premises and of areas adjacent thereto.

11.1.2 Lessee shall defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port and its Commissioners, officers, agents and employees from any and all loss, damages, expenses, attorneys' fees, consultants' fees, court costs and other costs for or from: (a) anything and everything whatsoever arising from the condition the Premises or out of the occupancy by the Lessee or subtenant, licensee, invitee or concessionaire of Lessee; and (b) any accident, injury, death or damage to any party however caused in or about the Premises or upon the sidewalks adjacent to the Premises, whether or not caused by the negligence of Lessee or any third party; and (c) any fault or negligence by Lessee or any sublessee, licensee, invitee or concessionaire of the Lessee or of any officer, agent, employee, guest or invitee of any such person; and (d) any failure on Lessee's part to comply with any of the covenants, terms and conditions contained in this Lease, *provided, however*, nothing herein shall require Lessee to indemnify the Port from any accident, injury, death or damage arising out of the sole negligence of the Port or its Commissioners, officers, agents and employees. Lessee agrees that the foregoing indemnity specifically covers actions brought by its own employees, and thus Lessee expressly waives its immunity under industrial insurance, Title 51, as necessary to effectuate this indemnity.

11.1.3 Notwithstanding anything to the contrary in Section 11.1.2, in the event of the concurrent negligence of Lessee, its subtenants, licensees, assignees, concessionaires, agents, employees, or contractors on the one hand and the negligence of the Port, its agents, employees or contractors on the other hand, which concurrent negligence results in injury or damage to persons or property of any nature and howsoever caused, and relates to the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of the Premises such that RCW 424.118 is applicable, Lessee's obligation to indemnify the Port as set forth in this Section shall be limited to the extent of Lessee's negligence and that of Lessee's officers, sublessees, assignees, agents, employees, contractors or licensees, including Lessee's proportional share of costs, court costs, attorneys' fees, consultants' fees and expenses incurred in connection with any claim, action or proceeding brought with respect to such injury or damage.

11.1.4 LESSEE AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION. Lessee's obligations under this Section shall survive the expiration or earlier termination of this Lease. The indemnity provided by the Lessee in Sections 5.5, 11.1.2, and 11.1.3, 18.1, 19.7 and 20.2 ~~is~~ is valid only to the extent that they ~~are~~ are permitted under RCW 35.32.A090. If it shall be finally determined by a court of competent jurisdiction that ~~any~~ any the indemnity provided by the Lessee in ~~this Lease Section 11.1.2~~ this Lease Section 11.1.2 is prohibited by, or is inconsistent with, RCW 35.32A.090, the indemnity shall, to the extent so determined (but only to such extent), be of no force or effect and the remainder of this Agreement shall not be deemed void or voidable by virtue of such determination. The Port acknowledges that the Lessee has made no representation or warranty as to the effectiveness of the indemnities provided by the Lessee.

### 11.2 Insurance.

- A. Prior to commencement of services under this Lease, Lessee at Lessee's expense shall procure and maintain a continuous program of commercial insurance, self insurance, or a combination of commercial and self-insurance that is acceptable to the Port.

- B. If commercial insurance is utilized, Lessee shall submit to the Port a Certificate of Insurance which shows that it has obtained the required coverage, at Lease inception and annually throughout the term of the Lease.
- C. If Lessee opts to self-insure, then Lessee shall submit to the Port a self-insurance program summary that allows the Port to establish the solvency of the self-insurance program, at Lease inception and annually throughout the term of the Lease.
- D. The following coverage and limits shall be provided using commercial insurance, self-insurance, or a combination of commercial and self-insurance.
1. Commercial General Liability insurance on ISO Form CG 00 01 10 01 (or equivalent) for third party property damage, bodily injury, personal and advertising injury, and medical payments in an amount which is not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. The insurance shall cover liability arising from premises, operations, independent contractors, products completed operations, personal and advertising injury, and liability assumed under an insured contract. The Port shall be named as an additional insured on an endorsement that is approved by the Port.
  2. Automobile Liability Insurance shall be provided in an amount not less than \$1,000,000 per occurrence on a combined single limit basis for bodily injury and property damage using ISO Form CA 00 01 (or equivalent).
  3. Property Insurance - Evidence of property insurance shall be provided to include coverage on a replacement basis for all improvements and Betterments (Alterations) that the Lessee is entitled to make under this Lease. The Port bears no responsibility or liability for any personal property of the Lessee on the Premises.
- E. Contractor's working on behalf of Lessee on the Premises shall have an equivalent program of insurance to what this Lease requires of Lessee.

11.2.1.1 *Other Insurance.* Lessee shall further obtain and keep in force such other and further insurance as the Port may from time to time reasonably request for the protection by insurance of its interest in the Premises.

The limits of insurance specified in this Section shall be subject to periodic adjustment to reflect changes in insuring practices for similar properties in the same geographic area and changes in insurance products.

#### 11.2.2 *Insurance Policies.*

11.2.2.1 *Insurance Companies.* Insurance required hereunder shall be in companies duly licensed to transact business in the State of Washington, and maintaining during the policy term a General Policyholders Rating of 'A-' or better and a financial rating of 'IX' or better, as set forth in the most current issue of "Best's Insurance Guide."

11.2.2.2 *Policies Primary; Deductibles; Per Location Endorsement.* All insurance to be carried by Lessee shall be primary to and not contributory with any similar insurance carried by the Port, whose insurance shall be considered excess insurance only. No insurance required herein shall contain a deductible or self-insured retention in excess of \$10,000 without the prior written consent of the Port. If at any time during the term, Lessee shall have in full force and effect a blanket policy of commercial general liability and umbrella liability insurance covering the Premises and other premises and/or properties of Lessee, such insurance shall satisfy the requirements hereof, provided said policy contains a specific endorsement providing a minimum amount of coverage applicable to the Premises equal to or greater than the amount required above (i.e. a "per location" endorsement).

11.2.2.3 *Termination; Renewal.* No policy of insurance required under this Lease shall be cancelable or subject to non-renewal or modification except after forty five (45) days prior written notice to the Port. Lessee shall at least forty five (45) days prior to the expiration of such policies, furnish the Port with evidence of renewals or "insurance binders"

evidencing renewal thereof, or the Port may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to the Port upon demand.

11.2.2.4 *Evidence of Insurance.* Lessee shall deliver, or cause to be delivered, to the Port, certificates of insurance, additional insured endorsements, loss payee endorsements for property insurance, waivers of subrogation and any other documentation or endorsement that provides evidence of the existence and amounts of such insurance, the inclusion of the Port as an insured as required by this Lease, and the amounts of all deductibles and/or self insured retentions. Upon request by the Port, Lessee shall deliver or cause to be delivered to the Port, certified copies of the policies of insurance that Lessee has purchased in order for the Port to verify insurance coverage, limits, and endorsements or view any exclusions to the Lessee's insurance policies.

11.2.2.5 *No Limitation of Liability.* The limits of insurance required by this Lease or as carried by Lessee shall not limit the liability of Lessee nor relieve Lessee of any obligation hereunder.

11.3 *Waiver of Subrogation.* Without affecting any other rights or remedies, Lessee (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against the Port, its officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to Lessee arising out of or incident to the perils required to be insured against under this Lease. Accordingly, Lessee shall cause each insurance policy required by this Section 11.2 to further contain a waiver of subrogation clause. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

11.4 *Increase in Port's Cost of Insurance.* Lessee shall not use the Premises in such a manner as to increase the existing rates of insurance applicable to the buildings or structures of which the Premises are a part. If nevertheless does so, then, at the option of the Port, the full amount of any resulting increase in premiums paid by the Port with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the term of this Lease, may be added to the amount of Rent and shall be paid by Lessee to the Port upon the monthly rental day next thereafter occurring.

## SECTION 12: DAMAGE OR DESTRUCTION

12.1 *Duty to Repair.* If the Premises are damaged by fire, the elements, earthquake, accident or other casualty (collectively, "Casualty"), the Port shall, except to the extent either party has the right to terminate this Lease under Section 12.2, use reasonable efforts to repair and restore the Premises to substantially their former condition to the extent permitted by then-applicable Legal Requirements; *provided, however,* the Port's obligation to repair and restore shall not extend to any Alterations or any of Lessee's personal property, specifically including that which Lessee retains ownership of under Section 7.3.

12.2 *Right to Terminate.* The Port may elect to terminate this Lease in the event that the Port, in its sole judgment, concludes that the damage to the Premises or any buildings or structures of which the Premises are a part cannot be repaired within thirty (30) days of the Casualty (with the repair work and the preparations therefor to be done during regular working hours on regular work days). In the event that the Port elects to terminate this Lease, the Port shall advise Lessee of that fact within thirty (30) days of the date of the Casualty and notify Lessee of the date, not more than ninety (90) days after the Casualty, on which the Lease will terminate.

12.3 *Abatement of Rent.* Unless the casualty results from Lessee's negligence or breach of the terms of this Lease, the Base Rent and Additional Rent, if any, shall be abated for any portion of the Premises that is rendered untenable or inaccessible from the period from the date of the Casualty through the date of substantial completion of the repairs to the Premises (or to the date of termination of the Lease if either party shall elect to terminate the Lease). The Port shall not otherwise be liable to Lessee for any loss in the use in the whole or any part of the Premises (including loss of business) and/or any inconvenience or annoyance occasioned by the Casualty, by any damage resulting from the Casualty, or by any repair, reconstruction or restoration.

Formatted: Don't adjust space between Latin and Asian text

12.4 Waiver. Except as specifically set forth in this Lease, Lessee hereby waives any right that Lessee may have, under any applicable existing or future law, to terminate this Lease in the event of any damage to, or destruction of, the Premises or any buildings or structures of which the Premises are a part.

#### SECTION 13: ASSIGNMENT AND SUBLEASE

Formatted: Don't adjust space between Latin and Asian text

13.1 Prohibition. Lessee shall not, in whole or in part, assign, sublet, license or permit occupancy by any party other than Lessee of all or any part of the Premises, without the prior written consent of the Port in each instance. Lessee shall at the time the Lessee requests the consent of the Port, deliver to the Port such information in writing as the Port may reasonably require respecting the proposed assignee, subtenant or licensee including without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee, subtenant or licensee. Within twenty (20) business days after receipt of all required information, the Port shall, in its sole discretion, elect one of the following: (a) to consent to such proposed assignment, sublease or license or (b) to refuse such consent.

13.1.1 As a condition for the Port's consent to any assignment, encumbrance or sublease, the Port may require that the assignee, sublessee or licensee remit directly to the Port on a monthly basis, all monies due to Lessee by said assignee, sublessee or licensee (except with respect to excess rentals otherwise due Lessee pursuant to Section 13.2). In addition, a condition to the Port's consent to any assignment, sublease or license of this Lease or the Premises shall be the delivery to the Port of a true copy of the fully executed instrument of assignment, sublease or license and an agreement executed by the assignee, sublessee or licensee in form and substance satisfactory to the Port and expressly enforceable by the Port, whereby the assignee, sublessee or licensee assumes and agrees to be bound by the terms and provisions of this Lease and perform all the obligations of Lessee hereunder.

13.1.2 In the event of any assignment, Lessee and each respective assignor, waives notice of default by the tenant in possession in the payment and performance of the Rent, covenants and conditions of this Lease and consents that the Port may in each and every instance deal with the tenant in possession, grant extensions of time, waive performance of any of the terms, covenants and conditions of this Lease and modify the same, and in general deal with the tenant then in possession without notice to or consent of any assignor, including Lessee; and any and all extensions of time, indulgences, dealings, modifications or waivers shall be deemed to be made with the consent of Lessee and of each respective assignor.

13.1.3 Lessee agrees that any sublease or license will contain a provision in substance that if there be any termination whatsoever of this Lease then the subtenant or licensee, at the request of the Port, will attorn to the Port and the sublessee or licensee, if the Port so requests, shall continue in effect with the Port, but the Port shall be bound to the subtenant or licensee in such circumstances only by privity of estate. Nothing herein shall be deemed to require the Port to accept such attornment.

13.1.4 No assignment, subletting or license by Lessee shall relieve Lessee of any obligation under this Lease, including Lessee's obligation to pay Rent or any other sum hereunder. Any purported assignment, subletting or license contrary to the provisions hereof without consent shall be void. The consent by the Port to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.

13.1.5 Lessee shall reimburse the Port in the sum of Five Hundred Dollars (\$500.00) plus any reasonable professionals' fees and expenses incurred by the Port in connection with any request by Lessee for consent to an assignment, subletting or license.

13.2 Excess Rental. If in connection with any assignment, sublease or license, Lessee receives rent or other monetary consideration, either initially or over the term of the assignment or sublease, in excess of the Rent called for hereunder, or in case of the sublease of a portion of the Premises, in excess of such Rent fairly allocable to such portion, after appropriate adjustments to assure that all other payments called for hereunder and out-of-pocket expenditures, operating costs or concessions incurred by Lessee in connection with such assignment, sublease or license, are appropriately taken into account, Lessee shall pay to the Port, as Additional Rent hereunder, seventy-five percent (75%) of the excess of each such payment of rent or other consideration received by Lessee after its receipt.

13.3 Scope. The prohibition against assigning or subletting contained in this Section 13 shall be construed to include a prohibition against any assignment or subletting by operation of law. Furthermore, for purposes of this Section 13, any sale, transfer or other disposition in the aggregate of fifty percent (50%) or more of the equity ownership in Lessee (i.e. stock with respect to tenant corporation, partnership interests with respect to a tenant partnership, etc.) shall be deemed an assignment. If this Lease be assigned, or if the underlying beneficial interest of Lessee is transferred, or if the Premises or any part thereof be sublet or occupied by anybody other than Lessee, the Port may collect Rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess Rent so collected in accordance with the terms of Section 13.2, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained. No assignment or subletting shall affect the continuing primary liability of Lessee (which, following assignment, shall be joint and several with the assignee), and Lessee shall not be released from performing any of the terms, covenants and conditions of this Lease.

#### SECTION 14: DEFAULT

Formatted: Don't adjust space between Latin and Asian text

14.1 Defaults. Time is of the essence of this Lease. The occurrence of any one or more of the following events constitutes a default of this Lease by Lessee with or without notice from the Port:

- 14.1.1 The vacating or abandonment of the Premises by Lessee.
- 14.1.2 The failure by Lessee to make any payment of Rent, or any other payment required by this Lease, when due.
- 14.1.3 The failure by Lessee to observe or perform any covenant, condition, or agreement to be observed or performed by Lessee in this Lease.
- 14.1.4 The discovery by the Port that any required report, financial statement or background statement provided to the Port by Lessee, any successor, grantee, or assign was materially false.
- 14.1.5 The filing by Lessee of a petition in bankruptcy, Lessee being adjudged bankrupt or insolvent by any court, a receiver of the property of Lessee being appointed in any proceeding brought by or against Lessee, Lessee making an assignment for the benefit of creditors, or any proceeding being commenced to foreclose any mortgage or other lien on Lessee's interest in the Premises or on any personal property kept or maintained on the Premises by Lessee.

#### 14.2 Remedies

14.2.1 Whenever any default (other than a default under Section 14.1.5 above) upon which termination of this Lease shall, at the Port's option, be effective immediately without further notice) continues unremedied in whole or in part for thirty (30) days after written notices provided by the Port to Lessee (or for ten (10) days after written notice in the case of default for failure to pay any Rent, or other required payment when due), this Lease and all of Lessee's rights under it will automatically terminate if the written notice of default so provides. Upon termination, the Port may reenter the Premises using such force as may be necessary and remove all persons and property from the Premises. The Port will be entitled to recover from Lessee all unpaid Rent or other payments and damages incurred because of Lessee's default including, but not limited to, the costs of re-letting, including tenant improvements, necessary renovations or repairs, advertising, leasing commissions, and attorney's fees and costs ("Termination Damages"), together with interest on all Termination Damages at the Default Rates from the date such Termination Damages are incurred by the Port until paid.

14.2.2 In addition to Termination Damages, and notwithstanding termination and reentry, Lessee's liability for all Rent or other charges which, but for termination of the Lease, would have become due over the remainder of the Lease term ("Future Charges") will not be extinguished and Lessee agrees that the Port will be entitled, upon termination for default, to



collect as additional damages, a Rental Deficiency. "Rental Deficiency" means, at the Port's election, either:

14.2.2.1 An amount equal to Future Charges, less the amount of actual rent, if any, which the Port receives during the remainder of the Lease term from others to whom the Premises may be rented, in which case such Rental Deficiency will be computed and payable at the Port's option either:

14.2.2.1.1 In an accelerated lump-sum payment; or

14.2.2.1.2 In monthly installments, in advance, on the first day of each calendar month following termination of the Lease and continuing until the date on which the Lease term would have expired but for such termination, and any suit or action brought to collect any portion of Rental Deficiency attributable to any particular month or months, shall not in any manner prejudice the Port's right to collect any portion of Rental Deficiency by a similar proceeding; or

14.2.2.2 An amount equal to Future Charges less the aggregate fair rental value of the Premises over the remaining Lease term, reduced to present worth. In this case, the Rental Deficiency must be paid to the Port in one lump sum, on demand, and will bear interest at the Default Rate until paid. For purposes of this subparagraph, "present worth" is computed by applying a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank in, or closest to, Seattle, Washington.

14.2.3 If this Lease is terminated for default as provided in this Lease, the Port shall use reasonable efforts to re-let the Premises in whole or in part, alone or together with other premises, for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the Lease term), for such use or uses and, otherwise on such terms and conditions as the Port, in its sole discretion, may determine, but the Port will not be liable for, nor will Lessee's obligations under this Lease be diminished by reason for any failure by the Port to re-let the Premises or any failures by the Port to collect any rent due upon such re-letting.

14.2.4 In addition to the rights granted by Section 7.3, if upon any reentry permitted under this Lease, there remains any personal property upon the Premises, the Port, in its sole discretion, may remove and store the personal property for the account and at the expense of Lessee. In the event the Port chooses to remove and store such property, it shall take reasonable steps to notify Lessee of the Port's action. All risks associated with removal and storage shall be on Lessee. Lessee shall reimburse the Port for all expenses incurred in connection with removal and storage as a condition to regaining possession of the personal property. The Port has the right to sell any property which has been stored for a period of 30 days or more, unless Lessee has tendered reimbursement to the Port for all expenses incurred in removal and storage. The proceeds of sale will be applied first to the costs of sale (including reasonable attorney's fees), second to the payment of storage charges, and third to the payment of any other amounts which may then be due and owing from Lessee to the Port. The balance of sale proceeds, if any, will then be paid to Lessee.

14.3 Remedies Cumulative. All rights, options and remedies of the Port contained in this Lease shall be construed and held to be distinct, separate and cumulative, and no one of them shall be exclusive of the other, and the Port shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease.

#### SECTION 15: TERMINATION OTHER THAN FOR DEFAULT

15.1 Major Capital Improvement. In the event that the Port, at its sole discretion, shall require the use of the Premises for a major capital improvement for public or private use in connection with the operation of the business of the Port, then this Lease may be terminated by the Port by written notice delivered or mailed by the Port to Lessee not less than one hundred twenty (120) days before the termination date specified in the notice. If Lessee is not in default under any of the provisions of this Lease on the effective date of such termination, any Rent prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of

Formatted: Don't adjust space between Latin and Asian text

the termination, be promptly refunded to Lessee. Lessee shall not be entitled to any compensation at termination for the bargain value of the leasehold or any relocation expenses.

#### 15.2 Condemnation.

15.2.1 Total Taking. In the case of a taking by eminent domain of either all of the Premises or such portion of either the Premises or any buildings or structures of which the Premises are a part as shall, in the Port's sole judgment, be required for reasonable use of the Premises, this Lease shall terminate as of the date of such taking. If Lessee is not in default under any of the provisions of this Lease on said date, any Rent prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.

15.2.2 Partial Taking. In the case of a taking of portion of the Premises or any buildings or structures of which the Premises are a part as shall *not*, in the Port's sole judgment, be required for reasonable use of the Premises, this Lease shall continue in full force and effect, and the Base Rent shall, as of the date of such taking, be equitably reduced based on the proportion by which the Premises (but not the buildings or structures of which the Premises are a part) is reduced.

15.2.3 Damages. The Port reserves all right to the entire damage award or payment for taking by eminent domain, and Lessee waives all claim whatsoever against the Port and/or the authority exercising eminent domain for damages for termination of its leasehold or for interference with its business. The Port and Lessee further agree that all decisions regarding how the eminent domain proceeding should be handled shall be made in the sole discretion of the Port (specifically including any response to a motion for order adjudicating public use and necessity or and request for immediate possession), and Lessee shall take no actions or steps which interfere with the Port's ability to control the handling of the eminent domain proceeding. Notwithstanding the foregoing, nothing in this Section shall be considered to be a waiver or assignment by Lessee of any right to relocation assistance payments or relocation advisory services which may be available in connection with the eminent domain proceeding.

15.2.4 Eminent Domain. The term "eminent domain" as used in this Section 15.2 shall include taking or damaging of property by, through or under any governmental or quasi-governmental authority and the purchase or acquisition in lieu thereof.

15.3 Court Decree. In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this Lease on the effective date of such termination, any Rent prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee. Lessee is not entitled to any compensation at termination for the bargain value of the leasehold.

### SECTION 16: ACCESS; EASEMENTS

16.1 Access to Premises. The Port shall have the right to show the Premises at all reasonable times during business hours of Lessee to any prospective purchasers, tenants or mortgagees of the same, and may at any time enter upon the Premises, or any part thereof, for the purpose of ascertaining the condition of the Premises or whether Lessee is observing and performing the obligations assumed by it under this Lease, all without hindrance or molestation from the Lessee. The Port shall also have the right to enter upon the Premises for the purpose of making any necessary repairs and performing any work that may be necessary by reason of Lessee's failure to make any such repairs or perform any such work. The above-mentioned rights of entry shall be exercisable upon request made on reasonable advance notice to Lessee (except that no notice shall be required in the event of an emergency) or an authorized employee of Lessee at the Premises, which notice may be given orally.

#### 16.2 Easements.

Formatted: Don't adjust space between Latin and Asian text

16.2.1 The Parties recognize that the Port facilities are continuously being modified to improve the utilities, services and premises used and provided by the Port. The Port and its authorized utility service providers are hereby granted a continuous easement or easements that the Port believes is necessary within the Premises of Lessee, without any additional cost to the Port for the purposes expressed hereinabove. The Port, its authorized utility service provider, and their respective agents, shall have the right to enter the Premises of Lessee, and to cross over, construct, move, reconstruct, rearrange, alter, maintain, repair and operate the sewer, water, and drainage lines, the electrical service, the roadways (specifically including routes of ingress and egress) and all other services and facilities required by the Port for its own use. Provided, however, that the Port by virtue of such use, does not substantially deprive Lessee from its beneficial use or occupancy of its leased area for an unreasonable period of time, not to exceed thirty (30) working days, without consent of Lessee.

16.2.2 In the event that the Port permanently deprives Lessee from such beneficial use or occupancy, then an equitable adjustment in Rent, or in the cost required to modify its Premises to allow the Lessee to operate its business, will be negotiated and paid by the Port to Lessee. In the event that such entry by the Port is temporary in nature, then the Port shall reimburse Lessee for the cost required to modify its Premises for the temporary period that Lessee is inconvenienced by such Port entry. The Port will not be responsible to Lessee for any reduced efficiency or loss of business occasioned by such entry.

#### SECTION 17: NONWAIVER; RIGHT TO PERFORM

17.1 Receipt of Monies Following Termination. No receipt of monies by the Port from Lessee after the termination or cancellation of this Lease in any lawful manner shall (i) reinstate, continue or extend the term of this Lease; (ii) affect any notice theretofore given to Lessee; (iii) operate as a waiver of the rights of the Port to enforce the payment of any Rent and fees then due or thereafter falling due; or (iv) operate as a waiver of the right of the Port to recover possession of the Premises by proper suit, action, proceeding or remedy; it being agreed that after the service of notice to terminate or cancel this Lease, or after the commencement of suit, action or summary proceedings for any other remedy, or after a final order or judgment for the possession of the Premises, the Port may demand, receive and collect any monies due, or thereafter falling due, without in any manner affecting such notice, proceeding, suit, action or judgment; and any and all such monies collected shall be deemed to be payments on account of the use and occupation and/or Lessee's liability hereunder.

17.2 No Waiver of Breach. The failure of the Port to insist in any one or more instances, upon a strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver of or relinquishment for the future of the performance of such covenant, or the right to exercise such option, but the same shall continue and remain in full force and effect. The receipt by the Port of the Rent or fees, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Port of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Port. The consent or approval of the Port to or of any act by Lessee requiring the Port's consent or approval shall not be deemed to waive or render unnecessary the Port's consent or approval to or of any subsequent similar acts by Lessee.

17.3 No Waiver of Rent. The receipt by the Port of any installment of Rent or of any amount shall not be a waiver of any Rent or other amount then due.

17.4 Application of Payments. The Port shall have the right to apply any payments made by Lessee to the satisfaction of any debt or obligation of Lessee to the Port, in the Port's sole discretion and regardless of the instructions of Lessee as to application of any such sum, whether such instructions be endorsed upon Lessee's check or otherwise, unless otherwise agreed upon by both parties in writing. The acceptance by the Port of a check or checks drawn by others than Lessee shall in no way affect Lessee's liability hereunder nor shall it be deemed an approval of any assignment of this Lease or subletting by Lessee.

17.5 Port's Right to Perform. Upon Lessee's failure to perform any obligation or make any payment required of Lessee hereunder, the Port shall have the right (but not the obligation) to perform such obligation of Lessee on behalf of Lessee and/or to make payment on behalf of Lessee to such parties. Lessee shall reimburse the Port the reasonable cost of the Port's

Formatted: Don't adjust space between Latin and Asian text

performing such obligation on Lessee's behalf, including reimbursement of any amounts that may be expended by the Port, plus interest at the Default Rate.

#### SECTION 18: SURRENDER AND HOLDING OVER

18.1 Surrender. At the expiration or sooner termination of this Lease, Lessee shall promptly: (i) surrender possession of the Premises to the Port in the same condition in which received (or, if altered, then the Premises shall be returned in such altered condition unless otherwise directed), reasonable wear and tear excepted and (ii) deliver to the Port all keys that it may have to any and all parts of the Premises. If the Premises are not surrendered as provided in this Section, Lessee shall, to the extent of available appropriations, indemnify and hold the Port harmless against loss or liability resulting from the delay by Lessee in so surrendering the Premises, including, without limitation, any claims made by any succeeding occupant founded on such delay.

18.2 Holding Over. If Lessee, with the consent of the Port, holds over after the expiration or sooner termination of this Lease, the resulting tenancy will, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. During such month-to-month tenancy, Lessee shall pay to the Port, at the Port's sole discretion, the same rental rate that was in effect immediately prior to the month-to-month tenancy times 150%. Lessee will continue to be bound by all of the additional provisions of this Lease insofar as they may be pertinent.

18.3 For Rent Signs. The Port shall have the right to place and maintain "For Rent" signs in conspicuous places on the Premises for ninety (90) days prior to the expiration or sooner termination of this Lease.

#### SECTION 19: ENVIRONMENTAL STANDARDS

19.1 Definitions. "Law or Regulation" as used herein shall mean any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction) now or hereafter in effect. "Hazardous Substances" as used herein shall mean any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant, by any Law or Regulation.

19.2 Hazardous Substances. Lessee shall not allow the presence in or about the Premises of any Hazardous Substance in any manner that could be a detriment to the Premises or in violation of any Law or Regulation. Lessee shall not allow any Hazardous Substances to migrate off the Premises, or the release of any Hazardous Substances into adjacent surface waters, soils, underground waters or air. Lessee shall provide the Port with Lessee's USEPA Waste Generator Number and with copies of all Material Safety Data Sheets (MSDS), Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence Lessee receives from, or provides to, any governmental unit or agency in connection with Lessee's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises.

19.3 Violation of Environmental Law. If Lessee, or the Premises, is in violation, or Lessee's use of the Premises causes the Premises to be in violation, of any Law or Regulation concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Lessee shall promptly take such action as is necessary to mitigate and correct the violation. If Lessee does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the Lessee (Lessee hereby appoints the Port as its agent for such purposes) and to take such action as the Port deems necessary to ensure compliance or to mitigate the violation. If the Port has a reasonable belief that Lessee is in violation of any Law or Regulation, or that Lessee's actions or inactions present a threat of violation or a threat of damage to the Premises, the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems necessary. All costs and expenses incurred by the Port in connection with any such actions shall become immediately due and payable by Lessee upon presentation of an invoice therefor.

19.4 Inspection: Test Results. Lessee shall permit the Port access to the Premises at any time upon reasonable notice for the purpose of conducting environmental testing and inspecting at the Port's expense. Lessee shall not conduct or permit others to conduct

Formatted: Don't adjust space between Latin and Asian text

Formatted: Don't adjust space between Latin and Asian text

environmental testing on the Premises without first obtaining the Port's written consent. Lessee shall promptly inform the Port of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to Lessee, and Lessee shall provide copies to the Port.

19.5 Removal of Hazardous Substances. Prior to vacation of the Premises, in addition to all other requirements under this Lease, Lessee shall remove any Hazardous Substances placed on the Premises during the term of this Lease or Lessee's possession of the Premises, and shall demonstrate such removal to the Port's satisfaction. This removal and demonstration shall be a condition precedent to the Port's payment of any Security to Lessee upon termination or expiration of this Lease.

19.6 Remedies Not Exclusive. No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the Port shall be entitled to full reimbursement from Lessee whenever the Port incurs any costs resulting from Lessee's use or management of Hazardous Substances on the Premises, including but not limited to, costs of clean-up or other remedial activities, fines or penalties assessed directly against the Port, injuries to third persons or other properties, and loss of revenues resulting from an inability to re-lease or market the property due to its environmental condition (even if such loss of revenue occurs after the expiration or earlier termination of this Lease).

19.7 Environmental Indemnity. In addition to all other indemnities provided in this Lease, Lessee agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises or the migration of any Hazardous Substance from the Premises to other properties or into the surrounding environment, whether (1) made, commenced or incurred during the term of this Lease, or (2) made, commenced or incurred after the expiration or termination of this Lease if arising out of events occurring during the term of this Lease.

~~19.7.1~~ 19.7.1 Grantee's obligations under this indemnity provision shall not exceed the appropriation authorized at the time Grantee must fulfill its indemnity obligations and nothing in this Lease may be considered as insuring that Grantee will appropriate sufficient funds in the future to fulfill its indemnity obligations. Appropriated funds that are subject to this indemnity obligation include but are not limited to, funds in the Licensee's self-insurance program and in the Judgment Claims Subfund (00126) established by Ordinance 124088, and future moneys appropriated for the same purposes.

Formatted: >> 1.2.3 - Section Lvl 3

19.8 Consent Decree. Lessee acknowledges that it has been served with a copy of the Consent Decree - Former SSI Property, entered into between the State of Washington, Department of Ecology and the Port of Seattle on February 22, 1995, which is still in effect on the Premises. Lessee further acknowledges that the Port is relying on Lessee's strict and complete compliance with the terms of the Operating Plan, prepared as specified in Paragraph 19.7 of this lease, in order to ensure continued operation and maintenance of the containment system, treatment system, and monitoring system installed under this Consent Decree. Failure to comply with the Operating Plan may trigger the environmental indemnity provisions of Paragraph 19.7.

## SECTION 20: MISCELLANEOUS

Formatted: Don't adjust space between Latin and Asian text

20.1 Notice. All notices hereunder shall be in writing and shall be delivered personally, by certified or registered mail, by facsimile or by recognized overnight courier addressed as follows:

*To Lessor:*

Port of Seattle  
Attention: Lease Administration  
P. O. Box 1209  
2711 Alaskan Way

Seattle, WA 98111

Facsimile: (206) 787-3280

For payments only, the following mailing address should be used:

Port of Seattle  
P. O. Box 34249  
Seattle, WA 98124-1249

To Lessee:

City of Seattle Finance and Administration  
Attn: Property Management  
700 5<sup>th</sup> Avenue, Suite 5200  
Facsimile: (206) 684-8391

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices shall be deemed delivered (i) when personally delivered; (ii) on the third day after mailing when sent by certified or registered mail and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; (iii) on the date transmitted by facsimile, if the facsimile is confirmed received; or (iv) on the first business day after deposit with a recognized overnight courier if deposited in time to permit overnight delivery by such courier as determined by its posted cutoff times for receipt of items for overnight delivery to the recipient.

Payments may be made in the manner provided for notices or may be delivered by regular mail (postage prepaid); provided, payments made by regular mail (postage prepaid) shall be deemed delivered when actually received by the Port.

20.2 Brokers. The Port and Lessee each warrant to the other that it has had no discussions, negotiations and/or other dealings with any real estate broker or agent in connection with the negotiation of this Lease, and that it knows of no other real estate broker or agent who is or may be entitled to any commission or finder's fee in connection with this Lease. The Port and Lessee, to the extent of available appropriations, each agree to indemnify and hold the other harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, attorneys' fees and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent. This Section is not intended to benefit any third parties and shall not be deemed to give any rights to brokers or finders. No commission(s) or finder's fee(s) shall be paid to Lessee, employee(s) of Lessee or any unlicensed representative of Lessee.

20.3 Consent. Whenever the Port's prior consent or approval is required by this Lease, the same shall not be unreasonably delayed but may, unless otherwise specifically provided by this Lease, be granted or denied in the Port's sole and absolute discretion.

20.4 Wireless Devices. Lessee shall not install any wireless devices and/or transmitters on or about the Premises without the prior written consent of the Port and subject to any and all conditions in such consent. Lessee specifically grants to the Port the power to regulate and control the use of unlicensed frequency bands (including, but not limited to, FCC Part 15 Subpart C, FCC Part 15 Subpart D (both asynchronous and Isochronous), IEEE 802.11 and Bluetooth (ISM), and FCC UNII 1 and UNII 2 (IEEE 802.11a)) on or about the Premises.

20.5 Relationship to the Port and Lessee. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners, and no provision contained in this Lease nor any acts of Lessee and the Port shall be deemed to create any relationship other than that of Lessee and the Port.

20.6 Time. Time is of the essence of each and every one of Lessee's obligations, responsibilities and covenants under this Lease.

20.7 Recording. Lessee shall not record this Lease or any memorandum thereof without the Port's prior written consent.

20.8 Subordination, Attornment. Unless otherwise designated by the Port, this Lease shall be subordinate to all existing or future mortgages and deeds of trust on the Premises or any larger property of which the Premises may be a part, and to all extensions, renewals or replacements thereof. Within ten (10) days of the Port's request, Lessee shall execute and deliver all instrument or certificates which may be necessary or appropriate to reflect such subordination. Notwithstanding the foregoing, Lessee shall not be required to subordinate to future mortgages or deeds of trust unless the mortgagee or beneficiary under the deed of trust agrees that if it becomes the owner of the property, it will recognize the Lease as long as Lessee is not in default. Within ten (10) days of the Port's request, Lessee shall also execute and deliver to third parties designated by the Port an estoppel certificate or letter in the form requested by the Port or any lender the correctly recites the facts with respect to the existence, terms and status of this Lease. Lessee agrees to attorn to any successor to the Port following any foreclosure, sale or transfer in lieu thereof.

20.9 Promotion of Port Commerce. Lessee agrees that throughout the term of this Lease it will, insofar as practicable, promote and aid the movement of passengers and freight through facilities within the territorial limits of the Port. Lessee further agrees that all incoming shipments of commodities that it may be able to control or direct shall be made through facilities within the territorial limits of the Port if there will be no resulting cost or time disadvantage to Lessee.

20.10 Nondiscrimination – Services.

20.10.1 Lessee agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, sex, age, creed, color or national origin in furnishing, or by refusing to furnish to such person or persons, the use of the facility herein provided, including any and all services, privileges, accommodations, and activities provided thereby.

20.10.2 It is agreed that Lessee's noncompliance with the provisions of this clause shall constitute a material breach of this Lease. In the event of such noncompliance, the Port may take appropriate action to enforce compliance, may terminate this Lease, or may pursue such other remedies as may be provided by law.

20.11 Nondiscrimination – Employment. Lessee covenants and agrees that in all matters pertaining to the performance of this Lease, Lessee shall at all times conduct its business in a manner which assures fair, equal and nondiscriminatory treatment of all persons without respect to race, sex, age, color, creed or national origin and, in particular:

20.11.1 Lessee will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified individuals who are member of racial or other minorities, and

20.11.2 Lessee will comply strictly with all requirements of applicable federal, state and local laws or regulations issued pursuant thereto relating to the establishment of nondiscriminatory requirements in hiring and employment practices and assuring the service of all patrons or customers without discrimination as to any person's race, sex, age, creed, color or national origin.

20.12 Labor Unrest. Lessee agrees to join with the Port and use its best efforts in avoiding labor unrest, or in the event of a wildcat strike or other labor difficulty, to use its good offices in negotiating and bringing to a swift and satisfactory conclusion any kind of labor dispute that may affect the interests of the Port.

20.13 Federal Maritime Commission Regulations. This Lease may be subject to the Shipping Act of 1984, the Shipping Act of 1916, the Ocean Shipping Reform Act of 1998, and their respective implementing regulations. No future amendment or modification to this instrument will be effective until the appropriate procedures, if any, have been completed in accordance with the procedures of the appropriate federal agency which has jurisdiction over the Shipping Acts.

20.14 Joint and Several Liability. Each and every party who signs this Lease, other than in a representative capacity, as Lessee, shall be jointly and severally liable hereunder.

It is understood and agreed that for convenience the word "Lessee" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this Lease, regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual lessee or lessees under this agreement.

~~20-15~~20.14 Captions. The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.

~~20-16~~20.15 Governing Law; Venue. This Lease shall be construed under the laws of Washington. Exclusive jurisdiction and venue for any action relating hereto shall be in the state or federal courts located in King County, Washington.

~~20-17~~20.17 Attorneys' Fees. In the event that either party shall be required to bring any action to enforce any of the provisions of this Lease, or shall be required to defend any action brought by the other party with respect to this Lease, and in the further event that one party shall substantially 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.

~~20-18~~20.16 Invalidity of Particular Provisions. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or enforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

~~20-19~~20.17 Survival of Indemnities. All indemnities provided in this Lease shall survive the expiration or any early termination of this Lease. In any litigation or proceeding within the scope of any indemnity provided in this Lease, Lessee shall, at the Port's option, defend the Port at Lessee's expense by counsel satisfactory to the Port.

~~20-20~~20.18 Entire Agreement; Amendments. This Lease, together with any and all exhibits attached hereto, shall constitute the whole agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modification or amendment of this agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties, but without further approval by the Seattle City Council.

~~20-21~~20.19 Exhibits. Exhibits A, B and \_\_\_\_\_ are attached to this Lease after the signatures and by this reference incorporated herein.

#### SECTION 21: SIGNATURES

IN WITNESS WHEREOF the parties hereto have signed this Lease as of the day and year first above written.

PORT OF SEATTLE

CITY OF SEATTLE

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

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

Formatted: Don't adjust space between latin and Asian text



SECTION 22: ACKNOWLEDGMENTS

Formatted: Don't adjust space between Latin and Asian text

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of the PORT OF SEATTLE, the municipal corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

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

\_\_\_\_\_  
(Print Name)  
Notary Public, in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of the \_\_\_\_\_ the individual/entity that executed the within and foregoing instrument as Lessee, and acknowledged said instrument to be the free and voluntary act and deed of said individual/entity, for the uses and purposes therein mentioned, and on oath stated that s/he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

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

\_\_\_\_\_  
(Print Name)  
Notary Public, in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

WORKING DRAFT DOCUMENT

EXHIBIT A

— LEGAL DESCRIPTION —

DRAFT  
WORKING DOCUMENT

EXHIBIT B  
- PREMISES -

DRAFT  
WORKING DOCUMENT

**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Finance and Administrative Services	Bill Craven/733-9238	Jennifer Devore/615-1328
Department of Transportation	Larry Huggins/684-5001	Christie Parker/684-5211

**Legislation Title:** AN ORDINANCE authorizing the Director of Finance and Administrative Services to enter into a lease agreement with the Port of Seattle, a Washington municipal corporation, for yard space to store jet grout spoils from the Elliott Bay Seawall Project, and ratifying and confirming certain prior acts.

**Summary of the Legislation:**

This legislation authorizes the Director of Finance and Administrative Services (FAS) to enter into a lease agreement with the Port of Seattle (Port) for up to 435,600 square feet (10 acres) of yard space. The Port and the City are working to finalize the location that will work best for both agencies. Currently two locations are being considered, 1) property located at 2900 SW Florida Street (commonly referred to as the C.E.M. Site); and 2) property located at 3235 16<sup>th</sup> Avenue Southwest (commonly referred to as Terminal 10); see Attachment 1. This legislation will allow the FAS Director to enter into an agreement for a period up to five (5) years; commencing on October 1, 2013 and terminating not later than September 30, 2018. The legislation is required because the amount of leased space exceeds FAS' leasing authority (under Seattle Municipal Code 3.127 020.C.3) of 18,000 square feet for unimproved real estate, or land used for storage purposes in a single building, structure or other facility in one calendar year.

**Background:**

The Elliott Bay Seawall Project will replace the existing seawall—from S. Washington Street to Broad Street—with a structure that meets current safety and design standards.

The Elliott Bay Seawall Project is a critical public safety project. Failure of the seawall would have significant impacts to the public, the City of Seattle, the Puget Sound region, Washington State, and the nation. Protection from coastal storm damage and shoreline erosion is vital to preserving Seattle's downtown, the economy, and the region's quality of life and economic competitiveness. The Elliott Bay seawall:

- Protects Seattle's downtown waterfront from wind-driven storm waves and the erosive tidal forces of Puget Sound and Elliott Bay.
- Supports and protects major public and private utilities, including power for downtown Seattle and the western seaboard, natural gas, and telecommunications.
- Supports State Route 99, the ferry terminal, and rail lines, all of which transport local

commuters and visitors as well as local, regional, and international freight.

Construction for the Elliott Bay Seawall Project will require drilling and displacement of approximately 50,000 cubic yards of material each year for three construction years. The Port Property will be used to store the uncommon borrow material for a temporary basis (assumed to be one year) until such time that the City's Meyer's Way Property has properly been entitled for such use as long term storage of the material.

Please check one of the following:

**This legislation has financial implications.**

**Appropriations:**

Fund Name and Number	Department	Budget Control Level*	2013 Appropriation	2014 Anticipated Appropriation
<b>TOTAL</b>				

\*See budget book to obtain the appropriate Budget Control Level for your department.

Appropriations Notes:

The Elliott Bay Seawall Proposition 1 Levy passed by voters in 2012 provided funding for space rent, construction, inspection testing and other services lawfully incurred incident to the Project therefore no additional appropriations are required.

**Anticipated Revenue/Reimbursement Resulting from this Legislation:**

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
<b>TOTAL</b>				

Revenue/Reimbursement Notes:

FAS will be reimbursed by SDOT for the rental of the Port of Seattle Property as detailed in the lease agreement. Additionally, FAS will charge SDOT an administrative overhead fee of 3% of the total rent.

**Spending/Cash Flow:**

Fund Name & #	Department	Budget Control Level*	2013 Expenditures	2014 Anticipated Expenditures
<b>TOTAL</b>				

\* See budget book to obtain the appropriate Budget Control Level for your department.

Spending/Cash Flow Notes:

Table 1 below illustrates the range of lease costs for the first year of the lease; the subsequent

years the lease amount will increase by not more than the previous year's CPI, as indicated by the lease agreement.

**Table 1: Maximum Annual Rent Payments for Port of Seattle Yard Space:**

	6 acres	10 acres
Yearly Cost	\$627,264.00	\$1,045,440.00
FAS OH	+ \$18,817.92	+ \$31,363.20
<b>Total Cost</b>	<b>\$646,081.92</b>	<b>\$1,076,803.20</b>

**Other Implications:**

- a) **Does the legislation have indirect financial implications, or long-term implications?**  
This legislation will obligate the City to pay to the Port of Seattle the monthly rental amount as described in Table 1 for a minimum of one year and up to a maximum of five years.
- b) **What is the financial cost of not implementing the legislation?**  
If the proposed legislation is not passed, the uncommon borrow material will need to be exported out of the City to an undetermined location. The costs to export the material could be well in excess of \$2,000,000. Furthermore, exporting the material will require a change in the contract adding further undue costs to the Elliott Bay Seawall Project.
- c) **Does this legislation affect any departments besides the originating department?**  
Yes, FAS will administer this lease on behalf of the Seattle Department of Transportation.
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**  
This is a temporary use of the Port of Seattle's property until such time that the City's owned Meyer's Way Property is entitled for the use of permanent storage of the material from the Seawall Project.
- e) **Is a public hearing required for this legislation?**  
No.
- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**  
No.
- g) **Does this legislation affect a piece of property?**  
Yes, this legislation authorizes the Director of Finance and Administrative Services to execute a lease agreement on a portion of property located at 2900 Florida Street. Please

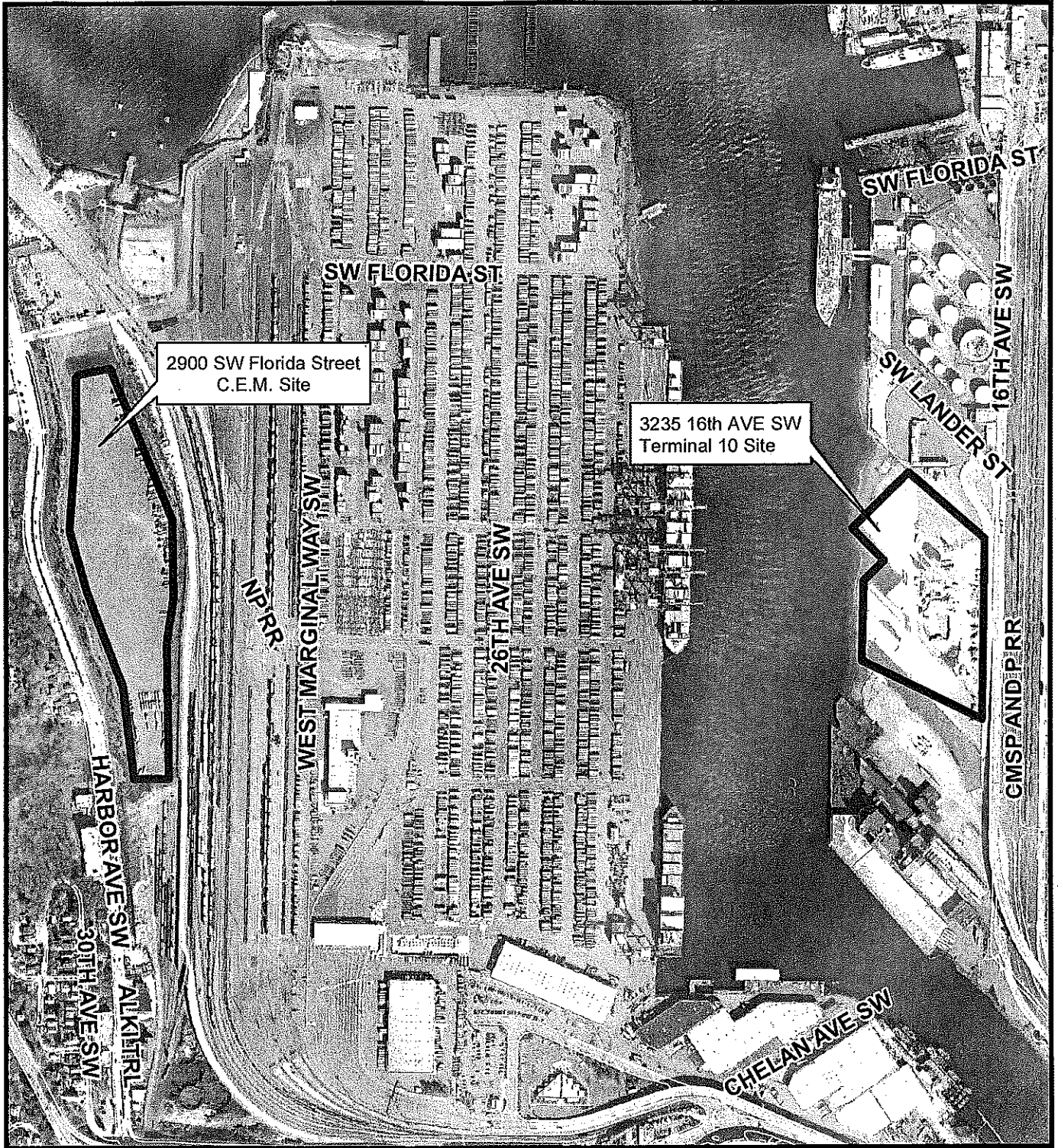
Bill Craven  
FAS Port of Seattle Lease Fisc  
August 9, 2013  
Version #1


see Attachment 2, proximity map of the leased warehouse space.

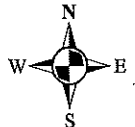
**h) Other Issues:**

**List attachments to the fiscal note below:**

Attachment 1: Proximity map of leased property



 **City of Seattle**  
Port of Seattle Lease  
C.E.M. and Terminal 10 Sites



FAS Facility Operations Division  
WCraven July 2013  
All rights reserved. No guarantee of any sort is implied,  
including accuracy, completeness, of fitness for use.





City of Seattle  
Office of the Mayor

August 20, 2013

Honorable Sally J. Clark  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill authorizing the Director of Finance and Administrative Services (FAS) to execute a lease agreement with the Port of Seattle (Port), for up to 435,600 sq ft (10 acres) of yard space for an initial period of one year, with 4-one year extension options. The yard space will be used by Seattle Department of Transportation (SDOT) for the Elliott Bay Seawall Project.

The Port and the City are currently working together to finalize the terms and conditions of the lease agreement. In an effort to secure the needed yard space in a timely manner, FAS is seeking approval to lease up to 10 acres of yard space from the Port while final details are resolved. Two sites have been identified that meet the needs of SDOT and both agencies are evaluating which site will work best. The two sites that are under consideration are 1) 2900 Southwest Florida Street, located on the easterly edge of West Seattle; and 2) 3235 16th Avenue Southwest, located on Harbor Island. This is a temporary use of the Port's property until such time as the City owned Meyer's Way Property is entitled for the use of permanent storage of the material from the Seawall Project.

Legislation is required to enter into this lease because the size of the space exceeds FAS' statutory authority for leasing without the Council's approval. Should you have questions, please contact Bill Craven at 733-9238.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael McGinn".

Michael McGinn  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council