

April 23, 2012 Ferry District Meeting

1

jym

Sponsor: Joe McDermott

Proposed No.: FD2012-05

LG MOVED
PASSED: 8-0 PVR EXCUSED

1 **AMENDMENT TO PROPOSED RESOLUTION FD-2012-05, VERSION 1**

- 2 Delete Attachment A, Pier 48 Lease No. GCB 1144 For Vessel Maintenance and
3 Moorage Barge, dated 4/19/12 Draft With WSDOT Revisions Shown and replace with
4 Attachment A. Pier 48 Lease No. GCB 1144 For Vessel Maintenance and Moorage
5 Barge, dated April 2012.
6 **EFFECT:** *Replaces final lease document.*



**PIER 48 LEASE NO. GCB 1144
FOR VESSEL MAINTENANCE AND MOORAGE BARGE**

**Between
Washington State Department of Transportation
and
King County Ferry District**

APRIL 2012



**Washington State
Department of Transportation**

**KING COUNTY
FERRY DISTRICT**

**PIER 48 LEASE NO. GCB 1144
FOR VESSEL MAINTENANCE AND MOORAGE BARGE**

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PIER 48 LEASE NO. GCB 1144
FOR MAINTENANCE AND MOORAGE BARGE

1 This **LEASE** is made and entered into this ____ day of April, 2012, between the
2 **WASHINGTON STATE DEPARTMENT OF TRANSPORTATION**, (hereinafter called
3 **“WSDOT”**) and the **KING COUNTY FERRY DISTRICT**, a municipal corporation of the
4 state of Washington (hereinafter called the **“KCFD”**), each of which is hereinafter referred to
5 individually as a **“Party”** or collectively as **“Parties”**.

6
7 **WITNESS THAT:**
8

9 **WHEREAS**, as components of its property in Seattle and Puget Sound, Washington,
10 **WSDOT** owns Pier 48 and associated tide lands in downtown Seattle as further described herein,
11 both in King County, Washington (hereinafter in these recitals jointly called **“Pier 48”**); and
12

13 **WHEREAS**, **WSDOT** purchased Pier 48 to serve as parking for contractors and Port of
14 Seattle Pilots during construction of the Alaskan Way Viaduct Project (hereinafter called the
15 **“AWV Project”**); and
16

17 **WHEREAS**, in order to form a ferry district that would be eligible to assume the
18 operation of the Seattle-Vashon Island passenger-only ferry route (hereinafter called the **“Seattle-**
19 **Vashon route”**), King County developed and submitted a business plan to the Governor for a
20 ferry district in accordance with RCW 36.54.110(5); and
21

22 **WHEREAS**, King County submitted an amendment to the business plan on April 3,
23 2007 and the Governor approved the business plan as amended on April 27, 2007 (hereinafter
24 called the **“Business Plan”**); and King County’s legislative body formed the **KCFD** by adopting
25 Ordinance 15739 on April 30, 2007; and
26

27 **WHEREAS**, under the Business Plan, the **KCFD** and King County became financially
28 responsible for the Seattle-Vashon route effective July 1, 2008; and
29
30

1 **WHEREAS**, the **KCFD** and King County entered into an interlocal agreement, executed
2 on May 23, 2008, to have King County provide planning, administration and operational support
3 to the **KCFD's** passenger-only ferry service, including service over the Seattle-Vashon route as
4 well as the Downtown Seattle to West Seattle Water Taxi route (hereinafter called the "West
5 Seattle route"); and
6

7 **WHEREAS**, the **KCFD** is building a Maintenance and Moorage Barge to maintain and
8 moor its ferries and provide associated maintenance work facilities on the Barge for its
9 personnel; and
10

11 **WHEREAS**, the **KCFD** desires to secure the use of a portion of Pier 48 for the location
12 and operation of the Maintenance and Moorage Barge; and
13

14 **WHEREAS**, the **KCFD** requires certainty regarding the availability of Pier 48 in order
15 to effectively plan for the provision of its Maintenance and Moorage Barge; and
16

17 **WHEREAS**, pursuant to RCW 47.64.090(3), if a ferry district is formed under governing
18 state law to operate passenger-only ferry service, it may enter into an agreement with the
19 WSDOT Ferries Division, operating as Washington State Ferries (WSF) to rent, lease or
20 purchase vessels, related equipment, or terminal space for purposes of loading and unloading the
21 ferries; and
22

23 **WHEREAS**, WSF and the **KCFD** entered into a Seattle and Vashon Island Passenger-
24 Only Ferry Terminal License Agreement No. GCA 6750, dated August 18, 2011, whereby WSF
25 granted the **KCFD** a license to use WSF's Pier 50 Passenger-Only Ferry Terminal and WSF's
26 Vashon Island Passenger-Only Ferry Terminal for the **KCFD's** Seattle-Vashon route; and
27 —

28 **WHEREAS**, **KCFD's** passenger only ferry service provides a significant public benefit
29 derived from the passenger-only ferry service, in general, and especially during the AWV
30 Project, and **KCFD** has made, or will make, improvements to Pier 48, all of which should be
31 considered when establishing a fee for the use of Pier 48; and
32

33 **WHEREAS**, on October 23, 2008 King County, by and through its Department of
34 Transportation, Metro Transit Division ("Metro Transit"), and **WSDOT** entered into an
35 Interagency Agreement No. GCA 5820, an Agreement for Metro Transit to implement and

1 provide Enhanced Transit Services in order to mitigate traffic impacts and congestion caused by
2 **WSDOT's** construction of the Early Safety and Mobility Projects of the Alaskan Way Viaduct
3 and Seawall Replacement Program, and to establish a method for **WSDOT** to pay the costs
4 associated with such Metro Transit work; and
5

6 **WHEREAS**, the Parties have also determined that the **KCFD's** West Seattle Water Taxi
7 and its water taxi commuter shuttle services can provide direct connections to alternative transit
8 routes that would bypass anticipated traffic congestion associated with the Early Safety and
9 Mobility Projects' construction work; and
10

11 **WHEREAS**, on November 28, 2011, Metro Transit and **WSDOT** entered into
12 Amendment No. 1 to Agreement No. GCA 5820 to allow for the West Seattle Water Taxi to be
13 included as one of the transit services available to provide an additional means of addressing
14 vehicle traffic congestion during construction activities associated with **WSDOT's** Early Safety
15 and Mobility Projects, and to allow King County to contract with the **KCFD** to implement and
16 fund supplementary water taxi service enhancements; and
17

18 **WHEREAS**, the **KCFD's** West Seattle Water Taxi service is limited by the funding
19 provided by **WSDOT** for such service in the maximum amount of \$1,300,000; and the Parties
20 wish to maximize such Water Taxi service through the efficient use of the **WSDOT** funds; and
21

22 **WHEREAS**, the West Seattle Water Taxi services can be enhanced by reducing the
23 **KCFD's** maintenance and operational costs for the Water Taxi; and
24

25 **WHEREAS**, **WSDOT** wishes to make available portions of Pier 48 to the **KCFD** at
26 reduced cost in order to reduce maintenance and operational costs for the West Seattle Water
27 Taxi; and
28

29 **WHEREAS**, **WSDOT** is providing the Pier 48 uplands to Seattle Tunnel Partners
30 ("STP"), the AWV Project contractor, for parking and staging during the AWV Project; and
31 King County, **KCFD**, **WSDOT** and STP have agreed how Pier 48 will be accessed and used by
32 King County; and
33

1 **1.2 Definitions.** The capitalized words and phrases used in this Lease have the meanings set
2 out below:

3
4 **A. "Additional Amounts"** means all sums of money other than the Rent, if any,
5 from time to time payable by the **KCFD** to **WSDOT** pursuant to agreement of the
6 parties for taxes or services provided by **WSDOT** that **WSDOT** is not otherwise
7 obligated to provide under this Lease.

8
9 **B. "Applicable Laws"** means all statutes, laws, regulations, bylaws, building codes,
10 orders and requirements of any federal, state, municipal or other public authority
11 having jurisdiction at any time and from time to time in force (including all
12 Environmental Laws).

13
14 **C. "KCFD Pier Maintenance"** means activities undertaken on a frequent basis to
15 maintain the appearance and safety of the Pier 48 abutment pier and access area at
16 the head of the gangway, as applicable (e.g., janitorial service, garbage disposal,
17 and sweeping), repairs to Barge and gangways; and repairs, replacements,
18 alterations and additions made to the abutment pier.

19
20 **D. "Environmental Laws"** means all Applicable Laws which impose any
21 obligations relating to the protection, conservation or restoration of the natural
22 environment or relating to the storage, use or manufacture of Hazardous Materials
23 or to the Release of Hazardous Materials into the environment including, without
24 limitation: (i) Washington Hazardous Waste Management Act, as now existing or
25 hereafter amended (RCW Ch. 70.105); (ii) Resource Conservation and Recovery
26 Act, as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); (iii)
27 Comprehensive Environmental Response, Compensation and Liability Act, as
28 now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); and (iv)
29 Washington Model Toxics Control Act, as now existing or hereafter amended
30 (RCW Ch. 70.105D).

31
32 **E. "Force Majeure"** means any strike, lock-out, labor dispute, act of God, inability
33 to obtain labor, utilities or services, application of Applicable Laws, enemy or
34 hostile actions, sabotage, war, blockades, insurrections, riots, epidemics,
35 washouts, nuclear and radiation activity or fall-out, civil disturbances, explosions,

1 fire or other casualty, or any other cause, whether similar to or dissimilar from the
2 foregoing, beyond the control of the party seeking to take advantage of such Force
3 Majeure and not avoidable by the exercise of reasonable foresight.
4

5 **F. “Governmental Authority”** means any federal, state, municipal or local
6 government, government authority, office or official having jurisdiction, or other
7 political subdivision of any of them, or any entity, authority, agency or court or
8 person exercising executive, legislative, judicial, regulatory or administrative
9 functions on behalf of such government, government authority, office or official
10 or other political subdivision thereof.
11

12 **G. “Hazardous Materials”** means any substance, material or thing or combination
13 of substances, materials or things which could cause an adverse effect on, or
14 which is dangerous or detrimental or potentially dangerous or detrimental to, any
15 part of the natural environment, including a substance, material or thing included
16 in or containing components included in the definition or meaning of “biomedical
17 waste”, “contaminant”, “dangerous good”, “deleterious substance”, “hazardous
18 product”, “nutrient”, “pollutant”, “reportable substance”, “special waste”, “waste”
19 or “toxic substance” or any variation of any such term, in any Environmental Law
20 or which is prohibited, controlled or regulated under any Environmental Law and,
21 in respect of the foregoing, is found in a material or relevant concentration for the
22 purpose of any Environmental Law.
23

24 **H. “Lease ”** means this instrument, as amended from time to time.
25

26 **I. “Order”** means any oral advice or warning or any directive, decision, order,
27 notice including a notice of litigation or proceeding, letter or other written
28 communication, that requires the taking of any measures or actions or refraining
29 from taking any measures or actions, issued or made by any Governmental
30 Authority under any Environmental Law.
31

32 **J. “Release”** includes releasing, spilling, leaking, pumping, pouring, flowing,
33 depositing, emitting, emptying, discharging, escaping, leaching, disposing and
34 dumping as pertains to the Environmental Laws and regulations.
35

1 **K.** **“WSDOT Pier 48 Maintenance”** means, without duplication, the management,
2 operation, maintenance and repair of Pier 48 that is not **KCFD** Pier Maintenance.
3 WSDOT Pier 48 Maintenance includes, but is not limited to: maintenance and
4 painting of any **WSDOT** fences; asphalt repair; fixtures, equipment or other state
5 property located on Pier 48, including major structural and Life Cycle Cost work;
6 landscaping; and maintenance and repair of any utilities that **WSDOT** is required
7 to make available to the **KCFD** pursuant to this Agreement.
8

9 **L.** **“Term”** means the term of this Lease set out in Article 3, or any shorter period
10 resulting from any earlier termination of this Lease.
11

12 **M.** **“WSDOT contractors”** means the AWV Project contractors, Seattle Tunnel
13 Partners and Skanska, and their subcontractors.
14

15 **1.3 Exhibits.** The following Exhibits are part of this Lease:
16

17 Exhibit A Pier 48 Site Plan
18 Exhibit B KCFD Barge Maintenance Facility Construction Plans
19 Exhibit C Parties’ Representatives
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ARTICLE 2
LEASE AND USE

2.1 Grant of Lease. The purpose of this Lease is to establish the terms and conditions for the **KCFD's** use of Pier 48 and associated tide lands at 201 Alaskan Way, Seattle, Washington. Accordingly, **WSDOT** grants to the **KCFD** access and use rights to: (i) a portion of Pier 48 and associated tide lands (hereinafter called "Pier 48"); (ii) certain infrastructure located at Pier 48, including fencing and gate and the concrete pad adjacent to the seawall (hereinafter collective called "Pier 48 Facilities"); (iii) an area at Pier 48 for access and parking; (iv) an area at Pier 48 for **KCFD** and contractor staging for construction of **KCFD** Improvements described in Article 2.2 below; and (v) area for utility services and connections, all as shown and depicted on **Exhibit A** and further described as follows:

A. Pier 48. **WSDOT** grants to the **KCFD** the right and Lease to enter onto and to use Pier 48 and the Pier 48 Facilities to locate and secure a Maintenance and Moorage Barge for **KCFD**, or **KCFD** authorized passenger-only ferries, as described further in Article 2.2 below. Up to four (4) passenger-only ferries may be moored at the Barge at one time.

The parties recognize that the upland areas of Pier 48 are very limited and are primarily for the use of **WSDOT** contractors and subcontractors working on the AWW Project. Therefore, as the priority user of Pier 48, **WSDOT** contractors shall have priority use of the Pier 48 upland areas unless **WSDOT**, the **WSDOT** contractors, the **KCFD** and other potential users agree upon a sharing arrangement.

—

The **KCFD** shall be solely responsible for: (i) the security of the Maintenance and Moorage Barge and any associated vessels and vehicles; (ii) the loss of or damage to the Barge and any associated vessels and vehicles; and (iii) damage to Pier 48 and the Pier 48 Facilities that results from the **KCFD's** use and occupancy which shall be subject to the environmental and other applicable provisions of this Lease.

—

1 **B.** **WSDOT** also authorizes the **KCFD** to park one (1) maintenance vehicle in the
2 area shown on **Exhibit A** and located on the north side of Pier 48 uplands, as
3 agreed to by **WSDOT** and its AWW Project contractor. Such parking space shall
4 be used solely for: (i) **KCFD** employees and agents while managing or
5 maintaining the Maintenance and Moorage Barge at Pier 48; or (ii) **KCFD**
6 vendors while delivering products or supplies to Pier 48.

7
8 The **KCFD**'s employees and agents will have twenty-four (24) hour access to and
9 use of Pier 48, the Pier 48 Facilities, and the **KCFD** improvements described in
10 Article 2.2 below.

11
12 **2.2 Use and Occupancy of Pier 48 for Barge.** **KCFD** and its employees and agents may
13 use and occupy Pier 48 and the Pier 48 Facilities for: (i) pile, gangway and frame
14 assembly installation as described in Article 2.3 below; (ii) utility installation including
15 power, potable water, sewer, communication lines, fire and water; (iii) modifications to
16 the existing abutment pier to support a gangway; (iv) the tie-up of the Moorage and
17 Maintenance Barge; (v) the docking of the **KCFD** vessels; (vi) the loading and unloading
18 of supplies from such vessels; (vii) the moorage of **KCFD** vessels during service hours,
19 non-service hours during the day and night tie-up; and (viii) maintenance of the **KCFD**
20 vessels.

21
22 **2.3 KCFD Improvements to Pier 48**

23
24 **A.** Subject to the conditions specified herein, the **KCFD** may make improvements to
25 Pier 48 and the Pier 48 Facilities as shown on the construction plans in **Exhibit B**
26 ("KCFD Improvements"). The **KCFD** Improvements include a gangway, pier
27 installation, pile frame assembly installation, utility installation, modifications to
28 the abutment pier and related work. **WSDOT** has approved these **KCFD**
29 Improvements. Except for the **KCFD** Improvements on **Exhibit B**, the **KCFD**
30 will provide to **WSDOT**, for prior review and consent, the design of any proposed
31 material change or addition to the **KCFD** Improvements. Such consent shall not
32 be unreasonably withheld. Unless otherwise agreed upon by the parties, the
33 **KCFD** will be solely responsible for obtaining all permits and approval from
34 applicable jurisdictions for the **KCFD** Improvements.

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ARTICLE 4
RENT

4.1 The **KCFD's** use of Pier 48 and the Pier 48 Facilities for a Maintenance and Moorage Barge for **KCFD** passenger-only ferries has a direct savings to the Early Safety and Mobility Projects by allowing the **KCFD** to maintain its West Seattle Water Taxi (and Vashon Island passenger-only ferry) at a location adjacent to the Pier 50 service landing for such vessels. Such proximity will enable the **KCFD** to enhance its West Seattle Water Taxi service which will mitigate vehicle traffic congestion during construction activities associated with **WSDOT's** Early Safety and Mobility Projects.

4.2 During the period December 28, 2011 through June 30, 2014 there shall be no Rent due, since the traffic mitigation benefits received during such period of time are deemed equivalent in value to economic rent for the leased premises, due to a prior funding agreement between **WSDOT** and King County which also expires on June 30, 2014. However, if the **KCFD** materially changes its use of such premises during such period of time, **WSDOT** may require the **KCFD** to begin paying rent.

4.3 During the Lease period July 1, 2014 through June 30, 2016, plus any Extension Terms, the **KCFD** agrees to pay fair market Rent for the leased premises, discounted to reflect the limited facilities and access at Pier 48 and calculated as follows:

A. The Parties agree to utilize the Port of Seattle tariff schedule as a market rate resource. As of the commencement of this Lease, such Port tariff schedule is \$2.08 per foot for moorage at piers with shore side electrical power access and upland parking. (Additionally, under the Port's tariff schedule, the tenant would be responsible for the cost of its own improvements, utility service and any leasehold excise tax, if applicable.)

B. Applying the Port of Seattle's tariff rate to approximately two hundred lineal feet (200') at Pier 48 for purposes of this Lease, the non-discounted market rate rent for the Pier 48 leased premises would be \$149,760.00 per year. Given the deteriorated condition of Pier 48, with limited facilities, access and parking, the Parties agree to a sixty-two percent (62%) discount from such market rate rent.

1 Such discounted market rate rent is \$56,908.80 per year, rounded to \$57,000 per
2 year, to be effective as specified in Paragraph C below.
3

4 **C.** Subject to the provisions in Article 4.5 below, for the Lease period July 1, 2014
5 through June 30, 2016, the **KCFD** shall pay **WSDOT** a discounted market rate
6 Rent equal to Fifty-seven Thousand Dollars (\$57,000.00) per year, payable in
7 advance on or before July 1st each year. The Rent shall commence on July 1,
8 2014 regardless of any other circumstances, including any extension of the prior
9 funding agreement between **WSDOT** and King County.
10

11 **4.4** Subject to the provisions in Article 4.5 below, if the **KCFD** exercises its option(s) to
12 extend this Lease pursuant to Article 3.2, the **KCFD** agrees to pay the same discounted
13 fair market Rent as for the initial term, i.e., Fifty-seven Thousand Dollars (\$57,000.00)
14 per year, for the duration of such Extension Term(s).
15

16 **4.5** If the Port of Seattle's tariff schedule in effect as of January 1, 2014 is more than ten
17 percent (10%) above or below the tariff rate specified in Article 4.3.A above, then the
18 Rent payable under this Lease shall be re-calculated to reflect any such increase or
19 decrease; Provided, the applied discount shall remain at sixty-two percent (62%). The
20 adjusted Rent shall: (i) be documented in a written amendment to this Lease, to be
21 executed prior to April 30, 2014; and (ii) remain in effect for the duration of this Lease,
22 including the Extension Term(s).
23

24 **4.6** **WSDOT's** designated Representative, or other designated **WSDOT** personnel, shall
25 coordinate invoicing for the Rent payable by the **KCFD**. **WSDOT** shall provide
26 supporting documentation for any cost reimbursements listed on its invoices. Upon the
27 **KCFD's** request, **WSDOT** shall provide any additional, available accounting records or
28 other documents to satisfy requests from federal funding agencies (if any) and to comply
29 with the **KCFD's** audit requirements.
30
31

1 4.7 The **KCFD** shall remit all payments under this Lease to:

2
3 DEPARTMENT OF TRANSPORTATION (Mailing Address)
4 Attn.: Property Management Program Manager
5 P.O. Box 47339
6 Olympia, WA 98504-7339

7
8 DEPARTMENT OF TRANSPORTATION (Physical Address)
9 Attn.: Property Management Program Manager
10 243 Israel Road S.E., Suite 101
11 Tumwater, WA 98501

12
13
14 **ARTICLE 5**
15 **TAXES AND OPERATING COSTS**

16
17 **5.1 Taxes, Assessments and Fees.** The **KCFD** shall pay all taxes that may hereafter be
18 levied or imposed upon the **KCFD** by reason of this Lease.

19
20 Immediately upon receiving a notice of intention from an assessing district, as defined in
21 RCW 79.44.003, to initiate an assessment, as defined in RCW 79.44.004, **WSDOT** shall
22 notify the **KCFD** of such notice of intention. If the assessing district orders the
23 improvement, the Parties shall negotiate and agree upon the benefit, if any, of such
24 improvement to the **KCFD** and its lease interest in Pier 48, and the amount of additional
25 annual rent to be paid by the **KCFD** for such benefit, if any. The additional rent shall
26 commence on the approval and confirmation of the assessment roll.

27
28 Additionally, if required by Applicable Laws, the **KCFD** will reimburse **WSDOT** for any
29 and all applicable taxes, fees or other charges incurred by or that become the obligation
30 of **WSDOT** as the result of the **KCFD**'s activities under this Lease. If any such taxes,
31 fees or other charges are not directly paid by the **KCFD** (i.e., as part of a prorated cost
32 allocation by **WSDOT**), they shall be considered an Additional Amount and invoiced by
33 and payable to **WSDOT** (or as may be otherwise required by law) as part of the normal
34 invoicing process under this Lease.

1
2 **5.2 Utility Charges.** The **KCFD** is responsible for and agrees to pay the cost of all utilities
3 that serve the leased Pier 48 and Pier 48 Facilities, including, but not limited to,
4 surcharges, fuel adjustments, rate adjustments and taxes. The **KCFD** will pay, when due,
5 all charges for utilities that are either: (i) a prorated cost allocation from a **WSDOT**
6 utility account based upon estimated utility usage by the **KCFD**; and/or (ii) arranged for
7 and billed directly to the **KCFD** by the applicable utility provider. The **KCFD** shall pay
8 such utility charges within thirty (30) days of receipt of any invoice in respect thereof. In
9 no event will **WSDOT** be liable for any interruption or failure in the supply of any
10 utilities or any other services to Pier 48 that **WSDOT** is not obligated to provide pursuant
11 to this Lease.
12

13 **5.3 Law Enforcement Costs.** Any costs incurred by or on behalf of the **KCFD** with respect
14 to any use of, or other attendance at, Pier 48 by **KCFD** selected law enforcement
15 personnel (e.g., King County Sheriff) will be paid directly by the **KCFD**.
16
17

18 **ARTICLE 6**
19 **FUTURE CAPITAL PROJECTS**
20

21 **6.1 Seattle Ferry Terminal Project.** The Seattle Ferry Terminal at Colman Dock – Pier 52
22 is scheduled for replacement within the next ten (10) years. Currently, construction is
23 planned to start during the 2015-2017 Biennium with completion scheduled during the
24 2019-2021 Biennium. The Terminal is in a re-design phase and these dates represent the
25 currently estimated start and completion dates for a complex project with significant
26 regulatory and environmental requirements. **WSDOT** will notify the **KCFD** of any
27 re-design of the Seattle Ferry Terminal that may impact use of Pier 48.
28

29 During re-construction of the Seattle Ferry Terminal, access to Pier 48 may be disrupted.
30 At a minimum, the Pier 48 area could be subject to construction zone conditions.
31 **WSDOT** will keep the Pier 48 access open during the construction period to the extent
32 practicable, to minimize any negative business impacts on the **KCFD**. In the event that
33 **WSDOT** determines this Lease must be terminated to allow for the construction activity,
34 **WSDOT** will terminate the Lease for convenience in accordance with Article 12.1 and
35 the prior written notice requirement therein.

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6.2 Alaskan Way Viaduct Project. The Alaskan Way Viaduct, an elevated highway, borders Pier 48 to the east. The Viaduct is slated for demolition within the term of this Lease. This is a very complex project in the early stages of planning, with many uncertainties and significant regulatory and environmental requirements. Access to Pier 48 may be disrupted during such demolition work. At a minimum, the Pier 48 area could be subject to construction zone conditions.

6.3 Seattle Seawall Project. The Seattle Seawall is scheduled for replacement by the City of Seattle within the next five (5) years. This is a very complex project in the early stages of planning, with many uncertainties and significant regulatory and environmental requirements. It is uncertain whether Pier 48 will remain in operation during such seawall work at or adjacent to Pier 48. At a minimum, Pier 48 could be subject to construction zone conditions.

6.4 No Liability. WSDOT will not be liable to the KCFD for any damages whatsoever arising from the Seattle Ferry Terminal Project, the Alaskan Way Viaduct Project or the Seattle Seawall Project, including but not limited to: (i) disruption to vendor or delivery access to Pier 48; (ii) changes in access; (iii) lost business opportunities and/or reduced revenues; or (iii) WSDOT's consequent termination of this Lease for convenience.

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ARTICLE 7
INSURANCE, RISK AND INDEMNITY

7.1 Insurance.

A. At its sole expense, the **KCFD** shall keep its activities, vessel and equipment covered by this Lease continuously insured (or self-insured) throughout the term of this Lease against claims for injuries to persons or property damage. The insurance shall be as follows:

1. Marine Hull and Machinery insurance for the vessels utilizing Pier 48, with such amount to be specified by the **KCFD**, all loss payable to the **KCFD** or other designated loss payee (e.g., the vessel owner).

2. Marine Protection and Indemnity, Collision Liabilities and Pollution insurance or equivalent with: (i) coverage in the amount of not less than a combined single limit of Three Million Dollars (\$3,000,000.00) per occurrence; (ii) as applicable, coverage for liability under the Jones Act, the Longshoremen's and Harbor Workers' Act and the Federal Water Quality Improvement Act of 1970; and (iii) no exclusion for marine losses (e.g. losses at either Pier 48). Coverage in the minimum amount set forth herein shall not be construed to relieve the **KCFD** from liability in excess of such coverage.

B. Except for coverages self-insured, the insurance policy or policies shall: (i) contain appropriate endorsements that name **WSDOT** as an "additional insured" during the performance of this Lease; (ii) include a waiver of subrogation for **WSDOT**; (iii) not be changed or canceled without prior notice to **WSDOT**; and (iv) be primary with respect to any insurance **WSDOT** may have except that such insurance shall not be primary to any deductible, self-insurance, retention, or insurance **WSDOT** may have with respect to its liability or potential liability to its employees or other person arising out of, or related to, the acts or omissions of **WSDOT** and its officials, employees, agents and contractors in the performance of this Lease. The **KCFD** shall furnish **WSDOT** proper evidence of such insurance (or self-insurance) upon execution of this Lease.

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2 C. The provision of insurance or self-insurance, or the absence thereof, shall not
3 limit the **KCFD**'s liability to **WSDOT** in the performance of this Lease.
4

5 **7.2 Indemnity.** To the maximum extent permitted by law, the **KCFD** shall defend,
6 indemnify and hold harmless **WSDOT**, and all of its officials, employees, principals and
7 agents, from any and all claims, demands, suits, actions, fines, penalties, and liability of
8 any kind, including injuries to persons or damages to property, and all legal fees, experts
9 fees and disbursements, which arise out of or are related to any negligent acts, errors,
10 omissions of the **KCFD** and its contractors, agents, employees and representatives, or
11 anyone for whom the **KCFD** is responsible at law in performing obligations under this
12 Lease; Provided that if any such damages and injuries to persons or property are caused
13 by or result from the concurrent negligence of the **KCFD** or its contractors, employees,
14 agents, or representatives, and **WSDOT** or its contractor or employees, agents, or
15 representatives, each party's obligation hereunder applies only to the extent of the
16 negligence of such party or its contractor or employees, agents, or representatives.
17

18 The foregoing indemnity is specifically and expressly intended to constitute a waiver of the
19 **KCFD**'s immunity under industrial insurance, Title 51 RCW, as respects **WSDOT** only,
20 and only to the extent necessary to provide **WSDOT** with a full and complete indemnity of
21 claims made by the **KCFD**'s employees. This waiver has been mutually negotiated.
22

23 **7.3** In the event either party incurs attorney fees, costs or other legal expenses to enforce the
24 provisions of this Article against the other party, all such fees, costs and expenses shall be
25 recoverable by the prevailing party.
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27 **7.4** The provisions of this Article shall survive any termination of this Lease.
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ARTICLE 8
RESPONSIBILITIES

8.1 **KCFD Responsibilities.** In the performance of this Lease, the **KCFD's** responsibilities include, but are not limited to the following:

A. **KCFD Pier 48 Maintenance.** The **KCFD** shall be responsible for the operation and maintenance of the Pier 48 Facilities at its sole cost. The maintenance activity shall be as described in the definition of **KCFD Pier Maintenance** in Article 1.2.C.

B. **Maintenance and Moorage Barge.** The **KCFD** shall maintain the Maintenance and Moorage Barge in a clean and safe condition, and in strict compliance with all directives and certifications issued by **WSDOT** and/or governing regulatory authorities. All **KCFD** operations personnel shall conduct themselves in a safe, reliable, efficient, courteous and/or responsible manner at Pier 48. If the **KCFD** or **WSDOT** receives complaints regarding one of **KCFD's** employees or contractors and/or it is determined that the employee or contractor is not providing service in a safe, reliable, efficient, courteous and/or responsible manner at the Pier 48, the **KCFD** shall take reasonable measures to remedy the situation. If **WSDOT** requests in writing that the **KCFD** take corrective measures in response to a complaint, the **KCFD** shall notify **WSDOT** in writing of the corrective measures taken.

C. **Utilities.** At its sole cost, the **KCFD** shall be responsible for securing: (i) shore power, water, sewer, phone, lighting and any other utility required for the operation of the Maintenance and Moorage Barge at Pier 48; and (ii) garbage and recycling dumpsters and disposal services. The **KCFD** and **WSDOT** may enter into mutually beneficial and agreed to arrangements for sharing of these utilities.

D. **Payment.** The **KCFD** shall pay the Rent and any Additional Amounts required to be paid by the **KCFD** hereunder in accordance with the terms of this Lease.

1 **8.2 WSDOT Responsibilities.** In the performance of this Lease, **WSDOT's** responsibilities
2 include, but are not limited to the following:

3
4 **A. WSDOT Pier 48 Maintenance.** Unless undertaken by the **KCFD** pursuant to
5 this Lease, **WSDOT** shall be solely responsible for the maintenance of those
6 portions of Pier 48 that are not part of the **KCFD's** lease of Pier 48 and the Pier
7 48 Facilities. Such maintenance activity shall be as described in the definition of
8 **WSDOT Pier 48 Maintenance** in Article 1.2.M. Using its own procurement and
9 contracting procedures, **WSDOT** shall acquire, construct, maintain, repair and
10 replace those portions of Pier 48 deemed necessary for **WSDOT** operations.
11 **WSDOT** shall have no obligation to maintain those portions of Pier 48 that are
12 not used for **WSDOT** operations.

13
14 Unless the Parties agree otherwise, **WSDOT** shall be responsible for the
15 inventory of and accounting and financial reporting for capital assets at Pier 48,
16 excluding the **KCFD's** personal property at Pier 48 pursuant to this Lease. Such
17 reporting shall include all required state and federal reporting requirements,
18 including the Federal Transit Administration's annual National Transit Database
19 report, if applicable. As used herein, 'capital assets' may include, but are not
20 limited to, the **KCFD** Improvements.

21
22 Regardless of which Party owns or leases capital assets at Pier 48, the **KCFD**
23 shall have right to use designated capital assets to manage, operate and maintain
24 its Barge, piles, gangway, fence and utilities, subject to the terms and conditions
25 of this Lease.

26
27 **B. Quiet Enjoyment.** To the maximum extent possible, **WSDOT** will ensure that
28 the **KCFD's** use of Pier 48 and the Pier 48 Facilities, as authorized by this Lease,
29 is not subject to unreasonable interference by **WSDOT** or its contractors and
30 suppliers. Similarly, the **KCFD** will ensure that **WSDOT's** use of Pier 48 is not
31 subject to unreasonable interference by the **KCFD** or its contractors and suppliers.

32
33 **C. Cooperate with KCFD Pier Maintenance.** **WSDOT** shall cooperate with the
34 **KCFD** in performing its operation and maintenance responsibilities as described

1 herein, including providing necessary information regarding proper disposal and
2 composting of garbage and recycling collected at Pier 48.

3
4 **D. Emergency Action.** In the event of harm, or a threat of imminent harm, to property
5 or public safety at Pier 48, **WSDOT** shall, as soon as practicable, inform the **KCFD**
6 of emergency actions that have been or will be taken, in response to the harm or that
7 may be required to protect against a threat of imminent or potential harm.

8
9 **E. Environmental Reports.** **WSDOT** shall deliver to the **KCFD**, upon the full
10 execution of this Lease, copies of all environmental reports and studies relating to
11 Pier 48 which are in **WSDOT's** possession or control or which are otherwise
12 available to **WSDOT**.

13
14 **F. Laws, Rules and Regulations.** **WSDOT** shall comply with all Applicable Laws,
15 rules and regulations pertaining to the ownership and maintenance of Pier 48, as
16 now in force or which may hereafter be in force during the Term. The provisions
17 of this Article will survive the expiration or earlier termination of this Lease.

18
19 **8.3 Mutual Responsibilities.** In the performance of this Lease, the Parties covenant and
20 agree with each other as follows:

21
22 **A. WSDOT and the KCFD** will each designate personnel to work with the other
23 Party on the planned and forecasted use of Pier 48 and the Pier 48 Facilities.
24 These tasks include: (i) identify and update access and parking issues; (ii) discuss
25 in advance any conflict between **WSDOT** and **KCFD** operations at Pier 48; and
26 (iii) coordinate vendor deliveries.

27
28 **B. Repairs.** The **KCFD** acknowledges that **WSDOT** and its contractors have the
29 right to undertake work involving construction, reconstruction, repair and
30 improvements in and about Pier 48 and the **KCFD** agrees that **WSDOT** will not
31 be liable for any damages or losses that may be suffered by the **KCFD** as a result,
32 unless due to the negligence or willful misconduct of **WSDOT**, and its
33 employees, contractors or agents or any other person for whom **WSDOT** is
34 responsible at law.

1 **B. Other Records.** Unless exempt from public disclosure, **WSDOT** shall make
2 available for inspection and copying by the **KCFD** or its representatives, any
3 available current and historical records, planning documents, budget documents,
4 and other information related to the operation and maintenance of Pier 48.
5

6 **10.2 Audit.** If an audit is requested by the **KCFD** or required by any applicable federal
7 agency requirements, **WSDOT** agrees to cooperate fully with the **KCFD's** auditor or an
8 independent auditor chosen and retained by the **KCFD**. In the event that the **KCFD** has
9 paid **WSDOT** in excess of the **KCFD's** final funding commitment under this Lease, the
10 excess amount will be repaid to the **KCFD** within thirty (30) days from the date the
11 **KCFD** notifies **WSDOT** of the audit results or, upon mutual agreement by the parties,
12 used as an offset against other amounts owing to **WSDOT**. Should the audit reveal that
13 the **KCFD** has underpaid **WSDOT**, the **KCFD** will pay the balance due to **WSDOT**
14 within thirty (30) days from the date the audit is completed.
15

16 **10.3 Electronic Production.** Wherever practicable, the **KCFD** and **WSDOT** will maintain
17 electronically all required records relating to this Lease and its performance in a manner
18 which is usable, searchable, retrievable and authentic for the length of the designated
19 retention period. Printing and retaining a hard copy is not a substitute for the electronic
20 version. Whenever the **KCFD** or **WSDOT** is required to produce such records or
21 electronically stored information to the other Party under the terms of this Lease or
22 otherwise, the Party in possession of the records or electronically stored information shall
23 produce them in an electronic format that is in a searchable and useable format. Where
24 appropriate, the Parties will confer on the timing and format of production. Each Party
25 will bear its own costs for the preservation and production of records or electronically
26 stored information.
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ARTICLE 11
DISPUTE RESOLUTION

11.1 If a dispute arises between the Parties in connection with this Lease, the Parties agree to use the following described procedure as a condition precedent to either Party pursuing other available remedies.

A. Either Party may notify the other by written notice of the existence of a dispute and a desire to resolve the dispute.

B. A meeting will be held promptly between the Parties, attended by appropriate personnel and by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.

C. In the event the Parties are unable to timely resolve the dispute utilizing the process set forth in Paragraphs A and B above, the Parties shall submit the matter to a non-binding mediation as set forth herein. The mediation shall be conducted by a mediator agreed upon by the Parties from Judicial Dispute Resolution (JDR) unless the Parties agree to use a mediator from a different organization. The Parties agree to split equally the fee for mediation services. If the mediation does not result in voluntary resolution of the dispute, the Parties will request that the mediator issue a non-binding memorandum of opinion or similar report regarding his or her recommended resolution of the dispute.

D. If, within fourteen (14) days after the issuance of such memorandum of opinion, or such further period as is agreeable to the Parties (“Negotiation Period”), the Parties have not succeeded in negotiating a resolution of the dispute, they agree that the dispute will be settled by a single arbitrator in accordance with the Ch. 7.04A RCW rules, or alternate agreed upon rules, as amended, supplemented or replaced from time to time. The arbitrator is to be instructed to take all reasonable measures to ensure that the dispute is arbitrated and settled in as expeditious a manner as possible. The decision of the arbitrator will be final and binding and will not be subject to appeal on a question of fact, law, or mixed fact and law.

1 E. The costs of arbitration will be awarded by the arbitrator in his / her absolute
2 discretion.

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5 **ARTICLE 12**
6 **TERMINATION**
7

8 **12.1 Termination For Convenience.** In addition to such other termination rights as may be
9 set out elsewhere in this Lease, **WSDOT** and the **KCFD** agree that:

10
11 A. The **KCFD** may, at any time, terminate this Lease for convenience on at least
12 three (3) months' prior written notice to **WSDOT**.

13
14 B. **WSDOT** may at any time, terminate this Lease for convenience on at least six (6)
15 months' prior written notice to the **KCFD**.

16
17 C. If Pier 48 is damaged through no fault of the **KCFD**, and **WSDOT** is unable to
18 secure funds to repair the damaged portion(s) of Pier 48 that are **WSDOT's**
19 responsibility, either Party may elect to immediately terminate this Lease for
20 convenience unless the **KCFD** elects to fund the repairs at its sole cost.

21
22 In the event of termination for convenience by either Party, and except as provided in
23 Article 12.4, the **KCFD** will surrender Pier 48 and the Pier 48 Facilities, remove the piles
24 subject to **WSDOT's** prior review and approval, and deliver up possession of Pier 48 and
25 the Pier 48 Facilities to **WSDOT** on the termination date specified in such written notice.
26 All amounts payable hereunder will be adjusted as of such date and the appropriate
27 adjustment payments made between the Parties. The **KCFD** will be entitled to
28 reimbursement for that portion of any Rent or Additional Amounts paid by the **KCFD**
29 that relates solely to any period after the aforesaid termination date but will remain
30 subject to any year end adjustment process, including those relating to Operating Costs.

31
32 **12.2 Termination For Default.** **WSDOT** may terminate this Lease if the **KCFD** breaches or
33 fails to comply with any of its obligations under this Lease and fails to remedy such
34 breach or failure within ten (10) days of receiving written notice of such breach or failure
35 or, if such breach or failure reasonably requires more than ten (10) days to remedy, if the

1 **KCFD** has not commenced diligently remedying such breach or failure within ten (10)
2 days of receipt of such notice or thereafter fails to continue to diligently and
3 expeditiously remedy such breach or failure.
4

5 **12.3 Termination for Lack of Appropriations.** Upon at least thirty (30) days' prior written
6 notice to **WSDOT**, this Lease shall terminate if the **KCFD** Board has not appropriated
7 sufficient funds to pay for the **KCFD's** obligations under this Lease for a given year. In
8 such event, the **KCFD** shall compensate **WSDOT** for all costs payable under this Lease
9 incurred prior to termination.
10

11 **12.4 Obligations on Expiration or Termination.** Upon the expiration or earlier termination
12 of this Lease, the **KCFD** will cease to have any further right to use Pier 48 and the Pier
13 48 Facilities for any purpose whatsoever. In such event, the **KCFD** shall, at its sole cost,
14 remove from Pier 48 and the Pier 48 Facilities the **KCFD** Improvements and the property
15 of those for whom the **KCFD** is responsible at law, and shall repair any damage caused
16 by such removal; Provided that for earlier termination this Lease pursuant to Article
17 12.1.C, the **KCFD** shall have sixty (60) days after the termination date to remove the
18 **KCFD** Improvements and such property. The Parties may agree that certain **KCFD**
19 Improvements or property of those for whom the **KCFD** is responsible at law may
20 remain at Pier 48.
21

22 **12.5 Survival of Obligations.** Upon the expiration or earlier termination of this Lease, all
23 claims, causes of action or other outstanding obligations remaining or being unfulfilled as
24 at the date of expiration or termination and all of the provisions of this Lease relating to
25 the obligation of either of the parties to perform actions or to account to or to indemnify
26 the other and pay to the other any monies owing as at the date of expiration or
27 termination in connection with this Lease will survive such expiration or termination.
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ARTICLE 13
ENVIRONMENTAL PROVISIONS

13.1 Environmental Requirements.

A. The KCFD agrees as follows:

- (i) notwithstanding any other provision of this Lease, the **KCFD** will fully comply with, and will ensure that all persons who the **KCFD** authorizes to use Pier 48 and the Pier 48 Facilities comply with, all applicable Environmental Laws and will not place, store, use, manufacture or Release any Hazardous Materials under, on or over Pier 48 and the Pier 48 Facilities in violation of Environmental Laws;
- (ii) the **KCFD** will not authorize, cause or permit a Release of Hazardous Materials into, onto or from the Maintenance and Moorage Barge, or from any vessels using the Barge, and will take all measures which are necessary to ensure that no other persons for whom it is responsible at law authorize, cause or permit a Release of Hazardous Materials as aforesaid;
- (iii) if a Release of Hazardous Materials does occur as a result of any action of the **KCFD** or any person for whom the **KCFD** is responsible at law, the **KCFD** will immediately report the occurrence of the Release to **WSDOT** and to all applicable Governmental Authorities to whom notification is required under Environmental Laws in the circumstances and will immediately clean up the Release and restore the natural environment affected by the discharge to the satisfaction of **WSDOT**, the U.S Coast Guard and any other applicable Governmental Authorities;
- (iv) if the **KCFD** fails or refuses to promptly clean up any such Release of Hazardous Materials and to restore the natural environment affected by such a Release, **WSDOT** may carry out the whole or any part of the cleanup and restoration at the **KCFD's** expense and may, at its sole discretion, terminate this Lease forthwith by a notice in writing to the **KCFD**;

- 1
- 2 (v) the **KCFD** will fully comply with all Orders of any applicable
- 3 Governmental Authority which may be directed to the **KCFD** and which
- 4 relate to the **KCFD's** use of Pier 48;
- 5
- 6 (vi) if an Order of any applicable Governmental Authority is issued to
- 7 **WSDOT** requiring **WSDOT** to do anything in relation to any
- 8 environmental problem caused by the **KCFD** or for which the **KCFD** is
- 9 responsible under this Lease or at law, the **KCFD** will, upon receipt of
- 10 written notice from **WSDOT**, carry out the Order at the **KCFD's** expense;
- 11
- 12 (vii) if the **KCFD** fails or refuses to promptly and fully carry out any Order of
- 13 any applicable Governmental Authority with respect to any such
- 14 environmental matter, **WSDOT** may carry out the whole or any part of the
- 15 Order at the **KCFD's** expense and may, at the sole discretion of **WSDOT**,
- 16 terminate this Lease forthwith by a notice in writing to the **KCFD**;
- 17
- 18 (viii) upon the expiration or earlier termination of this Lease, the **KCFD** will
- 19 leave Pier 48 clean of any Hazardous Materials introduced thereto by the
- 20 **KCFD** or any person for whom the **KCFD** is responsible at law; and
- 21
- 22 (ix) if **WSDOT** discovers a breach by the **KCFD** or any person for whom the
- 23 **KCFD** is responsible at law of an Environmental Law or a fact situation
- 24 which could be reasonably be anticipated to result in such a breach of an
- 25 Environmental Law, **WSDOT** will have the right to take whatever steps
- 26 are reasonably required to rectify such breach, or prevent such breach
- 27 from occurring, as the case may be, all at the **KCFD's** expense.
- 28

29 **B.** The **KCFD** will indemnify **WSDOT**, protect **WSDOT** and save it harmless from

30 and against and from any and all damages, losses, liabilities, obligations,

31 penalties, claims, litigation, suits, proceedings, costs, disbursements or expenses

32 (including, without limitation, all legal fees, experts fees and disbursements) of

33 any kind or of any nature whatsoever (collectively, the "Indemnified Matters")

34 which may at any time be imposed upon, incurred by or asserted or awarded

35 against **WSDOT** and arising from or out of any breach of or non-compliance with

1 this Article 13 by the **KCFD**, or the Release of any Hazardous Materials brought
2 onto a Terminal by the **KCFD** or those for whom it is responsible at law.
3

4 **C.** Indemnified Matters as defined above will include, without limitation, all of the
5 following: (i) the costs of removal of any and all Hazardous Materials, (ii)
6 additional costs required to take necessary precautions to protect against the
7 Release of Hazardous Materials into the air, the soil, any body of water, any other
8 public area or any surrounding areas, (iii) costs incurred to comply with all
9 Applicable Laws with respect to Hazardous Materials, and (iv) claims, actions,
10 damages, liability and expenses in connection with loss of life, personal injury
11 and/or damage arising from or out of any occurrence or matter described in (i) to
12 (iii) above.
13

14 **D.** **WSDOT** confirms and agrees that the **KCFD** will be responsible only for any
15 Hazardous Materials brought onto Pier 48 by the **KCFD** or those for whom the
16 **KCFD** is responsible at law and for any Releases of such Hazardous Materials by
17 the **KCFD** or those for whom the **KCFD** is responsible at law, and that the
18 **KCFD** will not be responsible for any Hazardous Materials brought onto or
19 released at Pier 48 by any other persons or for any Releases of any Hazardous
20 Materials brought onto Pier 48 by any other persons, unless such discharge is
21 caused by the wilful act or negligence of the **KCFD** or any person for whom the
22 **KCFD** is responsible at law.
23

24 **E.** The **KCFD** will pay to **WSDOT** any amount contemplated pursuant to this
25 Article within thirty (30) days of receipt from **WSDOT** of a written demand for
26 such amount.
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ARTICLE 14
GENERAL PROVISIONS

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4 **14.1 Damage.** In the event of damage to the Pier 48 Facilities or to portions of Pier 48 that are
5 necessary for operation of or access to **KCFD's** Maintenance and Moorage Barge,
6 **WSDOT** may either: (i) terminate this Lease for convenience; or (ii) repair or rebuild
7 necessary facilities and improvements subject to availability of funding. However, if
8 such damage is caused by the **KCFD**, then the **KCFD** will repair or rebuild such facilities
9 or improvements at its own cost, subject to advance review and approval by **WSDOT**
10 (e.g., scope and timing of such work, materials, etc).
11

12 In the event the **KCFD** is unable to use the Pier 48 Facilities and portions of Pier 48 that
13 are necessary for operation of or access to **KCFD's** Maintenance and Moorage Barge at
14 all or to the extent contemplated due to damage not caused by the **KCFD**, the **KCFD**
15 shall be released of the obligation to make any payment for the use of Pier 48 and the Pier
16 48 Facilities until use can be restored and the application of any pre-payments shall be
17 suspended until use can be restored. In addition, the **KCFD** will not be entitled to any
18 claim of any sort whatsoever against **WSDOT** in respect thereof and **WSDOT** will not be
19 liable to the **KCFD** in any way in respect thereof.
20

21 **14.2 Late Payments.** If either Party does not pay to the other any amount which it is required
22 to pay under this Lease within thirty (30) calendar days of the due date under this Lease,
23 such amount will thereafter bear interest at a rate equal to one percent (1%) per annum,
24 calculated and compounded monthly on the first day of each month until paid.
25

26 **14.3 No Tacit Renewal or Extension.** The **KCFD** will not be entitled to use Pier 48 and the
27 Pier 48 Facilities after the end of the Term without the execution and delivery by both
28 Parties of a new Lease for Pier 48 and the Pier 48 Facilities or without having exercised
29 the option(s) to extend as specified in Article 3.
30

31 **14.4 Federal Contract Provisions.** To the extent federal funds are utilized for construction or
32 maintenance, this Lease and all amendments or supplements shall comply with federal
33 contract funding requirements.
34

1 **14.5 Designated Representatives.** Each Party's designated representatives are named on
2 **Exhibit C.** The contact information may be revised or updated at any time by notice to
3 the other Party.
4

5 **14.6 Time.** Time will be of the essence herein.
6

7 **14.7 Waiver.** No condoning, excusing or overlooking by either Party of any default, breach
8 or non-observance by the other of any covenant, proviso or condition herein contained
9 will operate as a waiver of the non-defaulting Party's rights hereunder in respect of any
10 continuing or subsequent default, breach or non-observance, or so as to defeat or affect in
11 any way the rights of the non-defaulting Party herein in respect of any such continuing or
12 subsequent default, breach or non-observance. No waiver will be inferred from or
13 implied by anything done or omitted by the non-defaulting Party save only expressed
14 waiver in writing.
15

16 **14.8 Remedies Cumulative.** All rights and remedies of either party contained in this Lease
17 will be cumulative and not alternative.
18

19 **14.9 Notices.** Any notice, demand, request or other instrument (each herein called a "Notice")
20 which may be or is required to be given under this Lease, will be delivered in person,
21 transmitted by facsimile or e-mail, or sent by certified mail, return receipt requested, postage
22 prepaid. Any such notice shall be addressed to the Parties' respective designated
23 representatives listed in **Exhibit C.**
24

25 Any such Notice will be conclusively deemed to have been given or made on the day
26 upon which such Notice is delivered if by personal delivery, or if transmitted by facsimile
27 or e-mail on the day following transmission, or if mailed then on the fifth business day
28 following the date of the mailing unless there is between the day of mailing and actual
29 receipt a slow-down of postal service or other labor dispute which adversely affects mail
30 service, in which case the Party giving the Notice will deliver personally such Notice and
31 the time of giving such Notice will be the time of actual receipt. Either Party may at any
32 time give Notice in writing to the other of any change of address of the Party giving such
33 Notice (or of any other person to receive a notice) and from and after the giving of such
34 Notice, the address therein specified will be deemed to be the address of such Party or
35 person for the giving of Notices hereunder.

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14.10 Successors. All rights and liabilities herein given to or imposed upon the respective Parties hereto will extend to and bind the successors, permitted assigns and legal representatives of the Parties.

14.11 Business Day. Where the time limited to perform anything or to pay any amount herein falls on a Saturday, Sunday or legal holiday for the state of Washington or King County, the time so limited will extend to and the thing may done or the amount will be paid on the next day which is not a Saturday, Sunday or statutory holiday.

14.12 No Assignment. The **KCFD** will not be entitled to assign or sublicense its rights under this Lease unless it will have first requested and obtained **WSDOT's** consent thereto in writing, which consent shall be in **WSDOT's** sole discretion.

14.13 No Partnership or Joint Venture. Nothing herein contained will be construed or deemed to constitute or create a partnership or joint venture of or between the Parties or to render one of them liable for the debts and obligations of the other. In performing work and services hereunder, the **KCFD** and its employees, agents and representatives shall be acting as agents of the **KCFD** and shall not be deemed or construed to be employees or agents of **WSDOT** in any manner whatsoever. No employee of either Party shall hold him/herself out as, or claim to be an officer or employee of the other Party by reason of this Lease and shall not make any claim, demand, or application to, or for any right or privilege applicable to an officer or employee of, the other Party. Each Party shall be solely responsible for any claims for wages or compensation by its employees, agents and representatives, including consultants, and shall hold the other Party harmless therefrom.

14.14 Reasonableness. Whenever any action of **WSDOT** requires the approval or consent of the **KCFD** or any action of the **KCFD** requires the approval or consent of **WSDOT** under this Lease, or whenever any party under this Lease is entitled to exercise any discretion under this Lease, the Party whose approval or consent is required or who is entitled to exercise any discretion agrees that it will act promptly and reasonably in deciding whether or not to grant such approval or consent and in exercising any discretion.

1 **14.15 Severability.** If any provision of this Lease or any part thereof is determined to be
2 invalid for any reason it will be severable and severed from this Lease and the remainder
3 of this Lease will be construed as if such invalid provision or part had been deleted from
4 this Lease.

5
6 **14.16 Governing Law / Exclusive Jurisdiction.** This Lease will be construed and governed in
7 accordance with the laws of the state of Washington, and the Superior Court of Thurston
8 County, Washington will have the exclusive jurisdiction to entertain and determine all
9 claims and disputes arising out of or in any way connected with this Lease; subject,
10 however, to the obligation of the Parties to first pursue administrative dispute resolution
11 pursuant to Article 11.

12
13 **14.17 Counterparts.** This Lease may be executed in any number of counterparts, with the
14 same effect as if the Parties had signed the same document, and will become effective
15 when one or more counterparts have been signed by both Parties and delivered to the
16 other Party. All counterparts will be construed together and evidence only one
17 agreement, which, notwithstanding the dates of execution of any counterparts, will be
18 deemed to be dated the date first written above.

19
20 **14.18 Execution by Facsimile.** This Lease may be executed by the Parties and transmitted by
21 facsimile, e-mail or other electronic means and if so executed and transmitted this Lease
22 will be for all purposes as effective as if the Parties had delivered an executed original
23 Lease.

24
25
26 **ARTICLE 15**
27 **ENTIRE AGREEMENT**

28
29 **15.1** This Lease, including all references and Exhibits, sets forth all of the covenants,
30 promises, conditions, agreements and understandings between **WSDOT** and the **KCFD**
31 with respect to the **KCFD's** use of Pier 48 and the Pier 48 Facilities, except as may be
32 supplemented by subsequent amendments to this Lease. All prior negotiations and draft
33 written agreements are merged into and superseded by this Lease. No subsequent
34 amendment of this Lease will be binding upon **WSDOT** or the **KCFD** unless reduced to
35 writing and signed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Lease by their duly authorized signatories as of the day and year first written above.

**WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION**

By: _____
Assistant Secretary For
Washington State Department of Transportation

KING COUNTY FERRY DISTRICT

By: _____
Joe McDermott
King County Ferry District Board Chairperson

Approved as to form for WSDOT:

By: _____
Mark S. Lyon
Assistant Attorney General

Date: _____

Approved as to form for King County Ferry District:

By: _____
Rod Kaseguma

Date: _____

EXHIBIT A

PIER 48 SITE PLAN

(Drawings Attached)

EXHIBIT B

**KING COUNTY BARGE MAINTENANCE FACILITY
CONSTRUCTION PLANS**

(Drawings Attached)

EXHIBIT C

PARTIES REPRESENTATIVES

The following information is current as of the commencement of the subject Lease . Each Party agrees that should any of this information change, **WSDOT** will update and transmit a new Exhibit to the **KCFD**. For Lease administration, the Parties' representatives and addresses shall be as follows:

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Project Management

Attn: Chris Bambridge
Alaskan Way Viaduct and Seawall
Replacement Program
999 Third Ave, Suite 2424
Seattle, WA 98104-4019

Telephone: 206. 805. 5414
Fax: 206. 452. 9956
E-mail: Bambric@consultant.wsdot.wa.gov

For Invoicing

Attn: Bob Covington
Dir. of Accounting & Financial Services
Washington State Dept. of Transportation
310 Maple Park Ave. SE
Olympia, WA 98504-7300

Telephone: 360. 705. 7336
Fax: 360. 705. 6804
E-mail: CovingB@wsdot.wa.gov

KING COUNTY FERRY DISTRICT

Project Management

Attn: Scott Davis
Director, Marine Division
King County Department of Transportation
(KSC-TR-0816)
201 South Jackson Street
Seattle, WA 98104-3856

Telephone: 206. 263. 4248
Fax: 206. 684. 1968
E-mail: scott.davis@kingcounty.gov

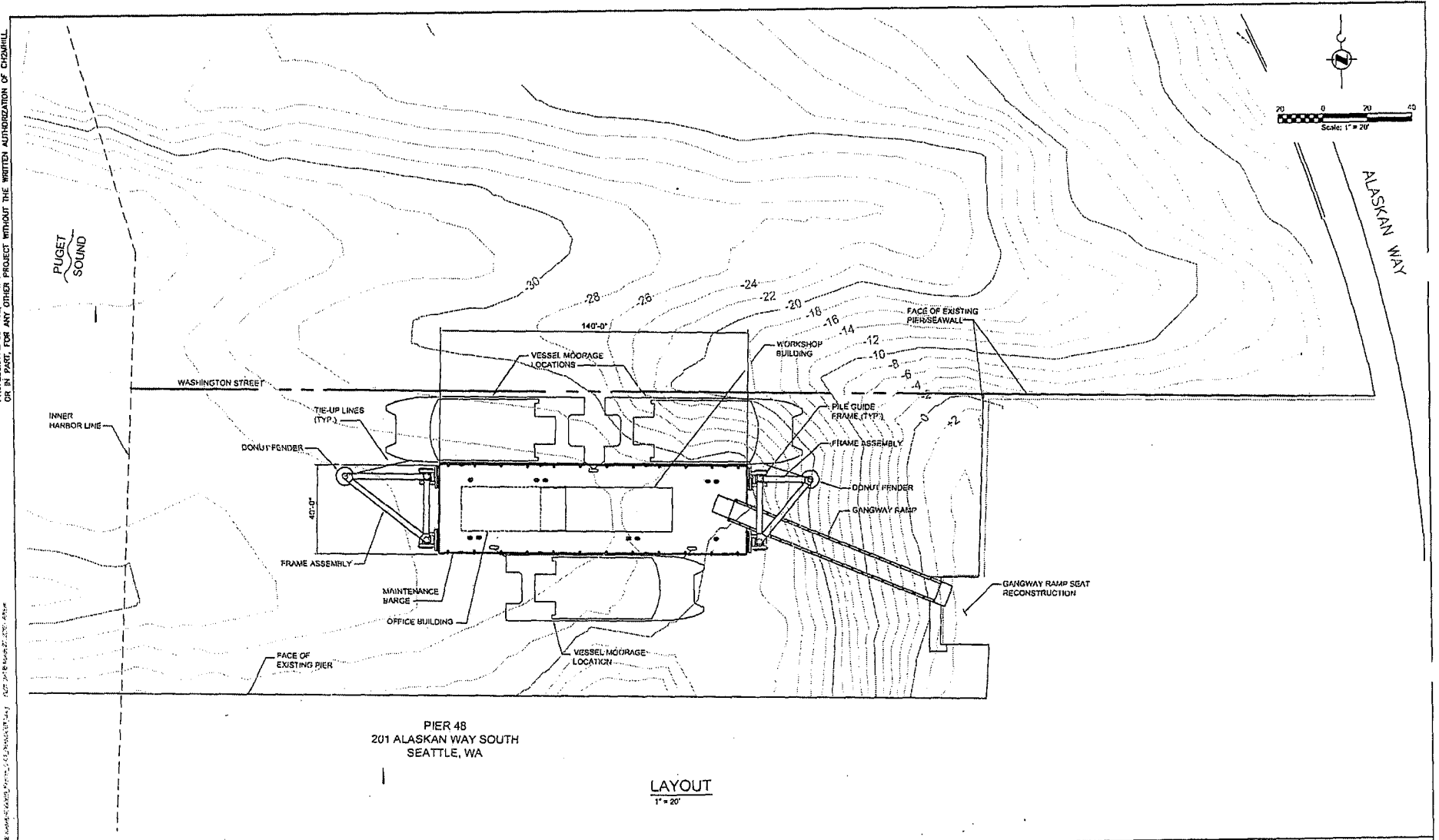
For Invoicing

Attn: Evelyn Wise
Finance and Administration Manager
King County Department of Transportation
(KSC-TR-0816)
201 South Jackson Street
Seattle, WA 98104-3856

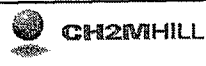
Telephone: 206. 263. 0417
Fax: 206. 684. 1968
E-mail: evelyn.wise@kingcounty.gov

NOTE: The parties may periodically update this Exhibit to reflect the parties' updated / current contact information. Each updated Exhibit shall be attached to the Lease and shall replace / supersede the prior Exhibit, without a formal Lease amendment.

REUSE OF DOCUMENTS: THIS DOCUMENT, AND THE IDEAS AND DESIGNS INCORPORATED HEREIN, AS AN INSTRUMENT OF PROFESSIONAL SERVICE, IS THE PROPERTY OF CH2M HILL AND IS NOT TO BE USED, IN WHOLE OR IN PART, FOR ANY OTHER PROJECT WITHOUT THE WRITTEN AUTHORIZATION OF CH2MHILL.



FIELD BOOK:					
SURVEYOR:					
SURVEY BASE MAP:					
DESIGN OFFICE:					
DESIGNED:	VTP				
CHECKED:	DRP				
SUPERVISOR:	DRP				
	NAL	REVISION	BY	DATE	

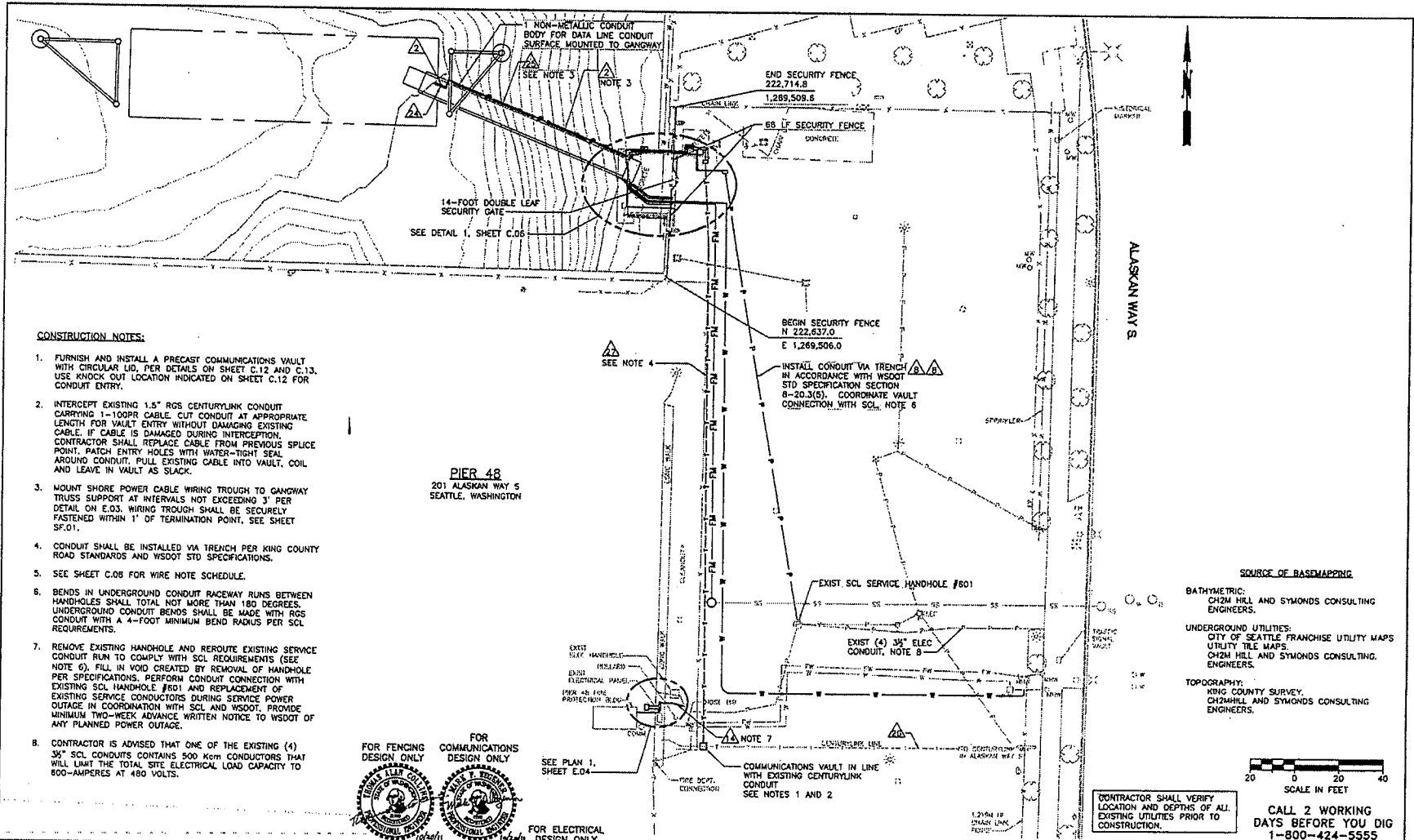


FED. AID No. WA-96-X020-00
 PROJECT No. 359120
 THIS PLAN SET IS APPROVED FOR CONSTRUCTION
 SCOTT DAVIS
 MARINE DIVISION DIRECTOR

KING COUNTY DEPARTMENT OF TRANSPORTATION
 MARINE DIVISION MAINTENANCE AND MOORAGE
 BARGE PROJECT
 BITE LAYOUT

King County
 INDEX
 SHEET
 2 OF 51 SHEETS
 C.01

20/10/11 - 828 A
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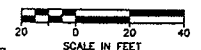


- CONSTRUCTION NOTES:**
- FURNISH AND INSTALL A PRECAST COMMUNICATIONS VAULT WITH CIRCULAR I.D. PER DETAILS ON SHEET C.12 AND C.13. USE KNOCK OUT LOCATION INDICATED ON SHEET C.12 FOR CONDUIT ENTRY.
 - INTERCEPT EXISTING 1.5" RGS CENTURYLINK CONDUIT CARRYING 1-1000PR CABLE CUT CONDUIT AT APPROPRIATE LENGTH FOR VAULT ENTRY WITHOUT DAMAGING EXISTING CABLE. IF CABLE IS DAMAGED DURING INTERCEPTION, CONTRACTOR SHALL REPLACE CABLE FROM PREVIOUS SPLICE POINT. PATCH ENTRY HOLES WITH WATER-TIGHT SEAL AROUND CONDUIT. PULL EXISTING CABLE INTO VAULT, COIL AND LEAVE IN VAULT AS SLACK.
 - MOUNT SHORE POWER CABLE WIRING TROUGH TO GANGWAY TRUSS SUPPORT AT INTERVALS NOT EXCEEDING 3' PER DETAIL ON E.03. WIRING TROUGH SHALL BE SECURELY FASTENED WITHIN 1' OF TERMINATION POINT, SEE SHEET SF.01.
 - CONDUIT SHALL BE INSTALLED VIA TRENCH PER KING COUNTY ROAD STANDARDS AND WSDOT STD SPECIFICATIONS.
 - SEE SHEET C.08 FOR WIRE NOTE SCHEDULE.
 - BENDS IN UNDERGROUND CONDUIT RACEWAY RUNS BETWEEN HANDHOLES SHALL TOTAL NOT MORE THAN 180 DEGREES. UNDERGROUND CONDUIT BENDS SHALL BE MADE WITH RGS CONDUIT WITH A 4-FOOT MINIMUM BEND RADIUS PER SCL REQUIREMENTS.
 - REMOVE EXISTING HANDHOLE AND REROUTE EXISTING SERVICE CONDUIT RUN TO COMPLY WITH SCL REQUIREMENTS (SEE NOTE 6). FILL IN VOID CREATED BY REMOVAL OF HANDHOLE PER SPECIFICATIONS. PERFORM CONDUIT CONNECTION WITH EXISTING SCL HANDHOLE #601 AND REPLACEMENT OF EXISTING SERVICE CONDUCTORS DURING SERVICE POWER OUTAGE IN COORDINATION WITH SCL AND WSDOT. PROVIDE MINIMUM TWO-WEEK ADVANCE WRITTEN NOTICE TO WSDOT OF ANY PLANNED POWER OUTAGE.
 - CONTRACTOR IS ADVISED THAT ONE OF THE EXISTING (4) 3/4" SCL CONDUITS CONTAINS 500 Kcm CONDUCTORS THAT WILL LIMIT THE TOTAL SITE ELECTRICAL LOAD CAPACITY TO 800-AMPERES AT 480 VOLTS.

PIER 48
 201 ALASKAN WAY S
 SEATTLE, WASHINGTON

FOR FENCING DESIGN ONLY
 FOR COMMUNICATIONS DESIGN ONLY
 FOR ELECTRICAL DESIGN ONLY

SOURCE OF BASEMAPPING:
 BATHYMETRIC:
 CH2M HILL AND SYMONDS CONSULTING ENGINEERS.
 UNDERGROUND UTILITIES:
 CITY OF SEATTLE FRANCHISE UTILITY MAPS UTILITY TILE MAPS.
 CH2M HILL AND SYMONDS CONSULTING ENGINEERS.
 TOPOGRAPHY:
 KING COUNTY SURVEY.
 CH2M HILL AND SYMONDS CONSULTING ENGINEERS.



CONTRACTOR SHALL VERIFY LOCATION AND DEPTHS OF ALL EXISTING UTILITIES PRIOR TO CONSTRUCTION.

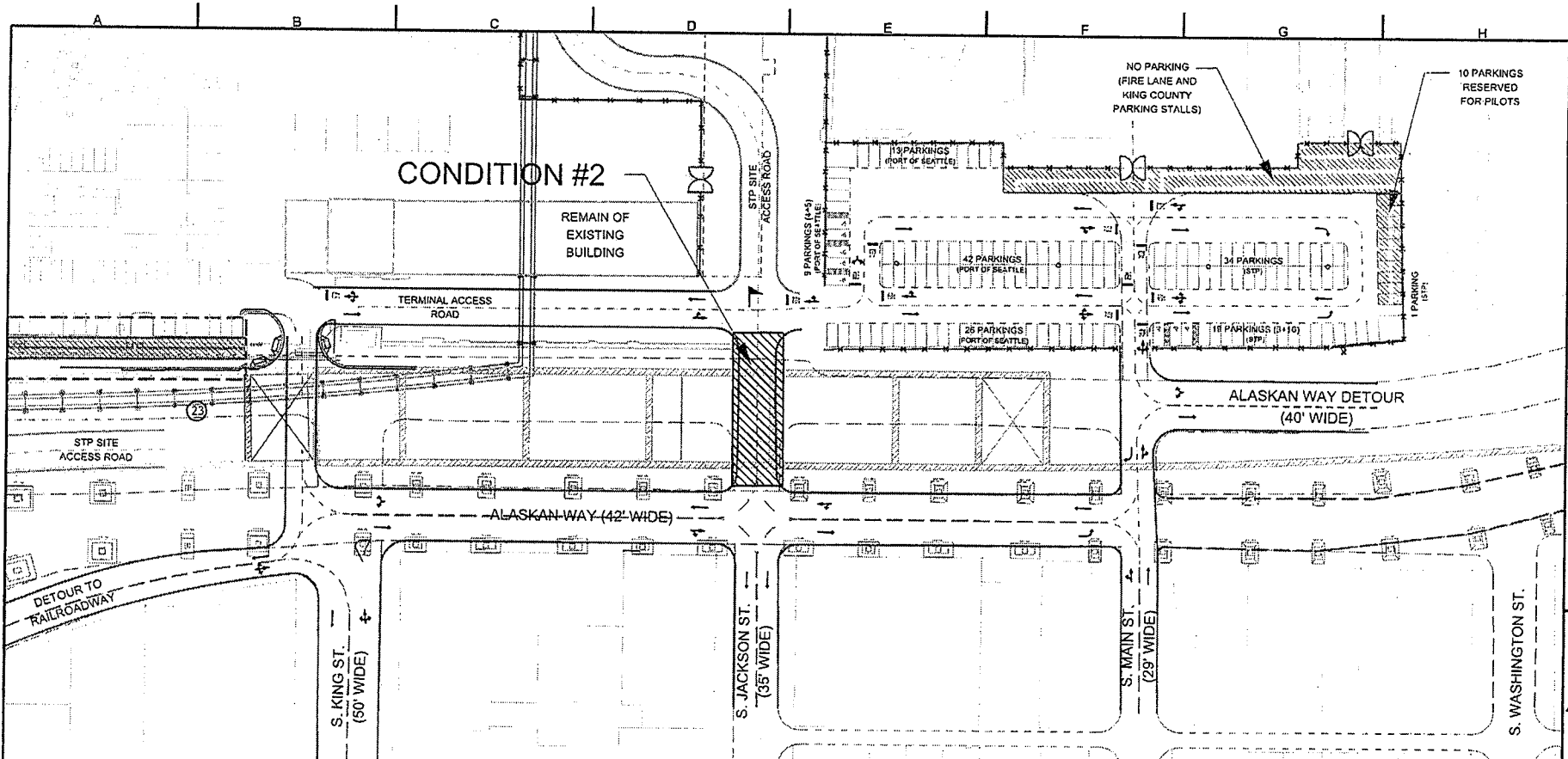
CALL 2 WORKING DAYS BEFORE YOU DIG
 1-800-424-5555
(UNDERGROUND UTILITY LOCATIONS ARE APPROX.)

FIELD BOOK:	
SURVEYED:	
SURVEY BASE MAP:	
DESIGN ENTERED:	ECM
DESIGNED:	LS/HMB
CHECKED:	MW/JM
SUPERVISOR:	EWT
REVISION	BY DATE

JACOBS
 CONTRACT No. C00873011
 PROJECT No. R41223
 THIS PLAN SET IS APPROVED FOR CONSTRUCTION
 SCOTT DAVIS
 MAINTENANCE DIVISION DIRECTOR

KING COUNTY MARINE DIVISION
BARGE MAINTENANCE FACILITY CONSTRUCTION
SHORE SIDE DRY UTILITIES ARRANGEMENT

SHEET 7 OF 30 SHEETS
C.04



GENERAL NOTES:

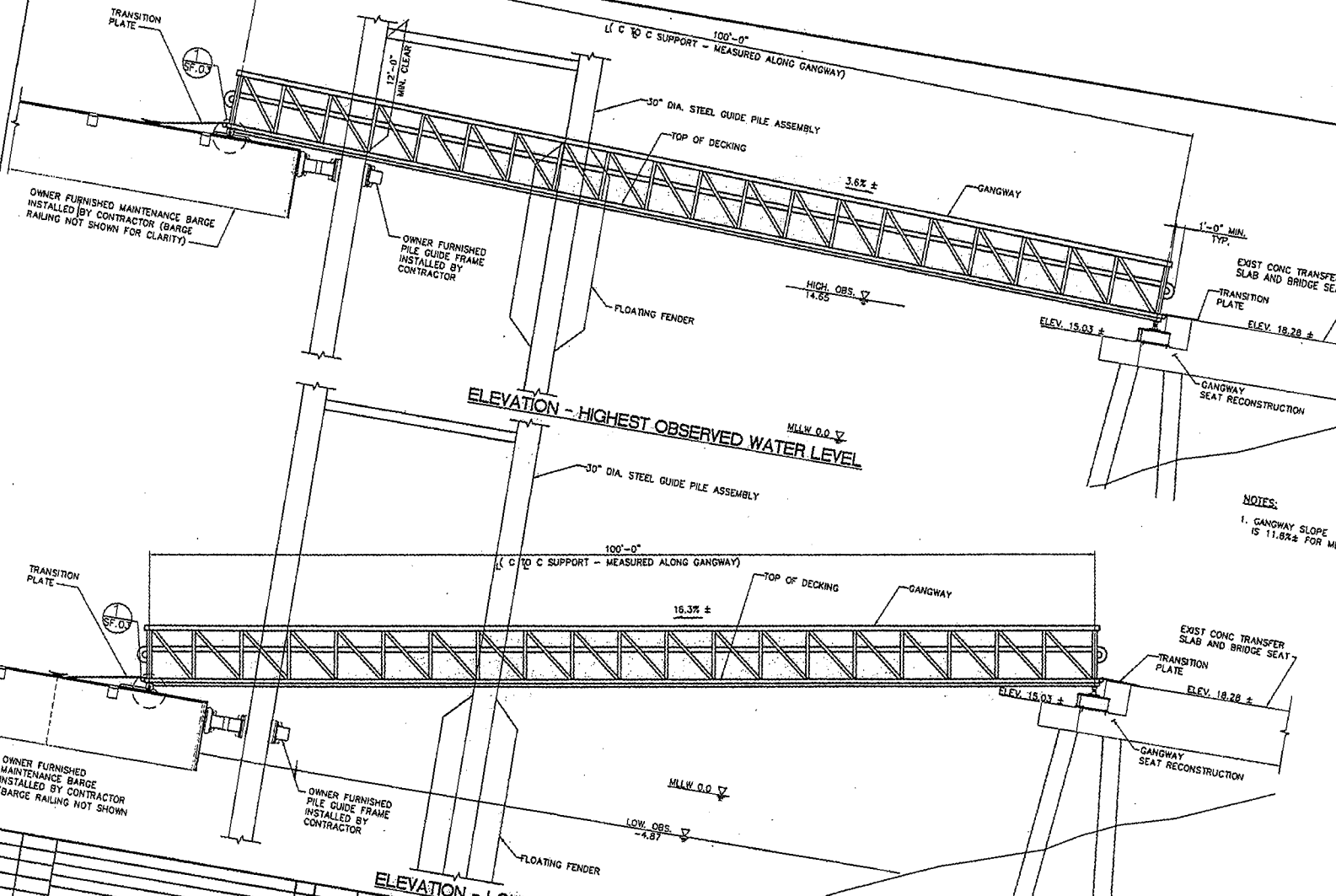
1. TRAFFIC ROUTES IN CITY ROADS AND DETOURS SHALL BE CONTROLLED BY CITY TRAFFIC LIGHTS.
2. TRAFFIC ROUTES INSIDE THE PARKING AREAS IN PIER 48 AND TERMINAL 46 SHALL BE CONTROLLED BY TRAFFIC SIGNS.
3. FLAGMAN SHALL BE UTILIZED AS NEEDED AT THE INTERSECTION OF STP SITE ACCESS AND TERMINAL/PARKING ACCESS.

**CONDITION #2:
CLOSURE OF TERMINAL ACCESS AT S. JACKSON ST.
(DURING SECANT PILING)**

1. VEHICLES GOING TO TERMINAL FROM S. JACKSON ST., ALASKAN WAY AND RAILROAD WAY SHALL USE THE TERMINAL ACCESS AT S. KING ST.
2. VEHICLES GOING TO TERMINAL FROM S. MAIN ST. AND ALASKAN WAY DETOUR SHALL USE THE TERMINAL ACCESS AT S. MAIN ST.
3. VEHICLES GOING OUT FROM TERMINAL SHALL USE TERMINAL ACCESS AT S. KING ST.
4. STP VEHICLES GOING IN AND OUT OF PARKING LOT SHALL USE THE ACCESS AT S. MAIN ST.

DRAFT

FILE NAME: S:\STP DRAWING\SHIF1\TERMINAL 46 & 48 ACCESS\TERMINAL ACCESS-CON1017.dwg		FED. AID PROJ. NO.		Washington State Department of Transportation Federal Highway Administration City of Seattle	PRELIM. DESIGN SUBMITTED BY SEATTLE TUNNEL PARTNERS NOT FOR CONSTRUCTION	ALASKAN WAY VIADUCT REPLACEMENT PROJECT SR 99 BORED TUNNEL ALTERNATIVE SIGNING PLANS TERMINAL 46 & PIER 48 PARKING AND TRAFFIC ROUTES LAYOUT	SN002
TIME: 8:58:12 AM	DATE: 7/1/2011	PROJECT NO. 10	STATE WASH				
DESIGNED BY: MSolvan	CHECKED BY: MARCELITO SALVAN	CONTRACT NO. 007999	LOCATION NO.				
PLOTTED BY: MSolvan	CHECKED BY: GLYDE JOSEPH						
REGIONAL ADM.:	REVISION	DATE	BY				



NOTES:
 1. GANGWAY SLOPE IS 11.6% FOR MLLW TIDE.

P:\WORKS\11\DESIGN\DESIGN\CONV\CONV\DESIGN\CONV\WORKS\11_SITE_GANGWAY_ELEV.dwg
 20/10/11 - R30 A
 mofat

FIELD BOOK:	
SURVEYED:	
SURVEY BASE MAP:	
DESIGN ENTERED:	EGM
DESIGNED:	LA
CHECKED:	GMT
SUPERVISOR:	EWY
DATE:	
BY:	
REVISION:	

JACOBS




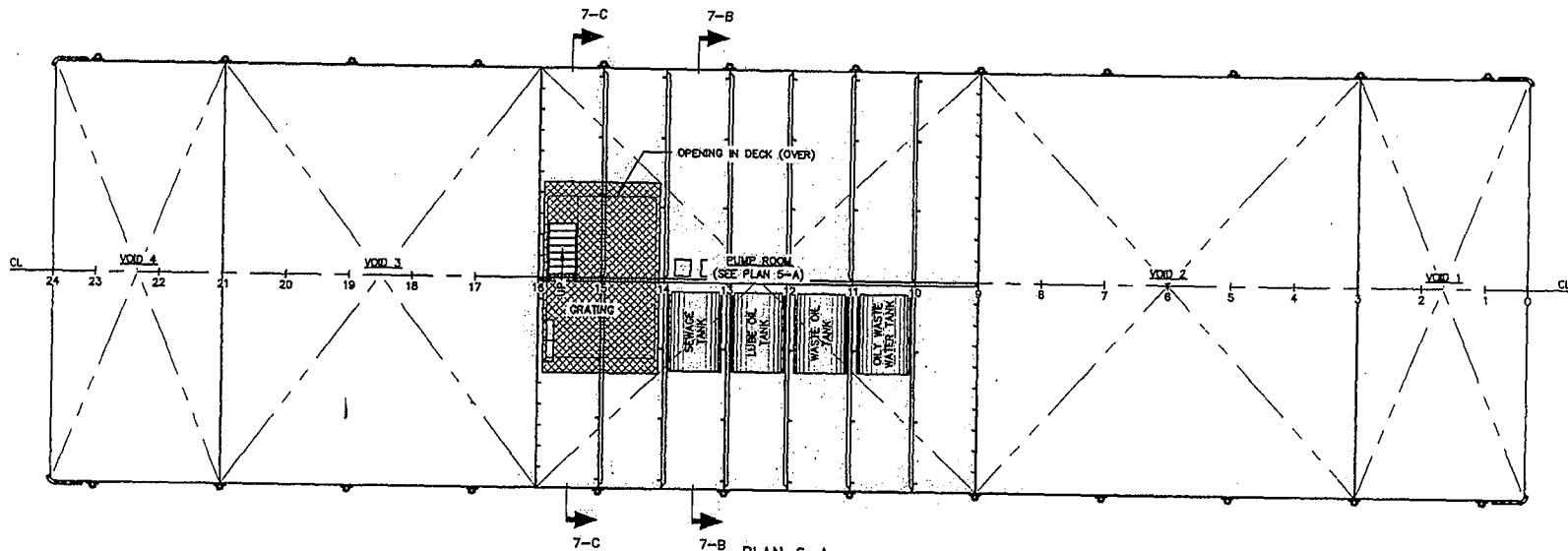
CONTRACT No. C00673C11
 PROJECT No. R41223

THIS PLAN SET IS APPROVED FOR CONSTRUCTION
 SCOTT HAYS
 MAINTENANCE DIVISION DIRECTOR

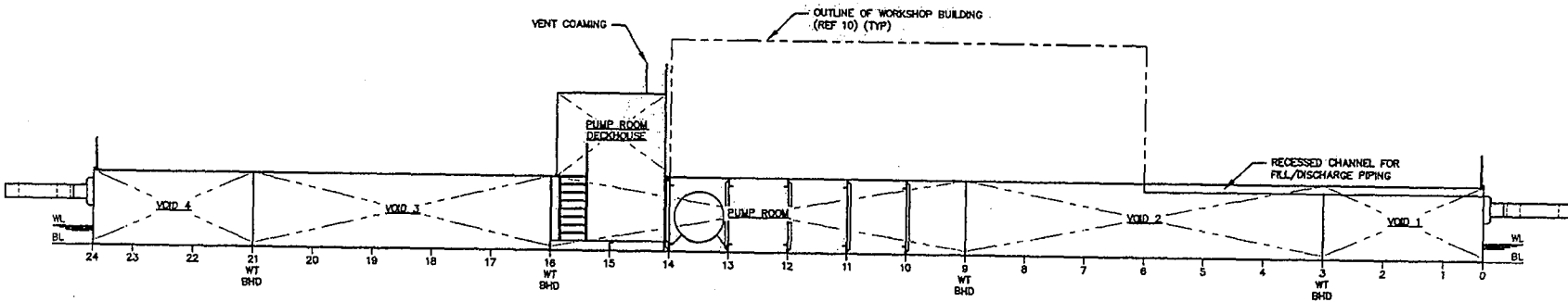


KING COUNTY MARINE DIVISION
 BARGE MAINTENANCE FACILITY CONSTRUCTION
GANGWAY ELEVATION


 SHEET
 24
 OF
 30
 SHEETS
SF.02



PLAN 6-A
HOLD PLAN
3/32"=1'-0"



ELEVATION 6-B
INBOARD PROFILE
3/32"=1'-0"

FIELD BOOK:	
SURVEYED:	
SURVEY BASE MAP:	
DESIGN ENTERED:	
DESIGNED:	KCB
CHECKED:	CCG
SUPERVISOR:	ISL
NO.	REVISION
BY	DATE

CH2MHILL

THE GLOSTEN ASSOCIATES
Consulting Engineers Serving the Marine Community

FED. AID No. WA-86-X020-00
PROJECT No. 359120

THIS PLAN SET IS APPROVED FOR CONSTRUCTION
SCOTT DAMS
MARINE DIVISION DIRECTOR



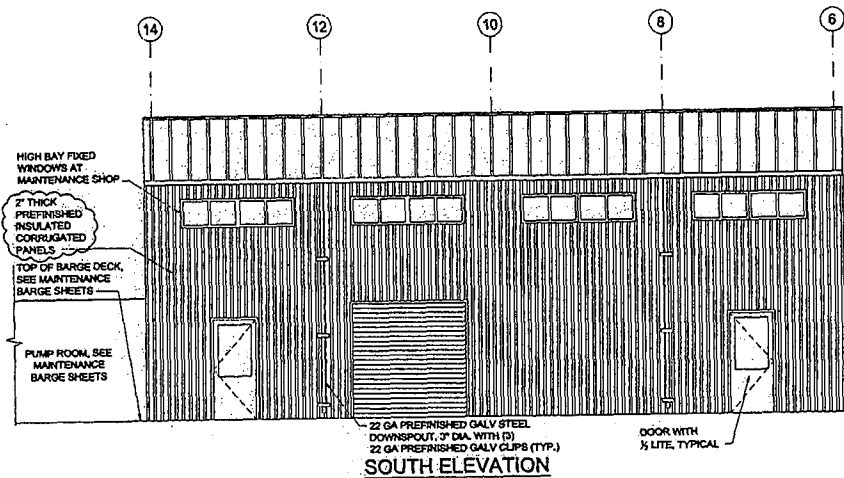
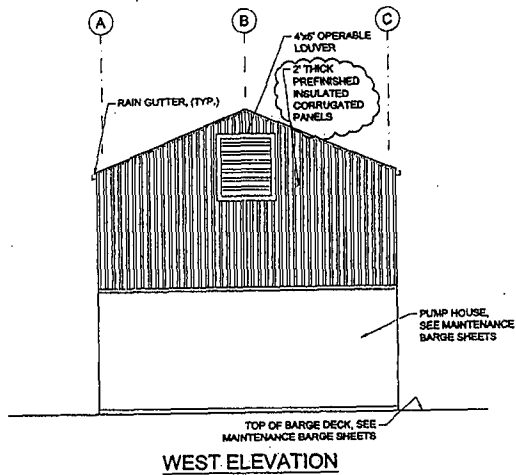
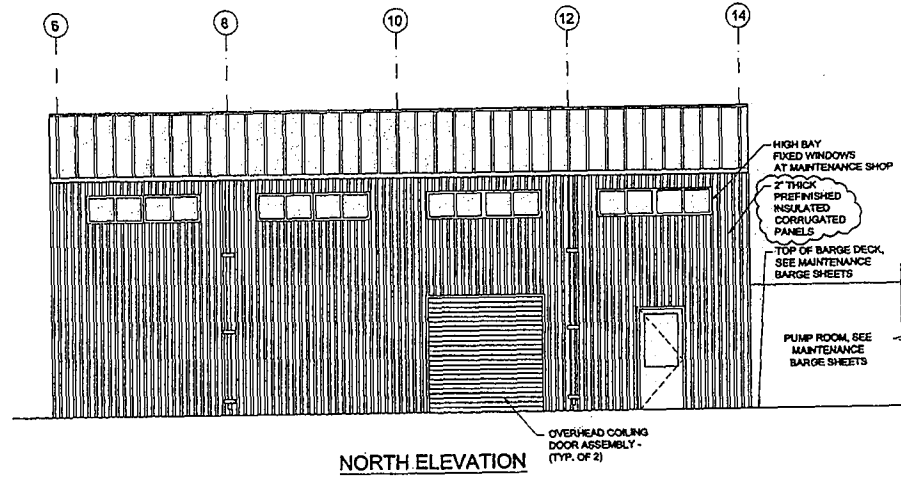
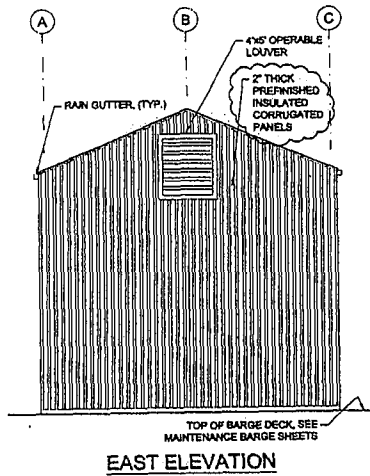
KING COUNTY DEPARTMENT OF TRANSPORTATION
MARINE DIVISION MAINTENANCE AND MOORAGE
BARGE PROJECT

BARGE GENERAL ARRANGEMENT
HOLD PLAN AND INBOARD PROFILE

King County

INDEX

SHEET 6 OF 81 SHEETS
SA.03



FILE: \\KING\002027\proj\1500_00\shop\1500_00.dwg PLOT DATE: September 01, 2011 10:46am

FIELD BOOK:					
SURVEY:					
SURVEY BASE MAP:					
DESIGN ENTERED:					
DESIGNED:	DCC				
CHECKED:	DRP				
SUPERVISOR:	DRP				
	NUM.	REVISION	BY	DATE	

CH2MHILL
CLINKSTON ARCHITECTS
 135 1st Avenue West
 Seattle, WA 98119
 P 206 294 2000

FED. AID No. WA-98-0020-00
 PROJECT No. 359120
 FOR BIDDING PURPOSES ONLY
 NOT FOR CONSTRUCTION

KING COUNTY DEPARTMENT OF TRANSPORTATION
 MARINE DIVISION MAINTENANCE AND MOORAGE
 BARGE PROJECT
 WORKSHOP BUILDING
 EXTERIOR ELEVATIONS

King County
 SHEET 23 OF 51 SHEETS
 INDEX SE.04