

ATTACHMENT A:

**LEASE AGREEMENT
8.22.16 version**

**TIDELANDS LEASE NO. GCB 2432
AT SEATTLE MULTIMODAL TERMINAL**

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**TIDELANDS LEASE NO. GCB 2432
AT SEATTLE MULTIMODAL TERMINAL**

This Tidelands Lease for a Passenger Only Ferry Terminal at Seattle Multimodal Terminal (“Lease”) is made and entered into this ___ day of _____, 2016 between WASHINGTON STATE DEPARTMENT OF TRANSPORTATION FERRIES DIVISION, operating as Washington State Ferries (“WSF” or “LANDLORD”), acting in the capacity of a landlord, and KING COUNTY, a political subdivision of the state of Washington, through the KING COUNTY DEPARTMENT OF TRANSPORTATION – MARINE DIVISION, acting in the capacity of a tenant (“COUNTY” or “TENANT”), (each a “Party” and collectively the “Parties”).

Definitions

ADA means the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., as amended.

Applicable Laws means those applicable laws, including local, state, and federal.

Authorized Users means COUNTY’s employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees who are authorized by the COUNTY to use the Premises.

Budget Proviso means Engrossed Substitute House Bill 2190, Chapter 86, Laws of 2012 (Supplemental Transportation Budget), Section 308 at subsection 13, which provides that “[c]onsistent with RCW 47.60.662, which requires Washington state ferry system to collaborate with passenger-only ferry and transit providers to provide service at existing terminals, [WSF] shall ensure that multimodal access, including for passenger-only ferries and transit service providers, is not precluded by any future modification at the terminal.”

Colman Dock means Piers 50 and 52 in Seattle, King County, Washington.

Commencement Date means the date upon which the Initial Term of the Lease shall commence to be described in the Commencement Notice signed by both WSF and the COUNTY.

Commencement Notice means the notice provided by WSF to the COUNTY, and countersigned by the COUNTY which sets the Commencement Date of the Initial Term of this Lease.

Common Areas means those areas shared by the COUNTY and WSF and depicted at Exhibit A for which WSF has granted the COUNTY a non-exclusive license as more specifically described in Section 3.1.A.6.

Concessions means newspaper boxes and/or newsstands, vending machines, coffee carts, and other small concessions compatible with POF service

Construction Agreement means that agreement to be entered into between the Parties for development, construction, and transfer of the improvements at the Seattle Multimodal Terminal.

Construction Contractor means the general contractor/construction manager (GC/CM) selected by WSF for the Project.

Construction Documents means the construction drawings and detailed specifications approved by WSF with input from COUNTY under Section 5.3 below, for the construction of the POF Facility, including technical drawings, schedules, diagrams, plans and specifications setting forth in detail the requirements for materials, equipment, construction systems, standards, and workmanship for the construction of the POF Facility and providing information customarily required for the use of the building trades.

County means King County, a political subdivision of the state of Washington.

County Vessels means any vessel used for King County POF purposes and owned, leased, chartered, or contracted for by the COUNTY.

CPI means the Consumer Price Index for Seattle-Tacoma-Bremerton for All Urban Consumers (1982-84=100) published by the United States Department of Labor's Bureau of Labor Statistics.

Days means calendar days.

Designated Representatives means those representatives designated by the Parties to make joint decisions and resolve disputes.

Design Phase Agreement means Agreement No. GCB 1951 for the Project, entered into between the Parties on December 23, 2014, a copy of which is on file with the Parties.

Director means the Director for the Marine Division of the King County Department of Transportation.

Dispute Resolution means the process of resolving disputes between the Parties as provided in Section 19.

Dispute Resolution Notice means that notice provided by one Party to another Party requesting to initiate Dispute Resolution.

DNR means the Washington State Department of Natural Resources.

Environmental Laws shall mean any federal, state, or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction, or common law pertaining in any way to the protection of human health, safety, or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42

U.S.C. § 9602 et. seq. (“CERCLA”); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq. (“RCRA”); the Washington State Model Toxics Control Act, RCW ch. 70.105D (“MTCA”); the Washington Hazardous Waste Management Act, RCW ch. 70.105; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Washington Water Pollution Control Act, RCW ch. 90.48, and any laws concerning above ground or underground storage tanks.

Expiration Date means the date this Lease terminates, which is the later of: (i) December 31 of the year that is the later of fifty (50) years from the year of the Commencement Date; or (ii) December 31 of the year that is twenty-five (25) years after the extension option is exercised.

Extension Term means the term of Lease following the Initial Term extending the Initial Term by an additional twenty-five (25) year period.

Force Majeure Event means any act or event that prevents the affected Party from performing its obligations under this Lease, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party is unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing definition, Force Majeure Event may include natural phenomena, such as storms, hurricanes, floods, lightning, or earthquakes; explosions or fires arising from causes unrelated to the acts or omissions of the Party seeking to be excused from performance; acts of war, civil unrest, public disorder, sabotage, epidemic, rebellion, riot, or terrorism or war. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers, contractors or subcontractors, except to the extent that such acts or omissions arise from a Force Majeure Event as defined herein.

Hazardous Materials means any waste, pollutant, contaminant, or other material that now or in the future becomes regulated or defined under any Environmental Laws.

Indemnified Environmental Matters means damages, losses, liabilities, obligations, penalties, claims, litigation, suits, proceedings, costs, disbursements, or expenses of any kind or of any nature whatsoever including, without limitation: (i) all legal fees, expert fees, and disbursements, (ii) the costs of removal of Hazardous Materials, to the extent required by the Environmental Laws, (iii) costs incurred to comply with all Environmental Laws with respect to Hazardous Materials, and (iv) claims, actions, damages, liability, and expenses in connection with loss of life, personal injury, and/or property damage that arise out of a Release of Hazardous Materials.

Indemnified Matters means those matters indemnified as defined in Section 7.

Initial Term means the initial Lease term, as specified in Section 4.1 of this Lease.

License Agreement means that agreement between the Parties for operation of POF service from Pier 50, as detailed in the Seattle and Vashon Island Passenger-Only Ferry Terminal

License Agreement No. GCA No. 6750, a copy of which is on file with the Parties.

Marine Division means that agency of King County within the Department of Transportation, formerly known as the King County Ferry District and possessing all the powers that a ferry district may have under RCW ch. 36.54 and other authorities.

Material Default means a default that significantly endangers public health or safety.

Naming Rights means a form of advertising sold by the COUNTY for the right to name the POF Terminal or any part thereof, for any period of time during the Initial Term or Extension Term.

Pier 50 means the location of the current passenger-only ferry terminal in Seattle, King County, Washington.

Pier 52 means the location of the current vehicle / passenger ferry terminal in Seattle, King County, Washington.

POF means passenger-only ferry.

POF Facility or POF Terminal means all of the improvements to be owned by the COUNTY, including the pilings, trestle, POF building, gangway, and float.

Public Place means that area west of the Tidelands within the harbor area, owned by DNR and designated a Public Place, as described and depicted in Exhibit B.

Premises means together, the Tidelands, the POF Facility, and the Common Areas.

Project means the design and construction phases for the Seattle Multimodal Terminal.

Release means releasing, spilling, leaking, pumping, pouring, flowing, depositing, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping, as used in the Environmental Laws and regulations.

Relocation Costs means all of those costs associated with the physical move of POF operations to a temporary location and to a new, permanent location. Such costs shall include but not be limited to: (i) the cost of constructing any temporary pilings, providing a temporary shelter, moving ticket vending machines and real-time information signs, and moving and securing the COUNTY's gangway and float to the temporary location; (ii) costs to make any other necessary and reasonable improvements to the temporary location; (iii) any increase in rent or utilities for the temporary rental location; and (iv) reasonable costs to inform the public about the temporary location and the new, permanent location. Subject to Section 19, the COUNTY reserves the right to reject any temporary location if it does not meet the COUNTY's reasonable physical requirements for providing POF service.

Rent means the periodic amount paid by the COUNTY to WSF in exchange for lease of the

Tidelands to locate the POF Facility.

Routine Communication means those written, telephonic, electronic and oral communications exchanged between the Parties, as a matter of course.

Sailing Schedule means the published seasonal schedule for the sailing routes operated by the COUNTY or WSF.

Seattle Ferry Terminal means collectively Piers 50 and 52 in Seattle, Washington, pending construction of the Seattle Multimodal Terminal at Pier 52.

Seattle Multimodal Terminal means the remodeled Seattle Ferry Terminal at Pier 52, including the vehicle/passenger ferry facilities and the POF Facility.

Substantial Completion means the date upon which a certificate of occupancy has been issued by The City of Seattle for the POF Facility.

Term or Lease Term means the Initial Term and any Extension Term under this Lease.

Tidelands means those areas described at Exhibit C1, which are leased from WSF to the COUNTY.

WSDOT means the Washington State Department of Transportation.

WSDOT Executive Representative means the Assistant Secretary, Ferries Division, Washington State Department of Transportation.

WSF means the Washington State Ferries.

1. Parties

1.1 **LANDLORD:** WASHINGTON STATE DEPARTMENT OF TRANSPORTATION FERRIES DIVISION, operating as Washington State Ferries (“WSF” or “LANDLORD” herein).

1.2 **TENANT:** KING COUNTY, a political subdivision of the state of Washington, through the KING COUNTY DEPARTMENT OF TRANSPORTATION – MARINE DIVISION (“COUNTY” or “TENANT” herein).

2. Tidelands, Common Areas, Public Place, and the County’s Personal Property.

2.1 Effective as of the Commencement Date, WSF does hereby lease to the COUNTY and the COUNTY does hereby lease from WSF, the Tidelands upon which the COUNTY’s POF Facility will be built.

2.2 This Lease does not create any estate or transfer any interest in real estate other than the rights specifically described in this Lease for the Tidelands and Common Areas. This Lease is made subject to all encumbrances of record.

2.3 In addition to use of the leased Tidelands, the COUNTY is authorized to use for its POF Facility a portion of the Public Place in the harbor area that is west of the leased Tidelands. DNR has determined that the COUNTY POF use of the Public Place is consistent with the current authorization for the Washington State Department of Transportation Colman Ferry Terminal, as described in Exhibit I.

2.4 Personal Property.

A. The COUNTY will own personal property to be located at the POF Facility. A list of personal property the COUNTY anticipates owning is identified at Exhibit D and will be updated on or before the Commencement Date by the COUNTY and memorialized by a written amendment, the form of which is identified at Exhibit E.

B. Personal property belonging to WSF or another person or entity and located in the Common Areas shall remain the exclusive property of WSF or such other person or entity, respectively. The COUNTY shall not be liable in any manner for, or on account of, any loss or damage sustained by WSF or other authorized users' personal property of whatsoever kind stored, kept, or maintained in the Common Areas except the COUNTY shall be liable for any such claims, losses, or damage caused by the acts or omissions of the COUNTY or its agents, employees, invitees or licensees.

2.5 Tidelands Legal Description. Within 30 days after Substantial Completion the COUNTY shall submit to WSF for approval an updated legal description for the Tidelands based on the final configuration of the POF Facility, which approval WSF shall not unreasonably withhold, condition, or delay. Upon such approval, this Lease shall be amended by replacing the legal description in Exhibit C1 with the updated legal description for the Tidelands. The updated legal description for the Tidelands shall be attached as Exhibit C2 and also be the basis for the calculation of rent under Section 5.1.A.

3. Uses Permitted Under Lease.

3.1 Permitted Uses

A. COUNTY's Use. The COUNTY's use of the Premises is limited as follows:

1. POF service. The COUNTY may use the Premises to provide its scheduled POF service and the COUNTY-sponsored special event sailings to/from the POF Facility, subject to the terms and conditions specified in this Lease.

2. Special Event Sailings. The COUNTY may allow COUNTY-sponsored special event sailings to/from the POF Facility with the consent of WSF, which

shall not be unreasonably withheld. All use must be coordinated with WSF to avoid conflicting sailing schedules.

3. Other Uses. The COUNTY may use the Premises for other POF operations, subject to advance review and approval by WSF, which shall not be unreasonably withheld.

4. Storage. The COUNTY may use the POF Facility for storage of items that support the COUNTY'S POF service. The COUNTY shall be solely responsible for the security of any items stored at the POF Facility and the loss of or damage to any such items.

5. Parking. The COUNTY has the right to park one (1) vehicle in the Seattle Multimodal Terminal holding lane for short term access to its POF Facility. Such parking space shall be used solely for: (i) COUNTY personnel while managing or maintaining the POF service at the Premises; (ii) for armored vehicle pickup; or (iii) for COUNTY vendors while delivering products or supplies to the Premises. WSF shall allow the COUNTY access to the POF Facility during deliveries and for other short-term needs through a gate in the fence separating the POF Facility from the WSF Seattle Multimodal Terminal. The gate shall be in close proximity to the COUNTY office in the POF. The COUNTY will control access through the gate between the POF Facility and the WSF Seattle Multimodal Terminal.

6. Common Areas. WSF grants to the COUNTY a non-exclusive license to use the Common Areas, which are for access only and are not available for any COUNTY concession services. WSF shall have the right to do and perform all such acts in and to the Common Areas as WSF shall determine in its reasonable discretion, including without limitation reconfiguring and temporarily closing the same from time to time, using all reasonable efforts to not adversely affect the COUNTY's use and enjoyment of the POF Facility.

7. COUNTY Sailing Schedule. No less than fourteen (14) days before the start of the Initial Term, or any schedule adjustment, the COUNTY will notify WSF of the COUNTY's proposed schedule for the dockings at the POF Facility, which will set out the proposed docking periods for each proposed docking. The COUNTY will notify WSF no less than fourteen (14) days in advance of any schedule adjustment, semi-annual or otherwise. The schedule will be deemed to be the COUNTY Sailing Schedule unless WSF notifies the COUNTY of a conflict with a WSF Sailing Schedule, in which case the Parties shall work together to resolve such conflict, as required by Section 19. WSF will use all reasonable efforts (subject to any events of Force Majeure) to ensure that the Premises are available for the docking, loading and unloading of the COUNTY's vessels during the times set out in the COUNTY's Sailing Schedule. In the case of any event of Force Majeure, WSF will be relieved of the foregoing obligation, but will cooperate with the COUNTY as reasonably required to ensure that alternate docking times are available to deal with the event of Force Majeure.

B. Use and Occupancy for Sailing. The COUNTY and its employees and agents may use and occupy the Premises for:

1. The docking of the COUNTY Vessels;
2. The loading and unloading of passengers, bicycles, baggage, and supplies from the COUNTY Vessels;
3. the moorage of the COUNTY Vessels during non-service hours during the day and night tie-up and COUNTY Vessel maintenance work conducted while vessels are tied up; and
4. The COUNTY-sponsored special event sailings to/from the POF Facility, subject to advance notice to and coordination with WSF operations personnel.

3.2 Concessions. The COUNTY's use of the POF Facility shall include the right to place Concessions in the waiting and queuing areas, provided such areas are secure and not accessible to customers at the WSF terminal. The COUNTY shall consult in advance with WSF regarding the scope and location of Concessions to avoid conflict with concession services at the WSF terminal. The COUNTY shall keep and pay any fees and taxes due on all gross revenues generated from Concessions operated at the POF Facility.

3.3. Advertising, Signage, and Naming Rights.

A. POF Facility. WSF hereby permits the COUNTY to sell advertisements for display in the POF Facility only. The COUNTY shall have sole responsibility and discretion over any advertising inside the POF Facility. All proposed sales of advertisements shall be subject to a COUNTY advertising policy similar to any Department of Transportation – Transit Division advertising policy existing at the time of such sale. The COUNTY shall have responsibility for installation and maintenance of any signs, displays and/or advertising devices. The COUNTY shall keep and pay any fees and taxes due on all revenues generated from the sale of advertisements.

B. WSF hereby permits the COUNTY to sell Naming Rights for the POF Facility. The COUNTY shall keep and pay any fees and taxes due on all revenues generated from the sale of Naming Rights.

C. Common Areas. No advertisements may be displayed by the COUNTY in the Common Areas. The COUNTY may display its current and upcoming POF sailing schedule and other related informational notices in WSF approved locations in the Common Areas. The Parties shall cooperate in the periodic development and administration of informational displays in the Common Areas as contemplated in Section 19.

3.4 Compliance Requirements. In connection with this Lease, it is expressly agreed that:

- A. The Parties shall comply with all Applicable Laws; and
- B. The COUNTY shall secure and maintain all necessary permits and licenses for the COUNTY's use of the POF Facility as authorized under this Lease.

3.5 Quiet Enjoyment. WSF covenants that as of the Commencement Date, WSF will have the right to lease the Tidelands for the purposes and uses stated herein and that the COUNTY shall have and quietly enjoy the Tidelands and POF Facility for the Initial Term and the Extension Term.

3.6 Security. After execution of this Lease, the Designated Representatives and/or their designees shall jointly develop a security plan for the POF Facility, to cover customer, staff, vendor and asset security during operating and non-operating hours. The Security Plan shall be administered consistent with Section 19.

4. Term, Term Extension and Commencement Notice.

4.1 Initial Term: The Initial Term of this Lease shall commence on the Commencement Date as set forth in the Commencement Notice, signed by both Parties and shall expire at 11:59 PM on December 31 of the calendar year that is fifty (50) years from the year of the Commencement Date, which is anticipated to be 2019. The Commencement Notice shall be in substantially the same form as Exhibit F.

4.2 Extension: At the COUNTY's written request, the term of the Lease may be extended for one (1) additional twenty-five (25) year period to be memorialized in a written amendment signed by the Parties, which agreement shall not be unreasonably withheld except if WSF has a legislatively approved and funded WSF project for the Tidelands. In the event the COUNTY desires to so extend the lease, in its sole discretion, it shall provide written notice of such intent to WSF not less than one (1) year and not more than two (2) years prior to the existing Expiration Date of the Lease. If the COUNTY does not provide such notice, then the Lease expires at the end of the Initial Term specified above. Any extension of this Lease Agreement shall be on the same terms and conditions, as set forth herein, except as modified by any changes in policies, practices, laws, regulations, or contracts that will be reflected in a written amendment signed by both Parties.

4.3 Commencement Notice: The Initial Term is to commence on the Commencement Date set forth in the Commencement Notice signed by both Parties. WSF shall give its Commencement Notice when the POF Facility is open to and available for use by the COUNTY to provide POF service at Pier 50. To issue the Commencement Notice, at a minimum, the POF Facility will have reached Substantial Completion, provided however, that in no case will the Commencement Date be later than sixty (60) days after Substantial Completion.

4.4 Existing POF: Subject to its terms and conditions, the Parties intend that the existing POF Terminal License Agreement No. GCA 6750 will remain in effect until the Commencement Date.

5. Consideration.

5.1 Rent: In consideration for lease of the Tidelands, WSF shall charge the COUNTY annual rent as follows:

A. Rent formula and calculation. The rent formula shall be eight and one-half cents (\$0.085) per square foot multiplied by the square feet of Tidelands multiplied by seventy-five percent (0.75), reflecting 25% discount for public benefit per RCW 47.64.090(3). Using the current estimate of 9160 sq.ft. of Tidelands, the calculation results in the following rent estimate: \$583.95 per month or \$7,007.40 per year, which will be confirmed by the Parties after Substantial Completion and prior to the Commencement Date.

B. The Rent shall be adjusted each year during the Term by the percentage increase, if any, in the CPI for the previous twelve-month period that ended on December 31. The Parties intend that any change in the Rent and any change in CPI will be determined on a calendar year basis, i.e. as of December 31 of each year during the Term, even if the Term does not begin on January 1. In no event shall the adjusted Rent be less than the Rent for the previous year.

C. If the CPI is discontinued or replaced during the Term, then the Parties shall jointly identify in writing another governmental cost-of-living index or computation to replace the CPI, and that index shall be used to obtain substantially the same result as would be obtained if the CPI had not been discontinued or replaced.

5.2 Other Consideration. The Parties acknowledge and agree that in addition to the COUNTY's payment of Rent, the COUNTY is contributing to the cost of design, construction, operation, and maintenance of the Common Areas, which are required to meet City of Seattle public access requirements for the WSF and COUNTY projects. In addition, at the request of WSF, the COUNTY is paying the cost of upgrading the trestle and pilings for the POF Facility, so that the POF Facility could be used by vehicles for WSF ferry access at some future time. The COUNTY and WSF are also providing mutual benefits to one another through the co-location of ferry facilities. The exchange of consideration described herein supports the COUNTY'S use of the Premises as described in this Lease.

5.3 Construction of POF Facility: The COUNTY would not have entered into this Lease but for the agreement by WSF to undertake development and construction of the POF Facility and Common Areas for use by the COUNTY for POF operations as defined in Section 3.1 above. Accordingly, WSF shall diligently cause the POF Facility and Common Areas to be designed and constructed to completion in a good and workmanlike manner and in accordance with the provisions of this Section 5.3 and the Construction Agreement to be executed between the Parties.

A. Construction Contract. To meet the requirements of this Lease for completion of the POF Facility and Common Areas, WSF shall enter into a construction contract for the Project with its selected Construction Contractor. Prior to its contract execution, WSF shall

provide the COUNTY with a copy of the Project construction contract for the COUNTY's information, and the COUNTY shall have the right to comment on the Project construction contract. In addition, the COUNTY shall have the right to view, for its own information, all related contracts and the bids submitted by potential contractors and subcontractors in connection with the POF Facility and Common Areas elements of the Project.

B. Construction Agreement. In addition to the Project construction contract, WSF shall enter into a Construction Agreement with the COUNTY. The Parties agree to use their reasonable efforts to negotiate a Construction Agreement with the intent to execute such Agreement not later than the date that Final Design for the Project is completed consistent with the Design Phase Agreement GCB 1951, Exhibit B, Estimated Design Schedule and Project Milestones for Seattle Multimodal Terminal Project Including POF Terminal Element. The Construction Agreement shall include, but not be limited to, terms and conditions addressing the following subjects:

1. A not-to-exceed amount for the COUNTY's maximum financial contribution towards construction of and mitigation for the POF Facility and Common Areas, including all contingencies and change orders. The COUNTY's maximum financial contribution to design of the POF Facility and Common Areas is already set forth in the Design Phase Agreement, GCB 1951.

2. A detailed schedule for design and construction of the POF Facility and Common Areas. The Parties acknowledge that WSF and the King County Ferry District previously entered into that certain Design Phase Agreement. The Parties agree that the dates set forth in Exhibit B to Agreement GCA 1951 (which Exhibit is titled "Estimated Design Schedule and Project Milestones for Seattle Multimodal Terminal Project, Including POF Terminal Element") as may be revised from time to time shall serve as target dates for achieving the matters set forth therein.

3. The preparation of construction drawings and detailed specifications for the POF Facility and Common Areas for review, comment, and acceptance by the COUNTY consistent with the 30% design plans for the POF Facility and Common Areas to be constructed at Colman Dock as an element of the Seattle Multimodal Terminal Project for benefit of the COUNTY, which 30% plans the COUNTY has prepared and provided to WSF and WSF has reviewed and accepted from the COUNTY, and which plans are identified as plan set No. 213027 prepared by SRG Partnership Project and dated May 15, 2015. The Parties acknowledge that copies of the 30% design plans are on file with them.

4. Factory Mutual Engineering review of all plans and specifications for the POF Facility and Common Areas elements of the Project.

5. A process for the COUNTY to review, comment, and concur with all proposed changes in the Construction Documents requiring WSF's review and/or approval pursuant to the Project construction contract with Construction Contractor, as and when such proposed changes are provided to WSF.

6. The COUNTY review and approval of any amendment of the Construction Documents or the Project construction contract between WSF and its Construction Contractor, but only if such amendment arises out of or relates to the design or construction of the POF Facility or the Common Areas elements of the Project or would otherwise affect the COUNTY's rights and duties.

7. Terms requiring WSF to cause the Construction Contractor to secure all permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with the POF Facility and Common Areas pursuant to requirements of law.

8. Indemnification; bonding or other security; and minimum construction insurance requirements for the Construction Contractor, including but not limited to builder's risk insurance for the protection of WSF and the COUNTY and additional insured provisions.

9. Process for the COUNTY payment of construction costs for POF Facility and its share of the Common Areas, including WSF and the Construction Contractor documentation requirements and a process for resolving disputes about invoices.

10. Provisions regarding cost savings and return of any unexpended amount of the COUNTY's not-to-exceed financial contribution towards the POF Facility and Common Areas.

11. The COUNTY's right to inspect on-going construction of the POF Facility and Common Areas.

12. Provisions addressing Force Majeure, unavoidable delays, and other considerations affecting the Project construction schedule.

13. A process for the COUNTY to inspect the completed POF Facility and Common Areas, and to notify WSF whether the COUNTY accepts or rejects them.

14. Requirements that WSF will provide the COUNTY with copies of all of the following regarding the completed POF Facility and Common Areas: As-built plans and specifications; manuals; warranties; permits and licenses; test results; and surveys.

C. Substantial Completion of POF Facility and Common Areas. WSF shall use its reasonable efforts to commence initial construction of the POF Facility and Common Areas following receipt of the building permits, and thereafter, WSF shall cause the POF Facility and Common Areas to be diligently constructed. All work shall be performed in a good and workmanlike manner, shall be free of defects in the work and materials and shall be constructed in substantial accordance with the Contract Documents, the requirements of this Lease and requirements of applicable law. WSF shall use its reasonable efforts to cause Substantial Completion to occur and the POF Facility and Common Areas to be operational consistent with Design Phase Agreement.

D. Termination of Lease for Lack of Construction Agreement or Substantial Completion.

1. If WSF and the COUNTY have not entered into a Construction Agreement by the date that WSF gives the Construction Contractor notice to proceed with construction of the Project, then the COUNTY shall have the right to terminate this Lease upon sixty (60) days prior written notice to WSF, without liability to the COUNTY.

2. If, by December 31, 2024, construction of the POF Facility and Common Areas has not commenced for any reason, then the COUNTY shall have the right to terminate this Lease upon sixty (60) days prior written notice to WSF, without liability to the COUNTY.

E. Order of Precedence. If there is any conflict or ambiguity between this Lease and the Design Phase Agreement regarding the design of the POF Facility, then the Design Phase Agreement shall control. If there is any conflict or ambiguity between this Lease and the Construction Agreement regarding the construction, delivery, and acceptance of the POF Facility and Common Areas, then the Construction Agreement shall control. As between this Lease, the Design Phase Agreement, and the Construction Agreement, this Lease shall control as to all other matters relating to or arising out of the COUNTY's use and possession of the Tidelands and permitted use of the Premises as described in Section 3.1.

6. Operations and Maintenance Obligations.

6.1 Matrix of Obligations. The Parties intend to allocate operation and maintenance obligations as conceptually described in Exhibit G. The COUNTY and WSF agree to perform or cause to be performed, at their respective allocated expense, the maintenance of the POF Facility and Common Areas as set forth in Exhibit G. Such maintenance will include, but not be limited to, keeping the POF Facility and Common Areas in good condition, both as to safety and appearance, in accordance with applicable standards in effect at the Seattle Multimodal Terminal. To the maximum extent possible, the Parties shall ensure that such maintenance will not cause interference with use of the Seattle Multimodal Terminal and the POF Facility. The Committee established in Section 19.1 shall update the Maintenance Responsibility Matrix following Substantial Completion of the POF Facility and Common Areas and thereafter as may be required during the Term of this Lease. The update shall be by written amendment to this Lease.

6.2 Reimbursement. For costs incurred by a Party that are required to be paid to the other Party, as part of maintenance obligations as described in the Maintenance Responsibility Matrix, the Party incurring the cost shall submit an invoice to the other Party. The invoice shall be deemed complete if it provides sufficient detail supporting the work performed and the costs incurred. Such invoices may be submitted no more than once a month, and no less than once per quarter. Such invoices shall be paid by the Party with the obligation to reimburse or pay the costs within thirty (30) days of that Party's receipt of the invoice. Payment is subject to submission of a complete invoice and approval by the Party receiving the invoice. If a Party disputes the charges, documentation, or completeness of an

invoice, that Party will, by written notice, set forth such objections to the Party issuing the invoice. The written notice of objections shall be provided within 20 days after receipt of the disputed invoice. Any dispute must be reconciled and if changes are necessary a new invoice issued and documentation of cancellation of the original invoice provided. Any such dispute is subject to the dispute resolution procedures of Section 19.

6.3 Inspection. The COUNTY and WSF each reserve the right to observe and inspect the maintenance work conducted by each Party in the Common Areas. The Committee established in Section 19.1 shall be the primary body for addressing matters pertaining to maintenance. If the Committee is unable to resolve maintenance-related concerns then the concerned Party shall provide written notice to the other Party of any unresolved maintenance concerns that Party may have, including details. The notice will set a specified reasonable period of time in which either Party must take the requested corrective action. If a Party does not complete corrective action within the time period specified in the notice, then the aggrieved Party may initiate dispute resolution under Section 19.2.

6.4 Other. The COUNTY's responsibility for operation and maintenance of the POF Facility and Common Areas is strictly limited to those specific tasks listed in the Maintenance Responsibility Matrix, and no others. The COUNTY shall have no duty to enforce any warranty or to repair or replace defective work or materials or to address any other problem arising out of or relating to WSF's design or construction of the POF Facility and Common Areas.

6.5 Order of Precedence. If there is any conflict between this Lease and the Maintenance Responsibility Matrix, then this Lease shall control.

7. Indemnity.

7.1 COUNTY. The COUNTY and its successors and assigns shall protect, save, indemnify, defend and hold harmless WSF, including its authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever arising out of or relating to the negligent acts or omissions of the COUNTY, its agents, contractors, licensees, invitees or employees, on or in connection with the Premises. The COUNTY obligations under this Section 7.1 shall not include any claims, costs, damages, or expenses, arising out of or relating to the acts of WSF or its agents, contractors, licensees, invitees or employees; PROVIDED that if claims, actions, costs, damages, or expenses arise out of or relate to: (i) the concurrent acts of WSF, its agents, contractors, licensees, invitees, or employees and the COUNTY, its agents, contractors, licensees, invitees or employees; or (ii) involve actions covered by RCW 4.24.115, then this Section 7.1 shall be valid and enforceable only to the extent of the negligent acts or omissions of the COUNTY and its agents, contractors, licensees, invitees or employees.

7.2. WSF. WSF and its successor and assigns shall protect, save, defend, indemnify and hold harmless the COUNTY, including its authorized agents and employees, from all claims, actions, costs, damages, or expenses of any nature whatsoever arising out of or relating to the negligent acts or omissions of WSF, its agents, contractors, licensees,

invitees, or employees in connection with the Premises. WSF's obligations under this Section 7.2 shall not include such claims, costs, damages, or expenses arising out of or relating to the acts of the COUNTY or its agents, contractors, licensees, invitees or employees; PROVIDED that if the claims, actions, costs, damages or expenses arise out of or relate to: (i) the concurrent acts of the COUNTY, its agents, contractors, licensees, invitees, or employees and WSF, its agents, contractors licensees, invitees, or employees; or (ii) involves actions covered by RCW 4.24.115, then this Section 7.2 shall be valid and enforceable only to the extent of the negligent acts or omissions of WSF and its agents, contractors, licensees, invitees or employees.

7.3. COUNTY Employees. The COUNTY specifically assumes potential liability for actions brought by the COUNTY's own employees against WSF and, solely for the purpose of this indemnification and defense, the COUNTY specifically waives any immunity under the state industrial insurance law, Title 51 RCW, which waiver has been mutually negotiated by the Parties.

7.4 WSF Employees. WSF specifically assumes potential liability for actions brought by WSF's own employees against the COUNTY and, solely for the purpose of this indemnification and defense, WSF specifically waives any immunity under the state industrial insurance law, Title 51 RCW, which waiver has been mutually negotiated by the Parties.

7.5 Environmental Matters Excluded. The indemnities and other duties set forth in this Section 7 do not extend to environmental matters or Hazardous Materials arising out of or related to the Premises.

8. Insurance.

8.1 COUNTY Liability Coverage. The COUNTY's insurance policy or self-insurance program must provide liability coverage at least equivalent to that provided by Insurances Services Office, Inc. Commercial General Liability Coverage Form CG 000101 07 (Coverages A&B) for not less than FIVE MILLION (\$5,000,000) per occurrence, with a general aggregate amount of not less than FIVE MILLION (\$5,000,0000) per policy period.

8.2. COUNTY Self Insurance. WSF acknowledges, agrees, and understands that the COUNTY maintains a fully funded self-insurance program for the protection and handling of the COUNTY's liabilities including injuries to persons and damage to property. The COUNTY agrees, at its own expense, to maintain, through its self-insurance program, coverage for all of its liability exposures in this Lease. The COUNTY agrees to provide WSF with a letter of self-insurance as adequate proof of coverage and provide WSF with at least thirty (30) calendar days prior written notice of any material change in the COUNTY's self-insurance program.

8.3 Insurance Change. If, after the Commencement Date of this Lease, the COUNTY elects to terminate its self-insured status and secure commercial liability coverage, then the COUNTY will promptly notify WSF and provide a certificate of insurance from an

insurer licensed to conduct business in the State of Washington, in the amounts and types as set forth in subsection 8.1 above. Further, the COUNTY shall provide to WSF a certificate of insurance within ten (10) calendar days of receiving a written notice from WSF for an increase in the coverage amounts as authorized in subsection 8.4 below.

8.4 Increased Coverage. The COUNTY agrees that WSF may require increases in the insurance coverage required in this Lease no more often than every three (3) years or sooner by mutual written agreement; provided, any adjustments made shall be in accordance with reasonable prudent risk management practices and insurance industry standards. The COUNTY agrees to provide to WSF a certificate of self-insurance as adequate proof of coverage of insurance for the increased coverage amounts.

8.5 COUNTY Liability. Coverage, if obtained by the COUNTY in compliance with this Section 8, shall not be deemed as having relieved the COUNTY of any liability.

8.6 WSF Insurance Coverage. WSF shall maintain an insurance policy or self-insurance program providing liability coverage at least equivalent to that provided by INSURANCE Services Office, Inc. Commercial General Liability Coverage Form CG 00 01 01 07 (Coverages A & B) for not less than FIVE MILLION (\$5,000,000.00) per occurrence, with a general aggregate amount of not less than FIVE MILLION (\$5,000,000.00) per policy period.

8.7 WSF Self-Insurance. If WSF maintains a self-insurance program for any of WSF's liabilities, including injuries to persons and damage to property, then WSF agrees, at its own expense, to maintain, through its self-insurance program, coverage for its liability exposures for the Premises as set forth in this Lease. WSF agrees to provide the COUNTY with at least thirty (30) calendar days prior written notice of any material change in WSF's self-insurance program.

8.8 WSF Change of Coverage. If, after the Commencement date of this Lease, WSF elects to terminate its self-insured status and secure commercial liability coverage, then WSF will promptly notify the COUNTY and provide a certificate of insurance from an insurer licensed to conduct business in the State of Washington, in the amounts and types as set forth in subsection 8.6 above, or such other larger amounts and types as may be warranted under the circumstances.

8.9 WSF Liability. Coverage, if obtained by WSF in compliance with this Section 8, shall not be deemed as having relieved WSF of any liability.

8.10 Property Insurance. The COUNTY shall, throughout the Initial Term and any Extension Terms of this Lease and any renewal hereof, at its own expense, keep and maintain in full force and effect all risk property insurance on the COUNTY's furniture, furnishings, fixtures, personal property, and equipment, and on any improvements and alterations to the Premises owned by the COUNTY. WSF is not required to carry insurance of any kind on the COUNTY's furniture, furnishings, fixtures, personal property, and equipment or on any improvements and alterations to the Premises owned by the COUNTY. WSF shall maintain

at its expense all risk property insurance on WSF's building, appurtenances, fixtures and equipment at one hundred percent (100%) of the current estimated replacement cost value, as specified by WSF for its marine insurance program.

8.11 Release and Waiver. Notwithstanding any language to the contrary, whether loss or damage is due to the negligence of either WSF or the COUNTY, their agents or employees, or any other cause, WSF and the COUNTY do each hereby release and relieve the other, their agents or employees, from responsibility for, and waive their entire claim of recovery for any loss or damage to the real or personal property of either Party located anywhere on the Premises, including the POF Facility itself, arising out of or incident to the occurrence of any of the perils which are covered under this Lease, or are required to be covered under this Lease, by their respective property and related insurance policies. Each Party shall use reasonable efforts to cause its insurance carriers to consent to the foregoing waiver of rights of subrogation against the other Party. Notwithstanding the foregoing, no such mutual release shall be effective unless and to the extent the aforesaid insurance policy or policies shall expressly permit such a release or contain a waiver of the carrier's right to be subrogated.

8.12 Risk Assessment. By requiring such minimum insurance coverage as specified herein, the Parties shall not be deemed or construed to have assessed the risks that may apply to either Party under this Lease. The Parties shall each assess their own respective risks and, if either Party deems appropriate and/or prudent, may maintain greater limits and/or broader coverage.

8.13 No Limitations. Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this Section 8 shall affect and/or alter the application of any other provision contained within this Lease.

9. Hazardous Materials. This Section 9 does not address contamination existing at or in the vicinity of Colman Dock or Pier 50 and the site of the former Pier 51 as of the Commencement Date. Any such existing contamination including but not limited to the existing sediment contamination discussed in Section 4.5 and Appendix G to the Environmental Assessment for the Seattle Multimodal Terminal at Colman Dock Project, prepared by Herrera Environmental Consultants and dated April 2014 is addressed under Section 10.4 of this Lease.

9.1 Compliance with Environmental Laws. Notwithstanding any other provision of this Lease, the COUNTY will itself, and will also make all reasonable efforts to ensure that all Authorized Users, comply with all applicable Environmental Laws and will not through use of the Premises place, store, use, manufacture, or Release any Hazardous Materials under, on, or over the Tidelands or any adjacent lands, including aquatic lands, in violation of Environmental Laws.

9.2. Releases. The COUNTY will not authorize, cause or permit a Release of Hazardous Materials into, onto, or from the Premises, or from any vessels using the Premises, and will make all reasonable efforts to ensure that no Authorized Users cause or permit a Release of Hazardous Materials on the Premises.

9.3 Notification of Release. If a Release of Hazardous Materials does occur on the Premises as a result of any action of the COUNTY or any Authorized User, the COUNTY will immediately report the occurrence of the Release to WSF. The COUNTY will also notify all applicable governmental authorities to whom notification is required under Environmental Laws, in accordance with the requirements of those laws, and will immediately clean up the Release consistent with the Environmental Laws.

9.4 WSF Clean-Up at County Cost; Termination for Non-Compliance. If the COUNTY fails or refuses to promptly and fully carry out any unappealable, binding, or otherwise final order of any applicable governmental authority directed to the COUNTY with respect to any Release or violation of Environmental Laws on the Premises during the Term of this Lease, then after giving notice to the COUNTY and providing a reasonable opportunity to cure, including but not limited to dispute resolution under Section 19, WSF may carry out the whole or any part of the Order at the COUNTY's expense and may, at the sole discretion of WSF, terminate this Lease forthwith by a notice in writing to the COUNTY; Provided that if the COUNTY contests or appeals an order of a governmental authority in good faith, then WSF shall not give notice or terminate this Lease under this Section 9.4 until and unless such order becomes final, binding, and not subject to further appeal or review.

9.5 Premises at End of Lease. Upon the expiration or earlier termination of this Lease, the COUNTY will leave the Premises clean of any Hazardous Materials that were introduced thereto during the Term of this Lease by the COUNTY or by any Authorized User.

9.6 WSF Right to Mitigate. If WSF discovers a violation by the COUNTY or any Authorized User of an Environmental Law or a fact situation that could reasonably be anticipated to result in a violation of an Environmental Law on the Premises, and that arose during the Initial Term and the Extension Term of this Lease, and if such violation reasonably constitutes an emergency that precludes dispute resolution under Section 19.4, then WSF will have the right to take whatever steps are reasonably required to rectify such violation, or prevent such violation from occurring, as the case may be, in WSF's sole discretion, all at the COUNTY's expense, provided that WSF shall notify the COUNTY of the alleged violation at WSF's earliest opportunity.

9.7 COUNTY Environmental Indemnification. The COUNTY will indemnify, defend, and hold WSF harmless from and against any and all Indemnified Environmental Matters to the extent arising out of any breach of or non-compliance with this Section 9 by the COUNTY, or to the extent arising out of the Release during the Term of this Lease of any Hazardous Materials brought onto the Premises by the COUNTY or any Authorized User. WSF shall promptly notify the COUNTY of any Indemnified Environmental Matter

and tender such matter to the COUNTY immediately upon WSF's discovery or notice of such matters.

9.8 Limitation of Liability. WSF agrees that the COUNTY will be responsible only for any Hazardous Materials brought onto the Premises by the COUNTY or any Authorized User and for any Releases of such Hazardous Materials during the Term of this Lease by the COUNTY or any Authorized User, and that the COUNTY will not be responsible for any Hazardous Materials brought onto the Premises by WSF or any other persons or for any Releases of any Hazardous Materials brought onto the Premises by WSF or any other persons, except to the extent such Release is caused by the willful act or negligence of the COUNTY or any Authorized User. Further, to the extent such Hazardous Materials become comingled with Hazardous Materials Released by WSF or any other persons, nothing in this Lease shall prevent the COUNTY from seeking to recover costs, expenses, or any other damages incurred as a result of the presence of such Hazardous Materials that were Released by WSF or any other persons.

9.9 Payments Due: The COUNTY will pay to WSF any amount required by Section 9.4 or Section 9.6 within sixty (60) days of receipt from WSF of a written demand for such amount, provided that if the COUNTY in good faith disputes the amount of the invoice or any element or cost of the invoice, then the Parties shall engage in dispute resolution under Section 19.

10. Releases by WSF and Existing Environmental Conditions.

10.1 Release by Others. The indemnities in Sections 10.2 and 10.3 apply to Releases of Hazardous Materials: (i) by persons or entities other than the COUNTY or any Authorized User; and (ii) that occur or are deemed to occur after the Commencement Date.

10.2 WSF Indemnification. WSF agrees to indemnify, defend, and hold the COUNTY harmless from and against any and all Indemnified Environmental Matters associated with the Release, existence of, cleanup, disposal, handling, treatment, remediation, removal, storage, or transportation of any Hazardous Materials, contingent on WSF's written concurrence that the following requirements are met, which concurrence shall not be unreasonably withheld, conditioned, or delayed:

A. The Hazardous Materials have been Released or otherwise come to be located on the Premises, or adjacent aquatic lands after the Commencement Date, and there is objective evidence that such Hazardous Materials were Released by WSF, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, or migrated from the WSF terminal through water, soil, or other means to the Premises or adjacent aquatic lands; and

B. The Hazardous Materials Release is determined to have been caused by or result from activities other than the COUNTY's or any Authorized User.

C. If WSF does not reasonably concur that conditions (A) and (B) are met, then the Parties shall engage in dispute resolution under Section 19.

10.3 WSF Concurrence. Contingent on WSF's reasonable written concurrence that conditions in Section 10.2(A) and (B) are met, WSF shall indemnify, defend, and hold the COUNTY harmless as provided in Section 10.2.

10.4 Releases Prior to Lease. As to Releases of Hazardous Materials that occurred or are deemed to have occurred prior to the Commencement Date (including but not limited to the existing sediment contamination discussed in Section 4.5 and Appendix G to the Environmental Assessment for the Seattle Multimodal Terminal at Colman Dock Project, prepared by Herrera Environmental Consultants and dated April 2014), Section 9 and Sections 10.1 through 10.3 shall not apply, and instead the Parties' rights and duties shall be as otherwise provided by Environmental Laws. The Parties reserve all claims and defenses under Environmental Laws as to such prior Releases or Hazardous Materials.

10.5 Hazardous Materials Provisions Exclusive. As between WSF and the COUNTY, Section 9 and this Section 10 are the exclusive provisions of this Lease and any other sections and exhibits referenced therein governing environmental matters and Hazardous Materials arising out of or relating to the Premises, and the exclusive contractual rights and duties of WSF and the COUNTY pertaining thereto.

11. Damage and Repair.

11.1 If the Premises are damaged due to the acts of WSF, and such damage renders continued POF operations unsafe or not practicable and convenient, then WSF shall diligently restore the Premises to its previous condition. WSF shall proceed with reasonable diligence to complete the work and the Rent shall be abated during the time work is conducted. If such casualty occurs during the last six (6) months of the Initial Term (after considering any option to extend the term timely exercised by the COUNTY) then either the COUNTY or WSF may elect to terminate the Lease Agreement.

11.2 If the Common Areas are damaged due to the acts of the COUNTY, then the COUNTY shall diligently restore the Common Areas to its previous condition. The COUNTY shall proceed with reasonable diligence to complete the work.

11.3 If the damaged Premises render continued POF operations unsafe or not practicable and convenient, and WSF is obligated to restore the Premises under Section 11.1, then WSF shall make all reasonable efforts to relocate the COUNTY while restoration work is completed, including paying the COUNTY its direct costs to locate, acquire, and make suitable replacement premises for its POF service, including but not limited to the costs of: Phase I and II environmental assessments; permitting and applications; engineering, architecture, and other consultant costs; and such other expenditures as may be reasonably necessary to re-establish POF service at a new location on the Seattle waterfront, up to a cap of \$1,000,000 as adjusted by CPI as of the Commencement Date.

12. Assignment, License, and Subletting.

12.1 Assignment. The COUNTY shall not be entitled to assign its rights, liabilities, and obligations under this Lease unless it will have first requested and obtained WSF's consent in writing. Such consent shall be in WSF's sole discretion, but shall not be unreasonably withheld. Any assignment must comply with the applicable statutory provisions which govern the formation of this Lease.

12.2 License & Permit. The COUNTY may issue a license or other use permit for the POF Facility, with the consent of WSF, which shall not be unreasonably withheld. All use must be coordinated with WSF to avoid conflicting sailing schedules. The COUNTY will retain all license and use permit fees collected, with the exception of those fees collected from for-profit entities. Fees collected from for-profit entities will be allocated 50% to the COUNTY and 50% to WSF after those fees exceed the COUNTY operating costs, overhead costs, and average annual depreciation expense in the POF Facility, as described in Exhibit H.

12.3 Sublease. The COUNTY shall not be entitled to sublease the POF Facility unless it will have first requested and obtained WSF's consent in writing. Such consent shall be in WSF's sole discretion, but shall not be unreasonably withheld. Any sublease must comply with the applicable statutory provisions which govern the formation of this Lease. The COUNTY will retain all sublease payments, with the exception of those payments collected from for-profit entities. Payments collected from for-profit entities will be allocated 50% to the COUNTY and 50% to WSF after those payments exceed the COUNTY operating costs, overhead costs and average annual depreciation expense in the POF Facility, as described in Exhibit H. All use must be coordinated with WSF to avoid conflicting sailing schedules.

12.4 Other Uses. For any use authorized under Sections 12.2 or 12.3, the COUNTY shall require each third party user to defend, indemnify and hold harmless WSF, the COUNTY and all of their officials, employees, principals, and agents, from any and all claims, demands, suits, actions, fines, penalties, and liability of any kind, including injuries to persons or damages to property, and all legal fees, expert fees, and disbursement, which arise out of or are related to any third party use of the POF Facility. The indemnity obligation shall include any damages arising out of the COUNTY-owned improvements.

13. Termination and Potential Renewal.

13.1 Termination by the COUNTY. In addition to termination for WSF's failure to timely enter into a Construction Agreement or to timely deliver the POF Facility and Common Areas under Section 5.3.D, the COUNTY may terminate the Lease without penalty or further liability as follows:

A. Upon Three Hundred Sixty Five (365) calendar day's written notice for any reason within the sole discretion of the COUNTY;

B. Upon forty-five (45) calendar days written notice, if WSF materially defaults on any one provision in the Lease a total of three (3) or more times within any twelve (12) month period, and none of the material defaults are due to acts or omissions by the COUNTY, or other third party, or Force Majeure Event;

C. Immediately, upon written notice, if in the COUNTY's judgment the Premises are destroyed or damaged so as to substantially and adversely affect the authorized use of the Premises;

D. If the COUNTY legislative body has not appropriated sufficient funds to pay for the COUNTY's obligations under the Lease for any given year. Notwithstanding any contrary provision in the Lease, such termination for non-appropriation shall occur automatically upon the end of the last calendar year for which there was sufficient appropriation, and the COUNTY shall have no further obligations that extend beyond the end of such calendar year. As between the Parties, the sufficiency of any appropriation shall be determined by the Director of the King County Department of Transportation, in his or her sole and absolute discretion; or

E. At the time title to any part of the Premises transfers to a condemning authority, if there is a condemnation of all or part of the Premises, including a sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of the power. In such event, each Party shall be entitled to pursue their own separate awards with respect to such taking.

13.2 Termination By WSF. WSF may terminate the Lease, in whole or in part, without penalty or further liability as follows:

A. Upon sixty (60) calendar days written notice to the COUNTY, if the COUNTY fails to cure a default or fails to perform operations and maintenance responsibilities assigned to the COUNTY under the Lease within that 60-day period, unless the COUNTY is diligently pursuing a cure or the Parties agree to extend said period;

B. Upon forty-five (45) calendar days written notice to the COUNTY, if the COUNTY materially defaults, and fails to cure such default within that 45-day period, unless the COUNTY is diligently pursuing a cure or WSF or the COUNTY agree to extend such period;

C. Upon sixty (60) calendar days written notice, if the COUNTY:

1. Commences a voluntary case or other proceeding to sell, liquidate, reorganize, or otherwise relieve itself of its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect;

2. Seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of the COUNTY or any substantial part of the COUNTY's assets;

3. Files an answer admitting the material allegations of such a petition filed against the COUNTY in any involuntary case or other proceeding commenced against the COUNTY, or consents to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against the COUNTY;

4. Makes an assignment for the benefit of creditors; fails, is unable, or admits in writing the inability generally to pay the COUNTY's debts as they become due; or takes any action to authorize any of the foregoing;

D. Upon thirty (30) calendar days prior written notice, if the POF Facility has been abandoned, in WSF's sole judgment, for a continuous period of ninety (90) calendar days, unless one or both of the Parties provides notice of a Force Majeure Event under the Lease, or previously notified the other Party of a Force Majeure Event that remains unabated, in which cases the Lease shall not be terminated;

E. In whole or in part, upon not less than seven hundred thirty (730) calendar days prior written notice, if WSF needs the POF Facility for the construction of a legislatively approved and funded WSF project, provided:

1. If WSF terminates the Lease before the expiration of the Initial Term, WSF shall coordinate and collaborate with the COUNTY to ensure the COUNTY's POF Facility is relocated to another suitable location at the Seattle Multimodal Terminal, without disruption or interference with WSF operations at the Terminal. This relocation of the POF Facility is consistent with the intent and purpose of the Budget Proviso. WSF shall reimburse:

a. the COUNTY's capital costs for those improvements the COUNTY paid for and that WSF will re-use for its legislatively approved and funded project ("Reimbursable Capital Costs") reduced by a straight line depreciation schedule over the FTA useful life of said improvements, which is described at Exhibit H and in equal monthly amounts from the Substantial Completion of the initial POF Facility. The value of the improvements listed in Exhibit H will be updated by the COUNTY once the POF Facility is constructed and full value can be accurately determined. The COUNTY will provide WSF those values in an updated Exhibit H prior to the Commencement Date. The update to Exhibit H shall be by written amendment to the Lease. The Parties expect the Reimbursable Capital Costs to include the COUNTY'S costs for the trestle and pilings supporting the POF Facility. In addition, the Parties expect the Reimbursable Capital Costs to include the COUNTY's portion of the costs for the Common Areas, except to the extent the Common Areas will be used by the COUNTY or its Authorized Users in conjunction with the relocated POF facilities; and

b. to the extent of prior legislative appropriation, (i) all Relocation Costs associated with relocating the COUNTY's POF operations at the Seattle Multimodal Terminal and (ii) all COUNTY capital costs not otherwise reimbursed under Section

13.2.E.1.a (“Other Capital Costs”) as reduced by a straight line depreciation schedule process set forth in Section 13.2.E.1.a. for those improvements that WSF will not re-use as part of its legislatively approved and funded project. WSF shall seek as part of the appropriation for the legislatively approved and funded WSF project sufficient funds to reimburse the COUNTY for all such Relocation Costs and Other Capital Costs. This commitment by WSF to seek funding is based in part on the COUNTY’s likely repayment obligations to the FTA should the Lease be terminated before the end of the useful life of the POF Facility.

2. To ensure consistency with the intent and purpose of the Budget Proviso and co-location of WSF and the COUNTY ferry Facility at the Seattle Multimodal Terminal, WSF and the COUNTY shall collaborate and coordinate their long-term planning efforts for the duration of the Lease Term. The Parties agree to work together efficiently and effectively and to communicate throughout the planning effort for the mutual benefit of the Parties.

F. Immediately, upon written notice, in the event of a court order by a court of competent jurisdiction, or legislative action, or action by a governmental agency having jurisdiction, which requires WSF to take some action that would prohibit the COUNTY’s use of the Premises.

G. Immediately, if an emergency exists as determined by WSF in its sole discretion. For purposes of this Section an emergency is defined to mean an event, including but not limited to a Force Majeure Event and/or a significant and continuing endangerment of life or the Premises, including but not limited to discovery of a severe structural deficiency that:

1. Prevents use of Pier 50 by pedestrians and functionally precludes the COUNTY’s passenger-only ferry operations due to reasons of safety; and
2. Cannot be accommodated or managed through temporary revisions to or re-routing of the COUNTY’s passenger-only ferry uses, or through relocation of the COUNTY’s POF operations to a portion of Pier 52.

13.3 Termination for Force Majeure. Termination for Force Majeure is addressed under Section 20 of this Lease.

13.4 Default: If the COUNTY materially defaults on any one provision in the Lease a total of three (3) or more times within any twelve (12) month period, and none of the material defaults are due to acts or omissions by WSF, or other third party, or Force Majeure Event, then the COUNTY’s third material default and any subsequent material default on the same provision shall be deemed "non-curable" and the Lease may be terminated by WSF on sixty (60) calendar days written notice.

13.5 Removal of Personal Property. Upon expiration or earlier termination of this Lease, the COUNTY shall remove all of its personal property from the POF Facility except for such property as the COUNTY and WSF agree in writing may remain. The COUNTY

and WSF shall conduct a joint walk-through of the POF Facility to confirm the removal of the COUNTY's personal property and upon conclusion of the walk-through WSF shall sign a statement confirming that the COUNTY has complied with this Section. Alternatively, if the COUNTY fails in whole or in part to comply with this Section, then WSF or its agents may remove all of the COUNTY's personal property remaining in the POF Facility and dispose of it in any manner WSF deems appropriate, all at the COUNTY's sole expense. The COUNTY agrees to reimburse WSF for the costs of such removal and disposal within thirty (30) calendar days of the date of WSF's invoice.

13.6 Potential Renewal. Prior to the expiration of the Term of this Lease, the Parties shall consider in good faith, opportunities to cooperate in the development and construction of a passenger-only ferry facility to functionally replace the POF Facility. The Parties anticipate the relationship reflected in this Lease will prove to be successful and that, as a result, perpetuating the relationship in the joint development of a replacement passenger-only ferry facility should be seriously considered. As the expiration of the Term approaches, and upon the COUNTY's request, the Parties will confer and determine a process for good faith collaborative consideration of such a project, including evaluating feasibility and possible locations as well as funding options, among other matters, but neither Party shall have any obligation to proceed with such project. To the extent practicable, WSF's consideration of alternatives to continued cooperation with the COUNTY should be informed by its collaborative consideration with the COUNTY of a replacement passenger-only ferry facility.

14. Compliance with Applicable Laws, Rules, and Regulations.

14.1. WSF shall ensure the Premises and the COUNTY's permitted uses are approved as an element of WSF's overall Project, including all zoning, construction, and demolition permits, certificates of occupancy, ADA, and any other preclearance, permitting, or authorization requirements necessary for the COUNTY to take possession and use the POF Facility as intended when Substantial Completion has occurred and WSF has the issued Commencement Notice.

14.2 Anti-Discrimination. Neither Party in administration of this Lease shall discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression, or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code 12.16.125. Both Parties shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a default of this Lease and shall be grounds for cancellation, termination, or suspension, in whole or in part, of the Lease and may result in ineligibility for further agreements with King County.

14.3 In general.

A. **Applicable Laws.** At its sole cost and expense, the COUNTY shall comply with all Applicable Laws now in force or which may hereafter be in force relating to its duties and obligations under this Lease including, without limitation, all Applicable Laws pertaining to the Premises or to the use or occupancy of the Premises by the COUNTY, including obtaining all governmental permits or authorizations which may be required in connection with the COUNTY's use of the Premises and any regulations by insurance underwriters.

B. **Rules and Regulations.** The COUNTY shall comply with any rules and regulations that WSF, the U.S. Coast Guard, or other governmental authority having jurisdiction may reasonably impose from time to time as respects the use of the Premises, including, without limitation, safety and navigational directions or requirements.

15. Notice.

15.1 When written notices are to be given or made pursuant to this Lease, including but not limited to notices of default, or of a Force Majeure Event, and notices regarding the reporting and correction of defects covered under warranty, but excluding Routine Communications and Dispute Resolution Notices, such notice shall be personally served by legal messenger, sent by certified or overnight U.S. mail, or delivered by reputable overnight delivery services, and addressed to the appropriate Party at the addresses provided herein, unless a different address is designated in writing or delivered to the other Party.

15.2. Notices other than Routine Communications or Dispute Resolution Notices shall be given to the individuals listed below:

COUNTY:

Director, Marine Division
King County Department of Transportation
Marine Division - KSC 08-16
201 S. Jackson Street
Seattle, WA 98104

WSF:

Director of Terminal Engineering
2901 Third Ave, Suite 500
Seattle, WA 98121-3014

15.3 Either Party may, from time to time, by notice in writing served upon the other Party as required herein, designate an additional and/or a different mailing address or an additional and/or different person to whom notices other than Routine Communications or Dispute Resolution Notices are to thereafter to be addressed.

16. Taxes and Assessments.

16.1 To the extent applicable, the COUNTY agrees that from and after the Commencement Date (but not before), the COUNTY shall pay all assessments by any assessing district as those terms are defined in Chapter 79.44 RCW and that benefit the POF Facility (and not the Tidelands or Common Areas, the cost of which shall be allocated to WSF) and/or which may hereafter become a lien on interest of the COUNTY. The COUNTY reserves its right to challenge any assessment of an authorized assessing district.

16.2 WSF shall remain responsible for and shall be liable for all assessments by any assessing district that benefits the remainder of the Seattle Multimodal Terminal, including the Tidelands and Common Areas. If an assessment by an assessing district benefits the entire Seattle Multimodal Terminal, including the POF Facility, then WSF and the COUNTY shall each pay a share of the assessment, with the COUNTY's share being a fraction equal to the square footage of the POF Facility divided by the square footage of the assessed portion of the Seattle Multimodal Terminal, and WSF's share being the remainder, subject to the COUNTY's reservation of its right to challenge the assessment as described above in Section 16.1.

16.3 Taxes. The COUNTY shall pay all taxes that may hereafter be levied or imposed upon the COUNTY in connection with or by reason of this Lease.

16.4 Utilities. The COUNTY shall pay the costs for all utility bills incurred or costs directly related to the COUNTY's use of the POF Facility including, but not limited to, sewer, electric, water, surcharges, and rate adjustments that solely serve the COUNTY's use of the POF Facility, and for no other, provided that the COUNTY's duty under this Section shall extend only to those utilities that are separately metered to the POF Facility, and to no other utilities.

16.5 Nothing in this Section 16 shall modify the COUNTY's rights to contest or dispute any tax, special assessment, utility fee, or other fee or charge. The COUNTY shall not be in violation of this Section and the COUNTY shall not be in default under this Lease if the COUNTY, in good faith contests or disputes the validity or amount of any such tax, assessment, fee, or charge.

17. No Liens or Other Encumbrances.

17.1 Encumbrances. The COUNTY shall not encumber the Premises by grant of mortgage, lease, easement, security interest, or other right, title, or interest in the Premise to any third party except as specifically described herein.

17.2 Liens.

A. Nothing in this Lease shall be deemed to make the COUNTY the agent of WSF for purposes of construction, repair, alternation, or installation of structures, improvements, equipment or facilities on the Premises. The COUNTY acknowledges that

WSF may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by the COUNTY.

B. The COUNTY shall at all times indemnify and hold harmless WSF from all claims for labor or materials in connection with the COUNTY's construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on the Premises, and from the costs of defending against such claims, including attorney fees.

C. In the event a lien is filed upon the Premises as a result of the COUNTY's construction, repair, alteration or installation of structures, improvements, equipment, or facilities within the Premises, the COUNTY shall:

1. Diligently pursue lien and successfully complete removal;
2. Deposit sufficient cash with WSF to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim; or
3. Procure and record a bond which releases the Premises from the claim of the lien from any action brought to foreclose the lien.

D. If the COUNTY fails to comply with this Section within sixty (60) calendar days after the filing of such lien, or within such other, longer time period as may be agreed upon between the Parties the COUNTY shall be in default.

18. Restoration and Vacation of Premises.

18.1 Restoration of POF Facility. Prior to the termination or expiration of this Lease, the COUNTY agrees, if so directed by WSF, and at WSF's option, to restore the POF Facility to its original condition existing at the time of the Commencement Date, reasonable wear and tear excepted. Restoration work is to be done at the COUNTY's expenses and to the satisfaction of WSF. If WSF directs the COUNTY to restore the POF Facility pursuant to this Section 18.1, then the COUNTY and WSF shall conduct a joint walk-through of the POF Facility to confirm restoration and upon conclusion of the walk-through WSF shall sign a statement confirming that the COUNTY has complied with this Section 18.1.

18.2 Vacation of Premises. Upon termination or expiration of this Lease, the COUNTY shall cease its operations and vacate the Premises. If the COUNTY fails to vacate the POF Facility and such failure is not caused by or due to acts or omissions of WSF, or other third party, or Force Majeure Event, then the COUNTY shall be liable for WSF's actual damages arising from the COUNTY's failure to timely vacate the POF Facility, and the COUNTY shall reimburse WSF for its actual damages within thirty (30) calendar days of the date of WSF's invoice for such damages.

19. Joint Decision Making and Dispute Resolution.

19.1. Joint Decision Making.

A. The Parties shall establish a Joint Operations Committee (the “Committee”) consisting of two representatives designated by Marine Division, and two representatives designated by WSF. The Committee shall meet not less than quarterly during the first two (2) calendar years of the term of this Lease, and may meet more frequently by agreement of the Committee members or as directed by the Parties. During the remaining term of this Lease, the Committee shall meet at such intervals as the Parties may determine, but not less than annually. In addition to the specific responsibilities set forth in this Section 19.1 and the other responsibilities assigned to the Committee elsewhere in this Agreement, the Committee is intended to facilitate communication and cooperation between the Parties in the operation of their respective ferry facilities. The Parties agree to seek to resolve all operational matters pertaining to this Lease at the Committee level before initiating dispute resolution. All decisions of the Committee must be unanimous. If the Committee members cannot reach a unanimous decision after reasonable mutual good faith efforts to do so, then the matter may be referred to dispute resolution under Section 19.2.

B. The Committee may review and update the POF sailing schedule over time as may be directed by the Parties. The Committee shall review and advise the Parties with respect to matters such as the coordination of sailing schedules, safety and security matters, forecasting the COUNTY’s use of the Premises over the coming twelve-month period, the need for and scheduling of significant maintenance or capital improvements to the Premises, and shall perform such other tasks as may be delegated to the Committee by the Parties from time to time.

C. The Committee shall annually review and, if needed, update the Maintenance Responsibility Matrix in Exhibit G to efficiently coordinate their activities and equitably manage the Common Areas and any other shared-used facilities.

D. The Parties understand and agree that the Committee may not obligate either Party to fund or pay any expense or cost in excess of that Party’s legislatively-authorized appropriation.

19.2 Dispute Resolution.

A. Any dispute between the Parties shall first be discussed by the joint operations Committee established under Section 19.1.A.

B. The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this Lease, and the contact notices shall be sent to:

WSF:
Director of Terminal Engineering
2901 Third Avenue, Suite 500
Seattle, WA 98121-3014

COUNTY:
King County, DOT
Director, Marine Division
201 S. Jackson Street

Seattle, WA 98103

C. The Party desiring to initiate dispute resolution (the “Initiating Party”) may do so by giving written notice to the other Party (the “Responding Party”) of the basis for the decision or dispute, provided that the Initiating Party shall use commercially reasonable efforts to furnish the Responding Party, as expeditiously as possible, with notice of dispute, and shall cooperate with the Responding Party in an effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition which is the cause of any dispute.

D. The Initiating Party shall, within five (5) business days after giving written notice to the Responding Party of the basis for the dispute, prepare and provide to the Responding Party a written, detailed summary of the dispute, together with all facts, documents, backup data and other information reasonably available to the Initiating Party that support the Initiating Party’s position in the dispute.

E. The Initiating Party shall make any of its employees or agents having knowledge of the dispute available to the Responding Party to respond to questions of the Responding Party, including the Designated Representatives. The Parties’ Designated Representatives shall confer and attempt to resolve the dispute as requested by the Initiating Party. The Designated Representatives shall use their reasonable efforts and exercise good faith to resolve such disputes.

F. If the Designated Representatives are unable to resolve a dispute, then the WSDOT Executive Representative or her/his designee and the Director for the King County Department of Transportation for the COUNTY or her/his designee shall confer and exercise good faith to resolve the dispute.

G. If the WSDOT Executive Representative and Director of the King County Department of Transportation are unable to resolve the dispute, then the Parties may, if mutually agreed in writing, submit the matter to non-binding mediation. The Parties shall then seek to mutually agree upon the mediation process, who shall serve as the mediator, and the time frame the Parties are willing to discuss the disputed issue(s).

H. Each Party shall bring to the mediation session, unless excused from doing so by the mediator, a representative from its side with full settlement authority. In addition, each Party shall bring counsel and such other persons as needed to contribute to a resolution of the dispute. The mediation process shall be considered settlement negotiations for the purposes of all state and federal rules protecting disclosures made during such negotiations from later discovery or use in evidence; provided, that any settlement agreement as may be executed by the Parties shall not be considered confidential and may be disclosed. Each Party shall pay its own costs for mediation and share equally in the cost of the mediator (the COUNTY – 50%; WSF – 50%). If other persons or entities also participate as independent parties to the mediation then the cost of the mediator shall be divided equally among all participating parties. The venue for mediation shall be in Seattle, Washington, unless the parties mutually agree in writing to a different location.

I. Except as provided in Section 19.4 or if the parties otherwise agreed to in writing, the dispute resolution procedures of this Section 19.2 are a condition precedent to litigation.

19.3 No Prejudice. Providing the initiating Party has complied with the requirements for giving notice of the existence of a dispute, no delay in disposing of such dispute while the Parties pursue the dispute resolution procedures shall prejudice the rights of either Party. At the request of the initiating Party or the responding Party, the Parties shall enter into an agreement to toll the statute of limitations with respect to the subject matter of a dispute while the Parties pursue the dispute resolution procedures. Positions expressed, responses given, and information submitted in any dispute resolution process under this Section 19 shall not be admissible as evidence in any subsequent dispute resolution, litigation, or other legal proceeding.

19.4 Emergency. If either Party reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to or loss of the Premises, Seattle Ferry Terminal, Public Place, or any part of them, or that delay in initiating or prosecuting a claim in litigation would irrevocably prejudice a Party, then such Party may pursue any immediate remedy at law or equity without following the dispute resolution procedures in this Section 19.

20. Force Majeure.

20.1 Except as otherwise specifically provided in this Lease, neither Party shall be considered in default or breach of this Lease or liable for any delay or failure to comply with this Lease, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event. Provided, that the Party claiming relief based on a Force Majeure Event shall:

A. Promptly notify the other Party in writing of the existence and nature of the Force Majeure Event;

B. Exercise all reasonable efforts to minimize delay caused by such Force Majeure Event;

C. Notify the other Party in writing of the cessation of such Force Majeure Event; and

D. Resume performance of its obligations under this Lease as soon as practicable thereafter.

20.2 Obligations to pay for services already provided shall not be excused by a Force Majeure Event.

20.3 In the event of a Force Majeure Event that destroys all or a substantial portion

of the Premises, WSF shall, within sixty (60) calendar days following such event, communicate to the COUNTY WSF's anticipated process and timeline for determining whether to restore the Premises or any such portion of the Premises. If WSF elects not to restore the Premises or any such portion of the Premises, then this Lease shall terminate as to the Premises. If WSF anticipates that it will restore the Premises, or any such portion of the Premises, the WSF shall notify the COUNTY, and the Parties shall cooperate to implement such restoration, and the temporary or permanent relocation, if any, or reconfiguration, if any, of the Premises so that the COUNTY may continue its use of the Premises and provide POF Service at the Seattle Multimodal Terminal.

20.4 The COUNTY shall determine within sixty (60) calendar days of receiving WSF's notice, whether to continue its use of the Premises. If the COUNTY elects not to continue the Lease, the COUNTY shall promptly remove its personal property. If this Lease is terminated pursuant to this Section, the Parties shall not be released from any payment or other obligations arising under this Lease prior to the Force Majeure Event, and all terms and conditions that expressly survive the expiration or termination of this Lease, or by their nature should survive the expiration or termination of this Lease, shall continue to apply.

20.5 Notwithstanding anything to the contrary in this Section, if nonperformance due to a Force Majeure Event (or multiple Force Majeure Events) continues beyond two (2) consecutive calendar years, then either Party may terminate this Lease upon thirty (30) calendar days' notice to the other Party. Upon such termination, the COUNTY shall remove its personal property from the POF Facility. If this Lease is terminated pursuant to this Section, the Parties shall not be released from any payment or other obligation arising under this Lease prior to the Force Majeure Event or Events, and all terms and conditions that expressly survive the expiration or termination of this Lease, or by their nature should survive the expiration or termination of this Lease, shall continue to apply.

21. Other Terms and Conditions.

21.1 Maintenance of records; Audit:

A. Availability of Records

1. Financial Records. WSF shall maintain records to support all reimbursable costs incurred in accordance with procedures prescribed by the Washington State Auditor's Office and the applicable federal funding agencies. The records shall be open to inspection by the COUNTY and the federal government during normal business hours, and shall be retained and made available for such inspection for a period of not less than six (6) years from the final reimbursement payment to WSF. Copies of said records shall be furnished to the COUNTY and/or the federal government upon request.

2. Other Records. Unless exempt from public disclosure, WSF shall make available for inspection and copying by the COUNTY or its representatives, any available current and historical records, planning documents, budget documents, and other

information related to this Lease and the provision of POF service on Puget Sound under the License Agreement.

B. Audit. If an audit is requested by the COUNTY or required by any applicable Governmental Authority requirements, WSF agrees to cooperate fully with the COUNTY's auditor or an independent auditor chosen and retained by the COUNTY. In the event that the COUNTY has paid WSF in excess of the COUNTY's final funding commitment under this Lease, the excess amount will be repaid to the COUNTY within thirty (30) days from the date the COUNTY notifies WSF of the audit results or, upon mutual agreement by the Parties, used as an offset against other amounts owing WSF. Should the audit reveal that the COUNTY has underpaid WSF, the COUNTY will pay the balance due to WSF within thirty (30) days from the date the audit is completed.

21.2 Governing Law; Venue; Attorney Fees and Costs:

A. Governing Law / Exclusive Jurisdiction. This Lease will be construed and governed in accordance with the laws of the state of Washington, and the Superior Court of King County in Seattle, Washington will have the exclusive jurisdiction to entertain and determine all claims and disputes arising out of or in any way connected with this Lease; subject, however, to the dispute resolution procedures of Section 19.

B. Attorney Fees and Costs. In the event of any controversy, claim, or dispute arising out of this Lease, each Party shall be solely responsible for the payment of its own attorney's fees and costs.

21.3 Construction; Interpretation. The Parties hereby acknowledge and agree that:

A. Each Party hereto is of equal bargaining strength;

B. Each Party has actively participated in the drafting, preparation, and negotiation of this Lease;

C. Each Party has reviewed this Lease and has consulted with its legal counsel and such other professional advisors as such Party has deemed appropriate, or had the opportunity to do so in relation to any and all matters contemplated under this Lease;

D. Each Party has agreed to enter into this Lease following such review and the rendering of such advice; and

E. Any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Lease, or any portion hereof, or amendments hereto.

F. Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

G. The headings used in this Lease are for convenience only and are not to be used in interpreting this Lease.

H. All provisions of this Lease are severable and the invalidity or unenforceability of any provision shall not affect or impair the validity or enforceability of the remaining provisions.

21.4 Memorandum of Lease. The Parties agree that this Lease shall not be recorded and instead the COUNTY shall record a Memorandum of Lease substantially in the form of Exhibit J attached hereto. The COUNTY shall pay the applicable recording fee and taxes. The Parties agree to record an additional Memorandum of Lease if the Term of this Lease is extended or renewed beyond the expiration date of the initial Term.

21.5 Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

21.6 Legal Relations. Nothing contained in this Lease shall be considered or interpreted to diminish the governmental or police powers of the State of Washington or King County. Nothing contained in this Lease shall make, or be deemed to make, the COUNTY and WSF a partner of one another and this Lease shall not be construed as creating a partnership or joint venture. This Lease shall create no right, privilege, duty, or cause of action in any person or entity not a party to it.

21.7 Non-Waiver. The failure of either Party to enforce any provision of this Lease shall not be construed as a waiver or limitation of that Party's right subsequently to enforce and compel strict compliance with every provision of this Lease.

21.8 Entire Agreement. This Lease, together with the Design Phase Agreement GCB 1951 and the Construction Agreement, contains the entire agreement of the Parties and supersedes any prior written or oral agreements with respect to the matters described herein. This Lease includes the exhibits listed in the front matter all of which are incorporated herein by this reference. The order of precedence regarding this Lease, GCB 1951, and the Construction Agreement is set forth in paragraph 5.3.E of this Lease. This Lease shall not be altered, modified, or amended except in writing signed by WSF and the COUNTY. Any amendments to this Lease shall be substantially in the form of Exhibit E.

TERMS AND CONDITIONS CONTINUE ON NEXT PAGE

21.9 Survival. The following Sections and paragraphs shall survive the expiration or earlier termination of this Lease:

- A. Section 7 (Indemnity)
- B. Sections 9 and 10 (Hazardous Materials)(Releases by WSF and Existing Environmental Conditions)
- C. Section 14.3.A (Applicable Laws)

SIGNATURES

KING COUNTY

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

By: _____
 Anthony Wright, Director
 Facility Management Division,
 King County Department of
 Executive Services

By _____
 Lynne Griffith
 WSDOT Assistant Secretary
 For Washington State Ferries

Date: _____

Date: _____

NOTARY BLOCKS FOLLOW

EXHIBIT B
RESOLUTION 452 AND DIAGRAM OF PUBLIC PLACE

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
BOARD OF NATURAL RESOURCES
HARBOR LINE COMMISSION

RESOLUTION NO. 452

A RESOLUTION relating to the relocation of a portion of the outer harbor line and the establishment of a "Public Place" in a portion of the harbor area in Elliott Bay, Seattle, Washington, and repealing Resolution No. 218 dated December 7, 1976.

SECTION 1. RCW 79.92.030 authorizes the Harbor Line Commission to change, relocate or reestablish harbor lines in Elliott Bay at Seattle, King County, Washington.

SECTION 2. RCW 47.12.026 authorizes the Harbor Line Commission to grant to the Department of Transportation, for no charge, easements creating a "Public Place" over, on, or across harbor areas. The "Public Place" may be approved only if the area will be used for public landings, wharves or other public conveniences of commerce or navigation.

SECTION 3. The Board of Natural Resources, Harbor Line Commission, by Resolution No. 218 dated December 7, 1976, relocated the inner harbor line in front of Block 198 1/2 Supplemental Map of Seattle Tide Lands. The project that required the relocation was never developed.

SECTION 4. The Board of Natural Resources, acting as the Harbor Line Commission, finds that it is in the public interest to repeal Resolution No. 218.

SECTION 5. The Department of Transportation has requested by letter dated January 7, 1981, that a portion of the outer harbor line in front of the City of Seattle be relocated and that the harbor area so affected be designated as a "Public Place." These changes will facilitate the planned expansion of the Seattle Ferry Terminal.

SECTION 6. The State of Washington, Department of Natural Resources has prepared a map¹ showing the proposed relocation of the outer harbor line as well as designating a portion of the harbor area as a "Public Place."

SECTION 7. BE IT RESOLVED by the Board of Natural Resources acting as the Harbor Line Commission that Resolution No. 218 dated December 7, 1976, is hereby repealed.


SECTION 8. BE IT FURTHER RESOLVED by the Board of Natural Resources, acting in its capacity as the Harbor Line Commission, that the harbor lines and "Public Place," as shown on the map, is hereby established, located and relocated, which map is hereby accepted, approved and adopted.

SECTION 9. The Commissioner of Public Lands is hereby directed and authorized to execute and affix his seal to the certificate inscribed on the above map which will identify and authenticate the 1984 Supplemental Map of Seattle Harbor. One copy of the map shall be filed in the Office of the Commissioner of Public Lands at Olympia, Washington, one copy in the Office of the County Auditor of King County at Seattle, Washington and one copy in the Office of the City Engineer at Seattle, Washington.

¹ State of Washington, Department of Natural Resources, Brian J. Boyle, Commissioner of Public Lands, 1984 supplemental map of Seattle Harbor, showing the outer harbor line as relocated and a portion of the harbor area Designated as a "Public Place" in front of Blocks 198 and 198 1/2 including Columbia Street and the south 10 feet (vacated) of Madison Street, Seattle Tide Lands Supplemental.

APPROVED AND ADOPTED BY THE BOARD OF NATURAL RESOURCES acting as the Harbor Line Commission this 5th day of June, 1984.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Commissioner of Public Lands.


BRIAN J. BOYLE
Commissioner of Public Lands and
Secretary of the Board of Natural
Resources

APPROVED AS TO FORM:


Victoria W. Sheldon 5-22-84

JOT/jd
5/22/84

Filed at the request of the State of Washington
 the office of the City Engineer of Seattle, Washington this
 22nd day of August, A.D. 1984
Cyril H. ...
 City Engineer of Seattle, Washington

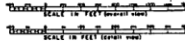
Filed for record at the request of the State of
 Washington this 22nd day of August, A.D. 1984 and recorded
 map title "Reverting to Description" records of King County,
 one of Washington

County Auditor of King County

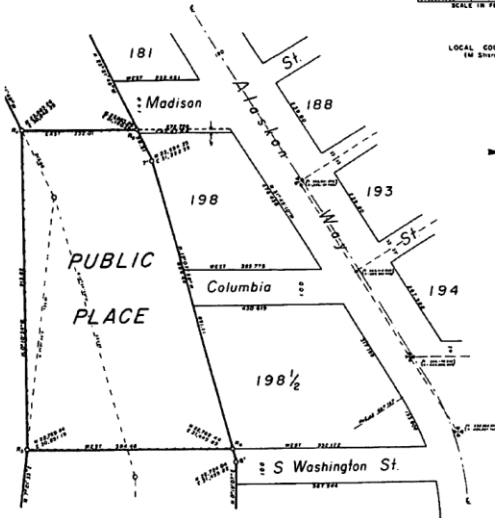
NOTE: Coordinates shown thus () are Washington State
 Coordinates North Zone, taken directly from a
 quarter-section map supplied by the Seattle
 Engineering Department.

LEGEND

- Existing Harbor Lines
 - New Harbor Line and Public Place
 - Former Outer Harbor Lines
 - Government Waterway Line
- Here: Outer Harbor Line relocated by this Supplemental Map lies
 between points A₁ and A₂.
 Public Place established by this Supplemental Map lies
 between the inner and outer harbor lines and between
 the lines A₁-A₂ and A₂-B₁.



LOCAL COORDINATE SYSTEM
 (NAD 83 UTM Zone 18N)



STATE OF WASHINGTON
 DEPARTMENT OF NATURAL RESOURCES
 BRIAN J. BOYLE
 COMMISSIONER OF PUBLIC LANDS

**1984 SUPPLEMENTAL MAP OF
 SEATTLE HARBOR**

SHOWING
 THE OUTER HARBOR LINE AS RELOCATED
 AND A PORTION OF THE HARBOR AREA
 DESIGNATED AS A 'PUBLIC PLACE'
 IN FRONT OF
 BLOCKS 198 AND 198 1/2 INCLUDING COLUMBIA
 STREET AND THE SOUTH 10 FEET (vacated)
 OF MADISON STREET, SEATTLE TIDE
 LANDS SUPPLEMENTAL

CERTIFICATE

STATE OF WASHINGTON)
 COUNTY OF THURSTON)
 I, Brian J. Boyle, Commissioner of Public Lands and Administration of the Department
 of Natural Resources do hereby certify that the Supplemental Map of Seattle Harbor
 shown on the attached map is a true and correct copy of the original record
 preserved in the archives of Chapter 102, Laws of 1953, as amended by Chapter
 Laws of 1977, Part 1 (Ordinary Session) and Chapter 103, Laws of 1977, Part 1
 (Extraordinary Session) and in accordance with the instructions set forth in Resolution
 2088, approved and passed by the Board of Natural Resources, Department of
 Natural Resources, acting in its capacity as the Harbor Line Commission the 22nd
 day of August, A.D. 1984, which resolution is hereby made a part of this certificate
 by this reference as though set out in length hereon.

I do hereby certify that said Resolution No. 2088 of 1977, A.D. 1977, as amended, and I
 directed that a duly authenticated copy of this map be filed in the office
 of the County Auditor of King County and in the office of the City Engineer of
 Seattle, Washington and the original copy thereof in the office of the Commission
 of Public Lands in Olympia, Washington.

WITNESS my hand and official seal this 22nd day of August, A.D. 1984

Brian J. Boyle
 Brian J. Boyle
 Commissioner of Public Lands

Filed in the office of the Commissioner of Public Lands
 at Olympia, Washington this 22nd day of August, A.D. 1984.

Brian J. Boyle
 Brian J. Boyle
 Commissioner of Public Lands

[Signatures]
 Director of Marine Line Management
 Director of Engineering
 Department of Natural Resources



NA17-1

EXHIBIT C1
LEGAL DESCRIPTION AND DIAGRAM OF LEASED TIDELANDS

A tract of land situated within Lots 11 and 12 Block 198 ½ Seattle Tide Lands being more particularly described as follows:

COMMENCING at the southeast corner of said block 198 ½ ; thence North 88°43'31" West, along the south line of said block, a distance of 195.72 feet to the southerly extension of the exterior east wall of the Passenger Ferry Only building; thence North 1°16'29" East, perpendicular to said south line of Block 198 ½, a distance of 169.76 feet to the exterior southeast corner of said Passenger Ferry Only building and the POINT OF BEGINNING of the tract to be described herein; Thence North 88°44'00" West, along the south exterior wall of said Passenger Ferry Only building, a distance of 176.67 feet to an angle point in the south exterior wall of said building; thence South 1°16'00" West, along the exterior wall, a distance of 25.0 feet to an angle point in the southerly exterior wall; thence North 88°44'00" West, along the southerly exterior wall, a distance of 141.76 feet to the southwesterly exterior corner of said Passenger Ferry Only building; thence North 32°28'48" West, along said southwesterly exterior wall, a distance of 34.88 feet to an exterior angle point; thence North 1°16' 00" East, along the exterior wall, a distance of 12.02 feet to the most northwesterly exterior corner of said Passenger Ferry Only building; thence South 88°44'00" East, along the exterior of said northerly wall, and its easterly extension thereof, a distance of 337.8 feet to a point which bears North 1°16'00" East , 16.02 feet from the point of beginning; thence South 1°16'00"West, 16.02 feet to the Point of Beginning.

The above described tract contains 9,160 square feet, more or less.

**EXHIBIT C2
LEGAL DESCRIPTION AND DIAGRAM OF LEASED TIDELANDS**

(To be attached to this Tidelands Lease prior to the Commencement Date)

EXHIBIT D**DESCRIPTION OF PERSONAL PROPERTY OWNED BY COUNTY**

- 1 Float/Barge
- 1 Gangway
- 2 Portable Ramps used to load/off-load passengers
- 1 Eight foot long bench
- 8 Six foot long benches
- 6 Four foot long benches
- 2 Ticket Vending Machines
- 1 Conex Box
- 2 Hazardous Material Lockers
- Life Rings
- 1 Variable Message Sign
- 2 Shore Power Cords
- 1 Potable Water Hose

EXHIBIT E**FORM OF AMENDMENT TO TIDELANDS LEASE
GCB _____**

This Amendment No. _____ (Amendment) to the Tidelands Lease No. GCB _____ (Lease) is made by the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION FERRIES DIVISION (WSF) and the KING COUNTY DEPARTMENT OF TRANSPORTATION – MARINE DIVISION (COUNTY), (collectively the “Parties.”).

RECITALS

- A. WSF and COUNTY are parties to a certain Lease, dated _____, _____, 2016.
- B. Section 21.8 of the Lease provides for written modifications.
- C. Both Parties desire to amend certain terms and exhibits in the Lease.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the terms contained herein, the Parties agree as follows:

- 1. Amendment to Section _____ of the Lease.** Section _____ is amended in its entirety to read as follows:
- 2. Amendment to Section _____ of the Lease.** Exhibit _____ is replaced by the revised Exhibit _____ which is attached and incorporated into the Lease.
- 3. New Exhibit _____.** A new **Exhibit** _____ identifying _____ is attached and incorporated into the Lease.
- 4. Other Provisions Unaffected.** All other provisions of the Lease remain in full force and effect and are not altered or affected in any way unless specifically modified herein. The provisions of the Lease modified by this Amendment shall apply equally to any and all other provisions in the Lease as though the modified provisions were originally written as amended hereby.
- 5. Authority.** Each person executing this Amendment represents and warrants that he/she has full power and authority to execute and deliver this Amendment on behalf of the party for whom he/she is executing and to bind such party to all the terms and provisions of this Amendment.

The Parties hereto have executed this Amendment as of the date signed last below.

KING COUNTY

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
FERRIES DIVISION

By: _____

By: _____

Date: _____

Date: _____

**EXHIBIT F
FORM OF COMMENCEMENT NOTICE**

[Insert Date Here]

King County
[Insert Address for King County Here]

**RE: Commencement Date
Lease by and between
Washington State Ferries and King County at Seattle Multimodal Terminal
Lease Agreement No. _____ Inventory Control No. _____**

By this Letter of Notification from WSF to King County, WSF and King County agree that the Commencement Date for the above referenced lease shall be [Insert Date Here].

SIGNATURES

WASHINGTON STATE FERRIES

KING COUNTY

By: _____

By: _____

EXHIBIT G
MAINTENANCE RESPONSIBILITY MATRIX

Item	Responsible Party	Notes
Stairs <ul style="list-style-type: none"> • Sweep, pick up, and dispose of refuse and litter • Wipe down and clean walls, railings, and control panels • Touch up paint • Remove graffiti • Repair/replace damaged handrails • Any special cleaning and spill removal • Repair/replace all lighting • Security and trespassing abatement • Snow and ice treatment • Repair/replace stair nosing as needed 	Split according to design phase agreement	Both agencies to check with operations team
Elevators <ul style="list-style-type: none"> • Maintain and repair all elevator mechanical and electrical systems, equipment, and control panels • Sweep, pick up, and dispose of refuse and litter • Wipe down and clean walls, railings, and control panels • Touch up paint • Remove graffiti • Repair/replace damaged handrails • Any special cleaning and spill removal • Repair/replace all lighting • Security and trespassing abatement 	Split 50/50	Use WSF elevator maintenance contract; County to have authority to request repair and required to send service report, notify of maintenance
Pedestrian Bridge (superstructure/foundation) <ul style="list-style-type: none"> • Touch up paint • Remove graffiti • Repair/replace damaged sidewalk, canopy/wind screens/ platforms/ benches/leaning rails and signs • Clean out/repair/replace roof and floor drains • Any special cleaning and spill removal • Snow, ice and sand removal • Sweep, pick up refuse, litter • Empty waste receptacles • Inspect/repair/replace all lights and switches for proper operation • Maintain all ADA accessibility components 	Split according to design phase agreement	
At-grade walkway <ul style="list-style-type: none"> • Touch up paint • Remove graffiti • Repair/replace damaged sidewalk, canopy/wind screens/ platforms/ benches/leaning rails and signs 	Split according to design phase agreement	

<ul style="list-style-type: none"> • Clean out/repair/replace roof and floor drains • Any special cleaning and spill removal • Snow, ice and sand removal • Sweep, pick up refuse, litter • Empty waste receptacles • Inspect/repair/replace all lights and switches for proper operation • Maintain all ADA accessibility components 		
POF float & gangway	TBD	
POF Terminal	TBD	
Security	KC to secure/monitor its own facility; WSF to monitor common areas	
Dock structure	TBD	
Garbage removal	KC to use WSF dumpster, as is done today	If possible, KC design team will make room for dumpster. This is unlikely.
Fire suppression <ul style="list-style-type: none"> • Inspect/report damage • Repair/replace 	Split 50/50	WSF to be key point of contact for inspection and repairs

EXHIBIT H
ANNUAL DEPRECIATION FOR POF FACILITY

Category	Asset Account	Depreciation Method	Life – Yr/Mo	Prorate Convention	Initial Value	In Service Date
Buildings - Other, Developed	16320	STL	50.00	FOL - Month		
Buildings – Pavement	16320	STL	40.00	FOL - Month		
Buildings – Plumbing	16320	STL	15.00	FOL - Month		
Buildings – Roof	16320	STL	15.00	FOL - Month		
Buildings – Sidewalks/Walkways	16320	STL	30.00	FOL - Month		
Buildings – Guardrails	16320	STL	30.00	FOL - Month		
Buildings - Fence	16320	STL	10.00	FOL - Month		
Pilings and trestles	16320	STL	75.00	FOL - Month		

Depreciation – Shared Facilities at Colman Dock

Shared Facility	Depreciation Method	Life – Yr/Mo	Prorate Convention	Initial Value	In Service Date
Walkway – Alaskan Way to POF	STL		FOL-Month		
Stairway to Overhead Walkway	STL		FOL-Month		
Overhead Walkway	STL		FOL-Month		
2 Elevators	STL		FOL-Month		

EXHIBIT I

DNR LETTER



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

Caring for
your natural resources
... now and forever

April 21, 2016

Tim McGuigan, Director Contracts & Legal Services
Washington State Ferries
2901 Third Avenue, Suite 500
Seattle, WA 98121-3014

Subject: Aquatic Lands Agreement No. 51-SR1007 - WSDOT Colman Dock

Dear Mr. McGuigan:

After reviewing the proposed use of the harbor area for the King County passenger ferry dock, the Department of Natural Resources has determined that the use is consistent with the current authorization (51-SR1007) for the Washington State Department of Transportation Colman Ferry Terminal. No additional authorization or modification is needed at this time.

Please contact me if you have any other questions or comments. My phone number is 206-450-5423 and my email address is derrick.toba@dnr.wa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Derrick Toba".

Derrick Toba, Assistant Division Manager
Shoreline District Aquatics

c: District File
Aquatic Resources File

SOUTH PUGET SOUND REGION | 950 FARMAN AVE N | ENUMCLAW, WA 98022-9282
TEL: (360) 825-1631 | FAX: (360) 825-1672 | TTY: (360) 902-1125 | TRS 711 | WWW.DNR.WA.GOV
EQUAL OPPORTUNITY EMPLOYER



EXHIBIT J**FORM OF MEMORANDUM OF LEASE FOR RECORDING PURPOSES**

After Recording Return To:
 King County
 Real Estate Services Division
 500 King County Administration Building
 500 Fourth Avenue
 Seattle, WA 98101

MEMORANDUM OF TIDELANDS LEASE

GRANTOR: Washington State Department of Transportation Ferries Division
 (Lessor)

GRANTEE: King County, a political subdivision of the State of Washington
 (Lessee)

Legal Description:
 Assessor's Property Tax Parcel Account Number(s):

THIS MEMORANDUM OF TIDELANDS LEASE ("Lease Memorandum") is dated for references purposes only as of _____ between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION FERRIES DIVISION (Lessor) AND KING COUNTY a political subdivision of the State of Washington (Lessee).

1. Tidelands Lease. Lessee has leased the real property described in Exhibit A, attached hereto and by this reference incorporated herein (the "Tidelands") to Lessee pursuant to the terms and conditions set forth in that certain Tidelands Lease No. GCB____ at Seattle Multimodal Terminal, dated _____ by and between Lessor and Lessee (the "Tidelands Lease"). The Tidelands Lease has an Initial Term of fifty (50) years expiring on _____, and may be extended for an additional twenty twenty-five (25) year period.
2. Definition of Terms. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Tidelands Lease.
3. Purpose of Memorandum. This Lease Memorandum is prepared for purposes of recordation only and does not set forth all of the terms and conditions set forth in the Tidelands Lease.

DATED the date first above written.

LESSOR:

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION FERRIES DIVISION

By: _____

Name: _____

Title: _____

Date: _____

LESSEE:

KING COUNTY, a political subdivision of the state of Washington

By: _____

Name: _____

Title: _____

Date: _____

STATE OF WASHINGTON

COUNTY OF KING } ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that [he/she] signed this instrument, on oath stated that [he/she] was authorized to execute the instrument and acknowledged it as the _____ of the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION FERRIES DIVISION, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____, 2016.

Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

STATE OF WASHINGTON

COUNTY OF KING } ss.

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

GIVEN UNDER MY HAND AND OFFICIAL SEAL this _____ day of _____,
2016.

Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____