

**PIER 48 LEASE NO. GCB 4077  
FOR PASSENGER - ONLY FERRIES  
MAINTENANCE AND MOORAGE BARGE**

**Between  
Washington State Department of Transportation  
Ferries Division  
and  
King County**

**JULY 2024**

**PIER 48 LEASE NO. GCB 4077  
FOR PASSENGER - ONLY FERRIES  
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1           This **LEASE** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2024,  
2 between the **WASHINGTON STATE DEPARTMENT OF TRANSPORTATION**  
3 **FERRIES DIVISION**, operating as Washington State Ferries (hereinafter called “**WSF**”) and  
4 **KING COUNTY**, a home rule charter county and political subdivision of the state of Washington,  
5 acting by and through its Metro Transit Department and Marine Division (hereinafter called  
6 “**COUNTY**”), each referred to individually as “Party” and collectively as the “Parties.”

**RECITALS**

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- 10 1. As components of its property in Seattle and Puget Sound, Washington, the Washington  
11 State Department of Transportation (herein after called “**WSDOT**”) owns Pier 48 located  
12 at 201 Alaskan Way S, tax parcel number 7666202630, and associated tidelands in  
13 downtown Seattle as further described herein, both in King County, Washington  
14 (hereinafter jointly called “Pier 48”). For this Agreement, **WSF** is acting on behalf of  
15 **WSDOT**.  
16
  - 17 2. **WSDOT** purchased Pier 48 to serve as parking for contractors and Port of Seattle Pilots  
18 during construction of the Alaskan Way Viaduct Project (hereinafter called the “**AWV**  
19 **Project**”). Subsequent to the **AWV Project**, **WSF** installed remote vehicle holding lanes at  
20 Pier 48 to support the construction of a new Seattle Multimodal Terminal at Colman Dock  
21 / Pier 52.  
22
  - 23 3. The Parties previously entered into a Pier 48 Lease No. GCB 1144 For Maintenance and  
24 Moorage Barge, dated April 14, 2012 (hereinafter called “**Lease No. GCB 1144**”) whereby  
25 **WSDOT** leased to the former King County Ferry District certain space on the north side  
26 of Pier 48 for moorage of the **COUNTY’S** maintenance and moorage barge (hereinafter  
27 called “**Barge**” or “**barge**”) to maintain and moor its passenger-only ferries (hereinafter  
28 may be called “**POF**”) and provide associated maintenance facilities on the Barge.  
29

- 1 4. The **COUNTY'S** use of Pier 48 and the Pier 48 Facilities for the Barge for **COUNTY** POF  
2 vessels has a direct savings benefit to the Early Safety and Mobility Projects by allowing  
3 the **COUNTY** to maintain its West Seattle Water Taxi (and Vashon Island POF) at Pier  
4 48, which is adjacent to the **COUNTY'S** new POF Terminal at Pier 50. Such proximity  
5 enables the **COUNTY** to efficiently maintain its POF vessels serving the **COUNTY'S** Pier  
6 50 / West Seattle Water Taxi route and Vashon Island POF route and other potential service  
7 routes. Such proximity enables the **COUNTY** to enhance POF service which helps  
8 mitigate vehicle traffic congestion on roadways and on **WSF'S** auto / passenger ferries  
9 serving the Seattle Multimodal Terminal (Colman Dock / Pier 52).
- 10
- 11 5. Subsequent to the execution of Lease No. GCB 1144, the **COUNTY** assumed all the rights  
12 and responsibilities of the former King County Ferry District under that lease.
- 13
- 14 6. **WSF** prepared a draft Amendment No. 1 to Lease No. GCB 1144 to further extend the  
15 Lease for the period of time specified in this Lease. On review, the **COUNTY** stated that  
16 it preferred a new successor lease with all references to the **COUNTY** instead of the former  
17 King County Ferry District. Lease No. GCB 1144 has been in holdover until the  
18 establishment of a new lease.
- 19
- 20 7. The Parties wish to enter into this new, successor Lease covering the **COUNTY'S** POF  
21 maintenance and moorage Barge activities at Pier 48.
- 22
- 23 8. **WSF** is authorized to enter into this Lease pursuant to Revised Code of Washington (RCW)  
24 47.56.253, RCW 47.60.662, RCW 47.64.090 and RCW 47.12.120. The **COUNTY** is  
25 authorized to enter into this Lease pursuant to RCW 36.54.110 and the King County  
26 Charter, Sections 120, 220.20, 230.10.10 and 320.20.

27  
28 **AGREEMENT**

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30 **NOW, THEREFORE**, in consideration of the covenants and mutual promises herein, the  
31 Parties agree as follows:  
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**ARTICLE 1**  
**INTERPRETATION, DEFINITIONS, AND EXHIBITS**

**1.1 Interpretation.** In this Lease, the following interpretations apply, except as otherwise expressly provided or unless the context otherwise requires.

**A.** The headings are for convenience only and are not intended as a guide to interpretation of this Lease or any portion thereof.

**B.** The word “**including**,” when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope.

**C.** Words importing the masculine gender include the feminine or neuter, words in the singular include the plural, words importing a corporate entity include individuals, and vice versa.

**D.** A reference to “**approval**,” “**authorization**,” or “**consent**” means written approval, authorization, or consent.

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

**A.** “**Additional Amounts**” means all sums of money other than the Rent, if any, from time to time payable by the **COUNTY** to **WSF** pursuant to agreement of the Parties for taxes or services provided by **WSF** that **WSF** is not otherwise obligated to provide under this Lease.

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

1           **C.**     “**Environmental Laws**” means any federal, state, or local statute, regulation, code,  
2           rule, ordinance, order, judgment, decree, injunction, or common law, or any permit  
3           issued pertaining in any way to the protection of human health, safety, or the  
4           environment including, without limitation, the Comprehensive Environmental  
5           Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9602 et. Seq.  
6           (“CERCLA”); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §  
7           6901 et seq. (“RCRA”); the Washington State Model Toxics Control Act, Chapter  
8           70A.305 RCW (“MTCA”); the Washington Hazardous Waste Management Act,  
9           RCW ch. 70A.300; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et  
10          seq., the Washington Water Pollution Control Act, RCW ch. 90.48, and any laws  
11          concerning aboveground or underground storage tanks.

12  
13          **D.**     “**Force Majeure**” means any strike, lock-out, labor dispute, act of God, inability  
14          to obtain labor, utilities or services, application of Applicable Laws, enemy or  
15          hostile actions, sabotage, war, blockades, insurrections, riots, epidemics,  
16          washouts, nuclear and radiation activity or fall-out, civil disturbances, explosions,  
17          fire or other casualty, or any other cause, whether similar to or dissimilar from the  
18          foregoing, beyond the control of the party seeking to take advantage of such Force  
19          Majeure and not avoidable by the exercise of reasonable foresight.

20  
21          **E.**     “**Governmental Authority**” means any federal, state, municipal, or local  
22          government, government authority, office, or official having jurisdiction, or other  
23          political subdivision of any of them, or any entity, authority, agency, or court or  
24          person exercising executive, legislative, judicial, regulatory, or administrative  
25          functions on behalf of such government, government authority, office or official or  
26          other political subdivision thereof.

27  
28          **F.**     “**Hazardous Materials**” as used herein shall mean: (i) any toxic substances or  
29          waste, sewage, petroleum products, radioactive substances, medical, heavy metals,  
30          corrosive, noxious, acidic, bacteriological or disease-producing substances; (ii) any  
31          dangerous waste or hazardous waste as defined in the Washington Hazardous  
32          Waste Management Act as now existing or hereafter amended (Chapter Ch.  
33          70A.300 RCW) or the Resource Conservation and Recovery Act as now existing  
34          or hereafter amended (42 U.S.C. § 6901 et seq.); (iii) any hazardous substance as  
35          defined in the Washington Model Toxics Control Act as now existing or hereafter

1 amended (Chapter 70A.305 RCW), or the Comprehensive Environmental  
2 Response, Compensation and Liability Act of 1980 as now existing or hereafter  
3 amended (42 U.S.C. § 9601 et seq.); or (iv) any pollutants, contaminants, or  
4 substances posing a danger or threat to public health, safety or welfare, or the  
5 environment, which are regulated or controlled as such by any applicable federal,  
6 state or local laws, ordinances or regulations as now existing or hereafter amended.  
7

8 **G.** “Lease” means this instrument, as amended from time to time.  
9

10 **H.** “Order” means any oral advice or warning or any directive, decision, order, notice  
11 including a notice of litigation or proceeding, letter or other written communication,  
12 that requires the taking of any measures or actions or refraining from taking any  
13 measures or actions, issued or made by any Governmental Authority under any  
14 Environmental Law.  
15

16 **I.** “Release” includes spilling, leaking, pumping, pouring, flowing, depositing,  
17 emitting, emptying, discharging, escaping, leaching, disposing, and dumping of  
18 Hazardous Materials into the environment consistent with definitions in the  
19 Environmental Laws and regulations, and except for as authorized under any  
20 applicable Environmental Law.  
21

22 **J.** “WSF Pier 48 Maintenance” means, without duplication, the management,  
23 operation, maintenance, and repair of Pier 48 that is not COUNTY’S responsibility  
24 pursuant to Article 8.1.A and any other related provisions in this Lease. **WSF Pier**  
25 **48 Maintenance** includes but is not limited to: maintenance and painting of any  
26 **WSF fences**; asphalt repair; fixtures, equipment or other state property located on  
27 Pier 48, including major structural and Life Cycle Cost work; landscaping; and  
28 maintenance and repair of any utilities that **WSF** is required to make available to  
29 the **COUNTY** pursuant to this Lease.  
30

31 **K.** “Term” means the term of this Lease set out in Article 3, or any shorter period  
32 resulting from any earlier termination of this Lease.  
33

34 **L.** “WSF or WSDOT contractors” includes but is not limited to: Hoffman Pacific  
35 JV, the prime contractor for the Seattle Multimodal Terminal project, and its

1 subcontractors; and any other contractor authorized by **WSF** or **WSDOT** to use a  
2 portion of Pier 48, provided such use does not interfere with the **COUNTY'S**  
3 activities under this Lease.  
4

5 **1.3 Exhibits.** The following Exhibits are part of this Lease:

- 6 Exhibit A Pier 48 Site Plan 2024
  - 7 Exhibit B COUNTY Existing Barge Maintenance Facility Drawings
  - 8 Exhibit C Parties' Representatives
- 9  
10  
11

12 **ARTICLE 2**  
13 **LEASE AND USE**  
14

15 **2.1 Grant of Lease.** The purpose of this Lease is to establish the terms and conditions for the  
16 **COUNTY'S** use of Pier 48 and associated tidelands at 201 Alaskan Way, Seattle,  
17 Washington. Accordingly, **WSF** grants to the **COUNTY** access and use rights to: (i) a  
18 portion of Pier 48 and associated tidelands (hereinafter called "Pier 48"); (ii) certain  
19 infrastructure located at Pier 48, including gangway, fencing and gate, and the concrete  
20 pad adjacent to the seawall (hereinafter collective called "**Pier 48 Facilities**"); (iii) an area  
21 at Pier 48 for access and parking; and (iv) area for utility services and connections, all as  
22 depicted and legally described on **Exhibit A** and further described below: The combined  
23 use areas at Pier 48 may hereinafter be referred to as the "Premises."  
24

25 **A. Pier 48.** **WSF** grants to the **COUNTY** the right and Lease to enter onto and to use  
26 Pier 48 and the Pier 48 Facilities to locate and secure a maintenance and moorage  
27 barge for the **COUNTY'S** passenger-only ferries, as described further in Section  
28 2.2 below. Up to four (4) passenger-only ferries may be moored at the Barge at  
29 one time.  
30

31 The Parties recognize that the upland areas of Pier 48 are very limited and are  
32 primarily for the use of **WSF** and its contractors. Therefore, as the priority user of  
33 Pier 48, **WSF** and its contractors shall have priority use of the Pier 48 upland areas



1  
2 **2.3 COUNTY Improvements to Pier 48**  
3

4 **A.** The **COUNTY** may make improvements to Pier 48 and the Pier 48 Facilities as  
5 shown on the construction plans in **Exhibit B** (“**COUNTY** Improvements”). The  
6 **COUNTY** Improvements include a gangway, pier installation, pile frame assembly  
7 installation, utility installation, and related work. **WSF** has approved those  
8 **COUNTY** Improvements. For any future modifications or improvements, the  
9 **COUNTY** will provide to **WSF**, for prior review and consent, the design of any  
10 proposed material change(s) to Pier 48 and the Pier 48 Facilities or proposed  
11 additional **COUNTY** Improvements. Such consent shall not be unreasonably  
12 withheld. Unless otherwise agreed upon by the Parties, the **COUNTY** will be  
13 solely responsible for obtaining all permits and approval from applicable  
14 jurisdictions for the **COUNTY** Improvements. Additionally, **WSF** shall have no  
15 obligation to repair or improve the seawall or rock retaining wall in the vicinity of  
16 the **COUNTY’S** gangway where it adjoins the Pier 48 upland.  
17

18 **B.** With permission from the **COUNTY**, which shall not be unreasonably withheld,  
19 **WSF** may utilize the utility connections installed by the **COUNTY**, if needed, as  
20 long as such use does not have a negative impact on the **COUNTY’S** use of Pier  
21 48 and the Pier 48 Facilities or cause the **COUNTY** to incur additional  
22 infrastructure or ongoing utility costs.  
23  
24

25 **ARTICLE 3**  
26 **TERM OF LEASE**  
27

28 **3.1 Term.** The “Commencement Date” for this Lease shall be July 1, 2024. The term of this  
29 Lease (“Term”) shall be for a period of ten (10) years, retroactively commencing on the  
30 Commencement Date and expiring on June 30, 2034, unless extended or earlier terminated  
31 as provided in this Lease.  
32

33 **3.2 Extension.** At the **COUNTY’S** written request, the term of the Lease may be extended  
34 via two (2) successive Lease extensions for up to five (5) years each. As such, the  
35 aggregate Lease extensions shall be for up to ten (10) total additional years, to be

1 documented in a written Lease amendment(s) signed by the Parties. **WSF** approval for  
2 such extension(s) shall not be unreasonably withheld except if **WSF** or WSDOT has a  
3 legislatively approved and funded project for the Leased Premises. In the event the  
4 **COUNTY** desires to so extend the Lease, it shall provide written notice of such intent to  
5 **WSF** not less than one (1) year and not more than two (2) years prior to the then existing  
6 expiration date of the Lease. If the **COUNTY** does not provide such notice, then the Lease  
7 shall expire at the end of the Initial Term specified above, subject to the Holding Over  
8 provision in this Article. Any extension of this Lease shall be on the same terms and  
9 conditions, as set forth herein, except as modified by any changes in policies, practices,  
10 laws, regulations, or contracts that will be reflected in a written Lease amendment signed  
11 by both Parties.  
12

13 **3.3 Holding Over.** If the **COUNTY** fails to issue a written request to extend the Term of the  
14 Lease, and the **COUNTY** continues its use of Pier 48 and the Pier 48 Facilities with **WSF'S**  
15 consent, the resulting tenancy shall be on a month-to-month basis unless the Parties agree  
16 otherwise in writing. Such month-to-month tenancy shall be governed by the Lease terms  
17 and conditions in effect immediately prior to such expiration, unless the Parties agree  
18 otherwise in writing, provided, **WSF** reserves the right to make any Extension Term  
19 retroactive to cover the period of any preceding hold-over tenancy.  
20  
21

## 22 **ARTICLE 4**

### 23 **RENT**

24  
25 **4.2** During the Term of the Lease, including any extensions thereof, the **COUNTY** agrees to  
26 pay fair market Rent for the Premises, discounted to reflect the limited facilities and access  
27 at Pier 48 and calculated as follows:  
28

29 **A.** The Parties agree to utilize the Port of Seattle's updated tariff schedule as a market  
30 rate resource. Accordingly, the Port of Seattle's Tariff No. 5, at  
31 <https://www.portseattle.org/page/tariffs-terminal-tariff-no-5> (eff 04/01/2023), is the  
32 market rate Lease value. Rental discounts will be applied to the base Lease value.  
33 The discounted net Rent will be subject to an annual Consumer Price Index (CPI)  
34 adjustment, as detailed below.  
35

1. Applying the Port of Seattle’s Tariff No. 5 that became effective on April 1, 2023, the moorage rate for a 200-foot vessel is \$846.00 per day, which amounts to \$ 25,380 per month and \$ 304,560 per year.
2. **WSF** will apply two discounts to the above base Lease value. The first discount is a 25% public benefit discount (new for this application), the same as applied to two other **WSF / COUNTY** agreements for premises to directly support the **COUNTY’S** POF operations. The second discount is a 62% discount as provided in Lease No. GCB 1144, principally due to the condition of Pier 48. These discounts are calculated as follows:

Annual base Lease value for calendar year 2024 per Port Tariff No. 5:	\$304,560.00
With 25% (\$76,140) discount for public benefit:	\$228,420.00
With 62% ( \$ 141,620) discount for deteriorated condition of Pier 48, with limited facilities, access and parking:	\$86,800.00
Total discounted Rent for calendar year 2024: (Rent will be prorated for partial months, if applicable)	\$86,800.00

**4.3 Annual CPI Adjustment.** Rent will be adjusted annually on July 1st of each year, commencing July 1, 2025, in accordance with the Consumer Price Index for the U.S. City Average for All Urban Consumers as published by the U.S. Bureau of Labor Statistics (the “Index”). The adjustment will be equal to any increase or decrease reported by the Index for the preceding calendar year; Provided, however, in no event will the annual Rent be less than the annual Rent payable for the twelve (12) month period immediately preceding the applicable anniversary.

If the Index 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 Index, and that index shall be used to obtain substantially the same result as would be obtained if the Index had not been discontinued or replaced.

1 **4.4 Invoicing, Payment and Late Fee.** As soon as the Index data is available each year, **WSF**  
2 will invoice the **COUNTY**, in advance, for the annual Rent, or prorated amount, as  
3 applicable. **WSF** shall send all invoices to the **COUNTY'S** designated representative for  
4 invoicing in Exhibit C. The invoice will include the address where checks are to be sent  
5 to **WSF**. The **COUNTY** will make the annual rent payment within thirty (30) calendar  
6 days following receipt of an invoice from **WSF**.

7  
8 In the event that Rent is not received by **WSDOT** within fifteen (15) days of the due date,  
9 the **COUNTY** shall pay a late charge of one percent (1%) of the overdue Rent, as well as  
10 a Twenty-Five Dollar (\$25.00) administration fee.  
11

12 **4.5** **WSF'S** designated Representative, or other designated **WSF** personnel, shall coordinate  
13 invoicing for the Rent payable by the **COUNTY**. **WSF** shall provide supporting  
14 documentation for any cost reimbursements listed on its invoices. Upon the **COUNTY'S**  
15 request, **WSF** shall provide any additional, available accounting records or other  
16 documents to satisfy requests from federal funding agencies (if any) and to comply with  
17 the **COUNTY'S** audit requirements.

18  
19 **4.6** The **COUNTY** shall remit all payments under this Lease to:

20  
21 Revenue Accountant  
22 Washington State Ferries  
23 P.O. Box 3985  
24 Seattle, WA 98124-3985  
25

26 **4.7** **WSF's** acceptance of late payment charges and/or any portion of the overdue payment  
27 shall in no event constitute an accord and satisfaction, compromise of such payment, or a  
28 waiver of default with respect to such overdue payment, nor prevent **WSF** from exercising  
29 any other rights and remedies granted in this Lease.  
30

31 When a delinquency exists, any payments received will be applied first to the late payment  
32 charge and late payment fees, next to delinquent rent, and any balance remaining to the  
33 current rent and leasehold excise tax, if applicable.  
34  
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3 **ARTICLE 5**  
4 **TAXES AND OPERATING COSTS**

5 **5.1 Taxes, Assessments and Fees.** The COUNTY shall pay all taxes that may hereafter be  
6 levied or imposed upon the COUNTY by reason of this Lease.

7  
8 Immediately upon receiving a notice of intention from an assessing district, as defined in  
9 RCW 79.44.003, to initiate an assessment, as defined in RCW 79.44.004, WSF shall notify  
10 the COUNTY of such notice of intention. If the assessing district orders the improvement,  
11 the Parties shall negotiate and agree upon the benefit, if any, of such improvement to the  
12 COUNTY and its lease interest in Pier 48, and the Additional amount to be paid by the  
13 COUNTY for such benefit, if any. The Additional Amount shall commence on the  
14 approval and confirmation of the assessment roll.

15  
16 Additionally, if required by Applicable Laws, the COUNTY will reimburse WSF for any  
17 and all applicable taxes, fees or other charges incurred by or that become the obligation of  
18 WSF as the result of the COUNTY'S activities under this Lease. If any such taxes, fees  
19 or other charges are not directly paid by the COUNTY (i.e., as part of a prorated cost  
20 allocation by WSF), they shall be considered an Additional Amount and invoiced by and  
21 payable to WSF (or as may be otherwise required by law) as part of the normal invoicing  
22 process under this Lease.

23  
24 **5.2 Utility Charges.** The COUNTY is responsible for and agrees to pay the cost of all utilities  
25 that serve the leased Pier 48 and Pier 48 Facilities, including, but not limited to, surcharges,  
26 fuel adjustments, rate adjustments, and taxes. The COUNTY will pay, when due, all  
27 charges for utilities that are either: (i) a prorated cost allocation from a WSF utility account  
28 based upon estimated utility usage by the COUNTY; and/or (ii) arranged for and billed  
29 directly to the COUNTY by the applicable utility provider. The COUNTY shall pay such  
30 utility charges within thirty (30) days of receipt of any invoice in respect thereof. In no  
31 event will WSF be liable for any interruption or failure in the supply of any utilities or any  
32 other services to Pier 48 that WSF is not obligated to provide pursuant to this Lease.

1 **5.3 Law Enforcement Costs.** Any costs incurred by or on behalf of the COUNTY with  
2 respect to any use of, or other attendance at, Pier 48 by COUNTY selected law  
3 enforcement personnel (e.g., King County Sheriff) will be paid directly by the COUNTY.  
4  
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6 **ARTICLE 6**  
7 **CAPITAL PROJECTS**  
8

9 **6.1 Seattle Multimodal Terminal Project.** Construction of the Seattle Multimodal Terminal  
10 to replace the Seattle Ferry Terminal at Colman Dock/Pier 52 is nearing completion. WSF  
11 opened the entire renovated Terminal for public access on August 3, 2023, with residual  
12 work remaining on the overhead walkway connection to First Ave. WSF will notify the  
13 COUNTY of any work on the Seattle Multimodal Terminal project that may impact use  
14 of Pier 48.  
15

16 During construction of the Seattle Multimodal Terminal, access to Pier 48 may be  
17 disrupted. At a minimum, the Pier 48 area could be subject to construction zone conditions.  
18 WSF will keep the Pier 48 access open during the construction period to the extent  
19 practicable, to minimize any negative business impacts on the COUNTY. In the event that  
20 WSF determines this Lease must be terminated to allow for the construction activity, WSF  
21 will terminate the Lease for convenience in accordance with Section 12.1 and the prior  
22 written notice requirement therein.  
23

24 **6.2 Seattle Waterfront Redevelopment Project.** The Seattle Waterfront Redevelopment  
25 Project will be underway during the term of this Lease. The Project follows the City of  
26 Seattle's construction of a new seawall along the Seattle waterfront and WSDOT's removal  
27 of the Alaskan Way Viaduct, both now completed.  
28

29 **6.3 No Liability.** WSF will not be liable to the COUNTY for any damages whatsoever arising  
30 from the Seattle Multimodal Terminal Project, the Alaskan Way Viaduct Project, the  
31 Seattle Seawall Project and / or the Seattle Waterfront Redevelopment Project, including  
32 but not limited to: (i) disruption to vendor or delivery access to Pier 48; (ii) changes in  
33 access; (iii) lost business opportunities and/or reduced revenues; or (iii) WSF's consequent  
34 termination of this Lease for convenience.  
35

**ARTICLE 7**  
**INSURANCE, RISK AND INDEMNITY**

**7.1 Insurance.**

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

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

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

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

1  
2 C. The provision of insurance or self-insurance, or the absence thereof, shall not limit  
3 the COUNTY's liability to WSF in the performance of this Lease.  
4

5 **7.2 Indemnity.**  
6

7 **A. COUNTY Indemnity.** The COUNTY and its successors and assigns shall protect,  
8 save, indemnify, defend and hold harmless WSF, including its authorized agents  
9 and employees, from all claims, actions, costs, damages, or expenses of any nature  
10 whatsoever arising out of or relating to the negligent acts or omissions of the  
11 COUNTY, its agents, contractors, licensees, invitees or employees, on or in  
12 connection with the Premises. The COUNTY obligations under this Section 7.2  
13 shall not include any claims, costs, damages, or expenses, arising out of or relating  
14 to the acts of WSF or its agents, contractors, licensees, invitees or employees;  
15 provided that if claims, actions, costs, damages, or expenses arise out of or relate  
16 to: (i) the concurrent acts of WSF, its agents, contractors, licensees, invitees, or  
17 employees and the COUNTY, its agents, contractors, licensees, invitees or  
18 employees; or (ii) involve actions covered by RCW 4.24.115, then this Section 7.2  
19 shall be valid and enforceable only to the extent of the negligent acts or omissions  
20 of the COUNTY and its agents, contractors, licensees, invitees or employees.  
21

22 **B. WSF Indemnity.** WSF and its successor and assigns shall protect, save, defend,  
23 indemnify and hold harmless the COUNTY, including its authorized agents and  
24 employees, from all claims, actions, costs, damages, or expenses of any nature  
25 whatsoever arising out of or relating to the negligent acts or omissions of WSF, its  
26 agents, contractors, licensees, invitees, or employees in connection with the  
27 Premises. WSF'S obligations under this Section 7.2 shall not include such claims,  
28 costs, damages, or expenses arising out of or relating to the acts of the COUNTY  
29 or its agents, contractors, licensees, invitees or employees; provided that if the  
30 claims, actions, costs, damages or expenses arise out of or relate to: (i) the  
31 concurrent acts of the COUNTY, its agents, contractors, licensees, invitees, or  
32 employees and WSF, its agents, contractors licensees, invitees, or employees; or  
33 (ii) involves actions covered by RCW 4.24.115, then this Section 7.2 shall be valid  
34 and enforceable only to the extent of the negligent acts or omissions of WSF and  
35 its agents, contractors, licensees, invitees or employees.

1  
2 **C. COUNTY Employees.** The COUNTY specifically assumes potential liability for  
3 actions brought by the COUNTY’S own employees against WSF and, solely for  
4 the purpose of this indemnification and defense, the COUNTY specifically waives  
5 any immunity under the state industrial insurance law, Title 51 RCW, which waiver  
6 has been mutually negotiated by the Parties.  
7

8 **D. WSF Employees.** WSF specifically assumes potential liability for actions brought  
9 by WSF’s own employees against the COUNTY and, solely for the purpose of this  
10 indemnification and defense, WSF specifically waives any immunity under the  
11 state industrial insurance law, Title 51 RCW, which waiver has been mutually  
12 negotiated by the Parties.  
13

14 **E. Environmental Matters Excluded.** The indemnities and other duties set forth in  
15 this Article 7 do not extend to environmental matters or Hazardous Materials  
16 arising out of or related to the Premises.  
17

18 **7.3** In the event either Party incurs attorney fees, costs or other legal expenses to enforce the  
19 provisions of this Article against the other Party, all such fees, costs and expenses shall be  
20 recoverable by the prevailing Party.  
21

22 **7.4** The provisions of this Article shall survive any termination of this Lease.  
23

24  
25 **ARTICLE 8**  
26 **RESPONSIBILITIES**  
27

28 **8.1 COUNTY Responsibilities.** In the performance of this Lease, the COUNTY’S  
29 responsibilities include, but are not limited to the following:  
30

31 **A. Maintenance and Repair of the Premises.** The COUNTY shall be responsible  
32 for the operation, maintenance and repair, if required, of the Premises at its sole  
33 cost. The COUNTY’s maintenance and repair, if any, should be performed on a  
34 regular basis to maintain the appearance and safety of the Premises and may include  
35 janitorial service, garbage disposal, and sweeping, as reasonably required.

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**B. Maintenance of the Barge.** The COUNTY shall maintain the Maintenance and Moorage Barge in a clean and safe condition, and in strict compliance with all directives and certifications issued by WSF and/or governing regulatory authorities.

All COUNTY operations personnel shall conduct themselves in a safe, reliable, efficient, courteous, and/or responsible manner at Pier 48. If the COUNTY or WSF receives complaints regarding one of the COUNTY's employees or contractors and/or it is determined that the employee or contractor is not providing service in a safe, reliable, efficient, courteous and/or responsible manner at the Pier 48, the COUNTY shall take reasonable measures to remedy the situation. If WSF requests in writing that the COUNTY take corrective measures in response to a complaint, the COUNTY shall notify WSF in writing of the corrective measures taken.

**C. Utilities.** At its sole cost, the COUNTY shall be responsible for securing: (i) shore power, water, sewer, phone, lighting, and any other utility required for the operation of the Barge, as well as (ii) garbage and recycling dumpsters and disposal services. The COUNTY and WSF may enter mutually beneficial and agreed to arrangements for sharing of these utilities.

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

**E. Security.** The COUNTY shall be solely responsible for security of the Barge and any COUNTY vehicle parking at Pier 48 at all times.

**F. No Encumbrances.** The COUNTY shall not charge or encumber in any way its interest in this Lease.

**G. Environmental Reports.** The COUNTY shall deliver to WSF, upon the full execution of this Lease, copies of environmental reports, studies, plans, and procedures relating to Pier 48 in the COUNTY'S possession or control or which are otherwise available to the COUNTY. The COUNTY'S obligation to provide

1           **WSF** with copies of all environmental reports and studies relating to Pier 48 shall  
2 apply to any environmental reports and studies that come into possession or control  
3 or which are otherwise available to the **COUNTY** during the Term of this Lease.  
4

5           **H. Emergency Action.** In the event of harm, or a threat of imminent harm to property  
6 or public safety at Pier 48, the **COUNTY** shall, as soon as practicable, inform **WSF**  
7 of emergency actions that have been or will be taken in response to the harm or that  
8 may be required to protect against a threat of imminent or potential harm.  
9

10           **I. Applicable Laws.** At its sole cost and expense, the **COUNTY** shall comply with  
11 all Applicable Laws now in force or which may hereafter be in force including,  
12 without limitation, all Applicable Laws pertaining to Pier 48 or to the use or  
13 occupancy of Pier 48 by the **COUNTY** (including obtaining all governmental  
14 permits or authorizations which may be required in connection with the  
15 **COUNTY'S** use of Pier 48) and any regulations by insurance underwriters. The  
16 provisions of this Article will survive the expiration or earlier termination of this  
17 Lease.  
18

19           **J. Rules and Regulations.** The **COUNTY** shall comply with any rules and  
20 regulations that **WSDOT/WSF**, the U.S. Coast Guard, or other Governmental  
21 Authority may reasonably impose from time to time as respects the use of the Pier  
22 48, including, without limitation, safety and navigational directions or  
23 requirements.  
24  
25

1 **8.2 WSF Responsibilities.** In the performance of this Lease, **WSF'S** responsibilities include,  
2 but are not limited to the following:  
3

4 **A. WSF Pier 48 Maintenance.** Unless undertaken by the **COUNTY** pursuant to this  
5 Lease, **WSF** shall be solely responsible for the maintenance of those portions of  
6 Pier 48 that are not part of the **COUNTY'S** lease of Pier 48 and the Pier 48  
7 Facilities. Such maintenance activity shall be as described in the definition of **WSF**  
8 Pier 48 Maintenance in Section 1.2.K. Using its own procurement and contracting  
9 procedures, **WSF** shall acquire, construct, maintain, repair and replace those  
10 portions of Pier 48 deemed necessary for **WSF** operations. **WSF** shall have no  
11 obligation to maintain those portions of Pier 48 that are not used for **WSF**  
12 operations, other than obligations imposed by law or through other agreements.  
13

14 Unless the Parties agree otherwise, **WSF** shall be responsible for the inventory of  
15 and accounting and financial reporting for capital assets at Pier 48, excluding the  
16 **COUNTY'S** personal property at Pier 48 pursuant to this Lease. Such reporting  
17 shall include all required state and federal reporting requirements, including the  
18 Federal Transit Administration's annual National Transit Database report, if  
19 applicable. As used herein, "capital assets" may include, but are not limited to, the  
20 **COUNTY** Improvements.  
21

22 Regardless of which Party owns or leases capital assets at Pier 48, the **COUNTY**  
23 shall have right to use designated capital assets to manage, operate, and maintain  
24 its Barge, piles, gangway, fence, and utilities, subject to the terms and conditions  
25 of this Lease.  
26

27 **B. Quiet Enjoyment.** To the maximum extent possible, **WSF** will ensure that the  
28 **COUNTY'S** use of Pier 48 and the Pier 48 Facilities, as authorized by this Lease,  
29 is not subject to unreasonable interference by **WSF** or its contractors and suppliers.  
30 Similarly, the **COUNTY** will ensure that **WSF'S** use of Pier 48 is not subject to  
31 unreasonable interference by the **COUNTY** or its contractors and suppliers.  
32

33 **C. Cooperate with COUNTY Pier Maintenance.** **WSF** shall cooperate with the  
34 **COUNTY** in performing its operation and maintenance responsibilities as

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

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

8  
9 **E. Environmental Reports.** **WSF** shall deliver to the **COUNTY**, upon the full  
10 execution of this Lease, copies of all environmental reports and studies relating to  
11 Pier 48 which are in **WSDOT'S/WSF'S** possession or control or which are  
12 otherwise available to **WSDOT/WSF**. **WSF'S** obligation to provide the  
13 **COUNTY** with copies of all environmental reports and studies relating to Pier 48  
14 shall apply to any environmental reports and studies that come into possession or  
15 control or which are otherwise available to **WSF** during the Term of this Lease.

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

21  
22 **8.3 Mutual Responsibilities.** In the performance of this Lease, the Parties covenant and agree  
23 with each other as follows:

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

30  
31 **B. Repairs.** The **COUNTY** acknowledges that **WSF** and its contractors have the right  
32 to undertake work involving construction, reconstruction, repair, and  
33 improvements in and about Pier 48 and the **COUNTY** agrees that **WSF** will not be  
34 liable for any damages or losses that may be suffered by the **COUNTY** as a result,

1 unless due to the negligence or willful misconduct of **WSF**, and its employees,  
2 contractors or agents or any other person for whom **WSF** is responsible at law.

3  
4 **WSF** and its contractors may from time to time perform repairs, maintenance, or  
5 improvements to Pier 48 which may require temporary closure of all or a portion  
6 of the Pier. For closures that could disrupt the **COUNTY'S** access to the Barge,  
7 **WSF** will attempt to schedule the closures around the **COUNTY'S** use and shall  
8 give the **COUNTY** notice as soon as practicable. In no event shall notice be less  
9 than forty-five (45) days in advance of the anticipated closures that could disrupt  
10 the **COUNTY'S** Barge access or fourteen (14) business days in advance of the  
11 anticipated closure that does not disrupt **COUNTY** Barge access unless emergent  
12 conditions prevent the giving of such notice. In the case of emergency, **WSF** shall  
13 provide the **COUNTY** notice as soon as possible under the circumstances.

14  
15 **WSDOT/WSF** will not be liable for any associated costs, or incidental or  
16 consequential damages (e.g., schedule disruption, loss or interruption of business  
17 and revenue), that may be suffered or incurred by the **COUNTY** by reason of any  
18 such closures.

19  
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21 **ARTICLE 9**  
22 **LABOR RELATIONS**

23  
24 **9.1** There are no labor relations provisions for this Lease.

25  
26  
27 **ARTICLE 10**  
28 **MAINTENANCE OF RECORDS**

29  
30 **10.1 Availability of Records**

31  
32 **A. Financial Records.** **WSF** shall maintain records to support any/all reimbursable  
33 costs incurred in accordance with procedures prescribed by the Washington State  
34 Auditor's Office and the applicable federal funding agencies. The records shall be  
35 open to inspection by the **COUNTY** and the federal government during normal

1 business hours and shall be retained and made available for such inspection for a  
2 period of not less than six (6) years from the final reimbursement payment to **WSF**.  
3 Copies of said records shall be furnished to the **COUNTY** and/or the federal  
4 government upon request.  
5

6 **B. Other Records.** Unless exempt from public disclosure, **WSF** shall make available  
7 for inspection and copying by the **COUNTY** or its representatives, any available  
8 current and historical records, planning documents, budget documents, and other  
9 information related to the operation and maintenance of Pier 48.  
10

11 **10.2 Audit.** If an audit is requested by the **COUNTY** or required by any applicable federal  
12 agency requirements, **WSF** agrees to cooperate fully with the **COUNTY's** auditor or an  
13 independent auditor chosen and retained by the **COUNTY**. In the event that the **COUNTY**  
14 has paid **WSF** in excess of the **COUNTY's** final funding commitment under this Lease,  
15 the excess amount will be repaid to the **COUNTY** within thirty (30) days from the date the  
16 **COUNTY** notifies **WSF** of the audit results or, upon mutual agreement by the Parties, used  
17 as an offset against other amounts owing to **WSF**. Should the audit reveal that the  
18 **COUNTY** has underpaid **WSF**, the **COUNTY** will pay the balance due to **WSF** within  
19 thirty (30) days from the date the audit is completed.  
20

21 **10.3 Electronic Production.** Wherever practicable, the **COUNTY** and **WSF** will maintain  
22 electronically all required records relating to this Lease and its performance in a manner  
23 which is usable, searchable, retrievable and authentic for the length of the designated  
24 retention period. Printing and retaining a hard copy is not a substitute for the electronic  
25 version. Whenever the **COUNTY** or **WSF** is required to produce such records or  
26 electronically stored information to the other Party under the terms of this Lease or  
27 otherwise, the Party in possession of the records or electronically stored information shall  
28 produce them in an electronic format that is in a searchable and useable format. Where  
29 appropriate, the Parties will confer on the timing and format of production. Each Party will  
30 bear its own costs for the preservation and production of records or electronically stored  
31 information.  
32  
33

**ARTICLE 11**  
**DISPUTE RESOLUTION**

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3  
4 **11.1** If a dispute arises between the Parties in connection with this Lease, the Parties agree to  
5 use the following described procedure as a condition precedent to either Party pursuing  
6 other available remedies.

7  
8 **A.** Either Party may notify the other by written notice of the existence of a dispute and  
9 a desire to resolve the dispute.

10  
11 **B.** A meeting will be held promptly between the Parties, attended by appropriate  
12 personnel and by individuals with decision-making authority regarding the dispute,  
13 to attempt in good faith to negotiate a resolution of the dispute.

14  
15 **C.** In the event the Parties are unable to timely resolve the dispute utilizing the process  
16 set forth in Paragraphs A and B above, the Parties shall submit the matter to a non-  
17 binding mediation as set forth herein. The mediation shall be conducted by a  
18 mediator agreed upon by the Parties from Judicial Dispute Resolution, LLC (JDR)  
19 unless the Parties agree to use a mediator from a different organization. The Parties  
20 agree to split equally the fee for mediation services. If the mediation does not result  
21 in voluntary resolution of the dispute, the Parties will request that the mediator issue  
22 a non-binding memorandum of opinion or similar report regarding his or her  
23 recommended resolution of the dispute.

24  
25 **D.** If, within fourteen (14) days after the issuance of such memorandum of opinion, or  
26 such further period as is agreeable to the Parties (“Negotiation Period”), the Parties  
27 have not succeeded in negotiating a resolution of the dispute, they agree that neither  
28 shall have the right to relief in a court of law until and unless the dispute resolution  
29 process described in this Article 11 has been exhausted.

**ARTICLE 12**  
**TERMINATION**

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

- A.** The **COUNTY** may, at any time, terminate this Lease for convenience on at least three (3) months' prior written notice to **WSF**.
- B.** **WSF** may at any time, terminate this Lease for convenience on at least twelve (12) months' prior written notice to the **COUNTY**.
- C.** In the event of termination for convenience by either Party, and except as provided in Section 12.4, the **COUNTY** will surrender the Premises, remove the gangway and gangway piles subject to **WSF'S** prior review and approval, and deliver possession of the Premises to **WSF** on the termination date specified in such written notice. All amounts payable hereunder will be adjusted as of such date and the appropriate adjustment payments made between the Parties. The **COUNTY** will be entitled to reimbursement for that portion of any Rent or Additional Amounts paid by the **COUNTY** that relates solely to any period after the aforesaid termination date but will remain subject to any year end adjustment process.
- D.** If Pier 48 is damaged through no fault of the **COUNTY**, and **WSF** is unable to secure funds to repair the damaged portion(s) of Pier 48 that are **WSF's** responsibility, either Party may elect to immediately terminate this Lease for convenience unless the **COUNTY** elects to fund the repairs at its sole cost.

**12.2 Termination For Default.** **WSF** may terminate this Lease if the **COUNTY** breaches or fails to comply with any of its obligations under this Lease and fails to remedy such breach or failure within ten (10) days of receiving written notice of such breach or failure or, if such breach or failure reasonably requires more than ten (10) days to remedy, if the **COUNTY** has not commenced diligently remedying such breach or failure within ten (10) days of receipt of such notice or thereafter fails to continue to diligently and expeditiously remedy such breach or failure.

1 **12.3 { Reserved}**  
2

3 **12.4 Obligations on Expiration or Termination.** Upon the expiration or earlier termination  
4 of this Lease, the COUNTY will cease to have any further right to use Pier 48 and the Pier  
5 48 Facilities for any purpose whatsoever. In such event, the COUNTY shall, at its sole  
6 cost, remove from the Premises the COUNTY Improvements and the property of those for  
7 whom the COUNTY is responsible at law, and shall repair any damage caused by such  
8 removal; Provided that for earlier termination this Lease pursuant to Section 12.1.D, the  
9 COUNTY shall have one hundred and eighty (180) days after the termination date to  
10 remove the COUNTY Improvements and such property. The Parties may agree that  
11 certain COUNTY Improvements or property of those for whom the COUNTY is  
12 responsible at law may remain at Pier 48.  
13

14 **12.5 Survival of Obligations.** Upon the expiration or earlier termination of this Lease, all  
15 claims, causes of action, or other outstanding obligations remaining or being unfulfilled as  
16 at the date of expiration or termination and all of the provisions of this Lease relating to  
17 the obligation of either of the Parties to perform actions or to account to or to indemnify  
18 the other and pay to the other any monies owing as at the date of expiration or termination  
19 in connection with this Lease will survive such expiration or termination.  
20  
21

22 **ARTICLE 13**  
23 **ENVIRONMENTAL PROVISIONS**  
24

25 **13.1 Environmental Requirements.**  
26

27 **A.** The COUNTY agrees as follows:  
28

- 29 (i) notwithstanding any other provision of this Lease, the COUNTY will fully  
30 comply with, and will ensure that all persons who the COUNTY authorizes  
31 to use Pier 48 and the Pier 48 Facilities comply with, all applicable  
32 Environmental Laws and will not place, store, use, manufacture, or Release  
33 any Hazardous Materials under, on, or over Pier 48 and the Pier 48 Facilities  
34 in violation of Environmental Laws;  
35

- 1 (ii) the **COUNTY** will not authorize, cause, or permit a Release of Hazardous  
2 Materials into, onto, or from the Barge, or from any vessels using the Barge,  
3 and will take all reasonable measures to ensure that no other persons for  
4 whom it is responsible at law authorize, cause, or permit a Release of  
5 Hazardous Materials as aforesaid;  
6
- 7 (iii) if a Release of Hazardous Materials does occur as a result of any action of  
8 the **COUNTY** or any person for whom the **COUNTY** is responsible at law,  
9 the **COUNTY** will immediately report the occurrence of the Release to  
10 **WSF** and to all applicable Governmental Authorities to whom notification  
11 is required under Environmental Laws in the circumstances and will  
12 immediately clean up the Release consistent with requirements and/or  
13 standards in the Environmental Laws, and restore to its prior-existing  
14 condition the property affected by the Release to the satisfaction of **WSF**,  
15 the U.S Coast Guard, and any other applicable Governmental Authorities;  
16
- 17 (iv) if the **COUNTY** fails or refuses to promptly clean up any such Release of  
18 Hazardous Materials and to restore the property affected by such a Release,  
19 **WSF** may carry out the whole or any part of the cleanup and restoration at  
20 the **COUNTY'S** expense and may, at its sole discretion, terminate this  
21 Lease forthwith by a notice in writing to the **COUNTY**;  
22
- 23 (v) the **COUNTY** will fully comply with all Orders of any applicable  
24 Governmental Authority which may be directed to the **COUNTY** and  
25 which relate to the **COUNTY'S** use of Pier 48;  
26
- 27 (vi) if an Order of any applicable Governmental Authority is issued to **WSF**  
28 requiring **WSF** to do anything in relation to any environmental problem  
29 caused by the **COUNTY** or for which the **COUNTY** is responsible under  
30 this Lease or at law, the **COUNTY** will, upon receipt of written notice from  
31 **WSF**, carry out any related parts of the Order at the **COUNTY'S** expense;  
32
- 33 (vii) if the **COUNTY** fails or refuses to promptly and fully carry out the related  
34 parts of any Order of any applicable Governmental Authority with respect  
35 to any such environmental matter, **WSF** may carry out the related parts of

1 the Order at the **COUNTY'S** expense and may, at the sole discretion of  
2 **WSF**, terminate this Lease forthwith by a notice in writing to the  
3 **COUNTY**;

4  
5 (viii) upon the expiration or earlier termination of this Lease, the **COUNTY** will  
6 leave Pier 48 clean of any Hazardous Materials introduced thereto by the  
7 **COUNTY** or any person for whom the **COUNTY** is responsible at law;  
8 and

9  
10 (ix) if **WSF** discovers a breach by the **COUNTY** or any person for whom the  
11 **COUNTY** is responsible at law of an Environmental Law or a fact situation  
12 which could be reasonably be anticipated to result in such a breach of an  
13 Environmental Law, **WSF** will have the right to notify the **COUNTY** of the  
14 breach or anticipated breach and the **COUNTY** shall take whatever steps  
15 are reasonably required to rectify such breach, or prevent such breach from  
16 occurring, as the case may be, all at the **COUNTY's** expense.

17  
18 **B.** The **COUNTY** shall defend, indemnify, and hold harmless **WSDOT/WSF**, and all  
19 of its officials, employees, principals, and agents, from and against and from any  
20 and all damages, losses, liabilities, obligations, penalties, claims, litigation, suits,  
21 proceedings, costs, disbursements or expenses (including, without limitation, all  
22 legal fees, experts fees and disbursements) of any kind or of any nature whatsoever  
23 (collectively, the "Indemnified Matters") which may at any time be imposed upon,  
24 incurred by or asserted or awarded against **WSDOT/WSF** to the extent any such  
25 damages, losses, liabilities, obligations, penalties, claims, litigation, suits,  
26 proceedings, costs, disbursement or expenses, were caused by any breach of or non-  
27 compliance with this Article 13 by the **COUNTY** which includes the Release of  
28 any Hazardous Materials for which the **COUNTY** is responsible to the extent  
29 caused by the **COUNTY** or those for whom it is responsible at law.

30  
31 **C.** Indemnified Matters as defined above will include, without limitation, all of the  
32 following: (i) the costs of removal of any and all Hazardous Materials brought onto  
33 Pier 48 by the **COUNTY** or those for whom it is responsible at law, that are  
34 Releasing or pose a threat of Release, (ii) the cost to clean up contamination from  
35 Hazardous Materials brought onto Pier 48 by the **COUNTY** or those for whom it

1 is responsible at law, consistent with any order issued by a Governmental Authority  
2 and/or the requirements and standards for cleanup contained in the Environmental  
3 Laws, and to the extent such contamination was caused by the **COUNTY** or by  
4 those for whom it is responsible at law; (iii) additional costs required to take  
5 necessary precautions to protect against the Release of Hazardous Materials,  
6 brought onto Pier 48 by the **COUNTY** or those for whom it is responsible at law,  
7 into the air, the soil, any body of water, any other public area or any surrounding  
8 areas, (iv) costs incurred to comply with all Applicable Laws with respect to  
9 Hazardous Materials brought onto Pier 48 by the **COUNTY** or by those for whom  
10 it is responsible at law, and (v) claims, actions, damages, liability and expenses in  
11 connection with loss of life, personal injury and/or damage arising from or out of  
12 any occurrence or matter described in (i) to (v) above.

13  
14 **D.** **WSF** confirms and agrees that the **COUNTY** will be responsible only for  
15 complying with applicable Environmental Laws related to the use, handling,  
16 storage, transportation, or other form of management of any Hazardous Materials  
17 brought onto Pier 48 and Pier 48 Facilities by the **COUNTY** or those for whom the  
18 **COUNTY** is responsible at law, and for any Releases of such Hazardous Materials  
19 to the extent caused by the **COUNTY** or those for whom the **COUNTY** is  
20 responsible at law, and that the **COUNTY** will not be responsible for any  
21 Hazardous Materials brought onto Pier 48 or Pier 48 Facilities by any other persons  
22 or for any Releases or the Exacerbation of any Releases of any Hazardous Materials  
23 to the extent caused by any other persons, except to the extent any such Release or  
24 Exacerbation of Release is caused by the willful act or negligence of the **COUNTY**  
25 or any person for whom the **COUNTY** is responsible at law.

26  
27 **E.** **WSDOT/WSF** shall defend, indemnify, and hold harmless the **COUNTY**, and all  
28 of its officials, employees, principals, and agents, from and against any and all  
29 claims, damages, losses, liabilities, obligations, penalties, claims, litigation, suits,  
30 proceedings, costs, disbursements, or expenses (including, all legal fees, experts  
31 fees and disbursements), including but not limited to removal, remedial action, or  
32 other costs recoverable under CERCLA or MTCA (collectively, "Claims"), caused  
33 by or arising from any pre-existing Contamination at Pier 48 and/or Pier 48  
34 Facilities, or by Releases to the extent caused or contributed to by **WSDOT/WSF**

1 or its employees, agents, consultants and other representatives. Without limiting  
2 the generality of the foregoing, the Parties acknowledge that Claims, as defined  
3 herein, are not limited to third party Claims, but include Claims made or incurred  
4 by the COUNTY. WSDOT/WSF's duties under this Section 13.E. include the  
5 duty to pay or reimburse WSDOT's/WSF's direct and indirect costs that it may  
6 incur to monitor or oversee the COUNTY'S cleanup or other corrective work on  
7 the Premises, including but not limited to engineering and other consulting services,  
8 sampling and studies, confirmatory testing, compliance monitoring, and  
9 administrative costs and expenses incurred in procuring and managing the same.

10  
11 **F.** Either Party obligated will pay to the other Party any amount contemplated pursuant  
12 to this Article within thirty (30) days of receipt from the owed Party of a written  
13 demand for such amount.  
14  
15

16 **ARTICLE 14**  
17 **GENERAL PROVISIONS**  
18

19 **14.1 Damage.** In the event of damage to the Pier 48 Facilities or to portions of Pier 48 that are  
20 necessary for operation of or access to the Barge, at the sole discretion of the COUNTY,  
21 the COUNTY shall immediately notify WSF which may either: (i) terminate this Lease  
22 effective immediately upon notice from the COUNTY; or (ii) repair or rebuild necessary  
23 facilities and improvements subject to availability of funding. However, if such damage is  
24 caused by the COUNTY, then the COUNTY shall repair or rebuild any such WSF  
25 facilities or improvements at its own cost, subject to advance review and approval by WSF  
26 (e.g., scope and timing of such work, materials, etc.).  
27

28 In the event the COUNTY, in its sole discretion, determines it is unable to use the Pier 48  
29 Facilities and portions of Pier 48 that are necessary for operation of or access to the Barge  
30 at all or to the extent contemplated due to damage not caused by the COUNTY, the  
31 COUNTY shall be released of the obligation to pay Rent and Additional Amounts for the  
32 use of the Premises until use can be restored, and the application of any pre-payments of  
33 Rent and Additional Amounts shall be suspended until use can be restored. In addition,

1 the COUNTY will not be entitled to any claim of any sort whatsoever against WSF in  
2 respect thereof and WSF will not be liable to the COUNTY in any way in respect thereof.  
3

4 **14.2 Federal Contract Provisions.** To the extent federal funds are utilized for construction or  
5 maintenance, this Lease and all amendments or supplements, shall comply with federal  
6 contract funding requirements.  
7

8 **14.3 Designated Representatives.** Each Party's designated representatives are named on  
9 **Exhibit C.** The contact information may be revised or updated at any time by notice to the  
10 other Party.  
11

12 **14.4 Time.** Time will be of the essence herein.  
13

14 **14.5 Waiver.** No action or failure to act by either Party shall constitute a waiver of any right or  
15 duty afforded to the other Party under the Lease, nor shall any such action or failure to act  
16 by either Party constitute an approval of, or acquiescence in, any breach hereunder, except  
17 as may be specifically stated by the Party in writing.  
18

19 **14.6 Remedies Cumulative.** All rights and remedies of either party contained in this Lease  
20 will be cumulative and not alternative.  
21

22 **14.7 Notices.** Any notice, demand, request, or other instrument (each herein called a "Notice")  
23 which may be or is required to be given under this Lease, will be delivered in person,  
24 transmitted by facsimile or e-mail, or sent by certified mail, return receipt requested, postage  
25 prepaid. Any such notice shall be addressed to the Parties' respective designated  
26 representatives listed in **Exhibit C.**  
27

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

1 Notice (or of any other person to receive a notice) and from and after the giving of such  
2 Notice, the address therein specified will be deemed to be the address of such Party or  
3 person for the giving of Notices hereunder.  
4

5 **14.8 Successors.** All rights and liabilities herein given to or imposed upon the respective Parties  
6 hereto will extend to and bind the successors, permitted assigns, and legal representatives  
7 of the Parties.  
8

9 **14.9 Business Day.** Where the time limited to perform anything or to pay any amount herein  
10 falls on a Saturday, Sunday, or legal holiday for the State of Washington or King County,  
11 the time so limited will extend to and the thing may done or the amount will be paid on the  
12 next day which is not a Saturday, Sunday, or statutory holiday.  
13

14 **14.10 Transfers.** The COUNTY shall not assign, sublet, mortgage, encumber, or otherwise  
15 transfer any interest in this Lease (collectively referred to as a "Transfer") or any part of  
16 the Premises, without first obtaining WSF'S written consent, which shall be in WSF'S  
17 sole discretion. No Transfer shall relieve the COUNTY of any liability under this Lease  
18 notwithstanding WSF'S consent to such transfer. Consent to any Transfer shall not operate  
19 as a waiver of the necessity for WSF'S consent to any subsequent Transfer.  
20

21 **14.11 No Partnership or Joint Venture.** Nothing herein contained will be construed or deemed  
22 to constitute or create a partnership or joint venture of or between the Parties or to render  
23 one of them liable for the debts and obligations of the other. In performing work and  
24 services hereunder, the COUNTY and its employees, agents and representatives shall be  
25 acting as agents of the COUNTY and shall not be deemed or construed to be employees  
26 or agents of WSF in any manner whatsoever. No employee of either Party shall hold  
27 him/herself out as, or claim to be an officer or employee of the other Party by reason of  
28 this Lease and shall not make any claim, demand, or application to, or for any right or  
29 privilege applicable to an officer or employee of, the other Party. Each Party shall be solely  
30 responsible for any claims for wages or compensation by its employees, agents, and  
31 representatives, including consultants, and shall hold the other Party harmless therefrom.  
32

33 **14.12 Reasonableness.** Whenever any action of WSF requires the approval or consent of the  
34 COUNTY or any action of the COUNTY requires the approval or consent of WSF under  
35 this Lease, or whenever any party under this Lease is entitled to exercise any discretion

1 under this Lease, the Party whose approval or consent is required or who is entitled to  
2 exercise any discretion agrees that it will act promptly and reasonably in deciding whether  
3 or not to grant such approval or consent and in exercising any discretion.  
4

5 **14.13 Severability.** If any provision of this Lease or any part thereof is determined to be invalid  
6 for any reason it will be severable and severed from this Lease and the remainder of this  
7 Lease will be construed as if such invalid provision or part had been deleted from this  
8 Lease.  
9

10 **14.14 Governing Law/Exclusive Jurisdiction.** This Lease will be construed and governed in  
11 accordance with the laws of the state of Washington, and the Superior Court of Thurston  
12 County, Washington will have the exclusive jurisdiction to entertain and determine all  
13 claims and disputes arising out of or in any way connected with this Lease; subject,  
14 however, to the obligation of the Parties to first pursue administrative dispute resolution  
15 pursuant to Article 11.  
16

17 **14.15 Counterparts.** This Lease may be executed in any number of counterparts, with the same  
18 effect as if the Parties had signed the same document and will become effective when one  
19 or more counterparts have been signed by both Parties and delivered to the other Party. All  
20 counterparts will be construed together and evidence only one agreement, which,  
21 notwithstanding the dates of execution of any counterparts, will be deemed to be dated the  
22 date first written above.  
23

24 **14.16 Execution by Facsimile.** This Lease may be executed by the Parties and transmitted by  
25 facsimile, e-mail, or other electronic means and if so executed and transmitted this Lease  
26 will be for all purposes as effective as if the Parties had delivered an executed original  
27 Lease.

**ARTICLE 15**  
**ENTIRE AGREEMENT**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

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

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

**WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION  
FERRIES DIVISION**

By: \_\_\_\_\_  
Steve Nevey  
WSDOT Assistant Secretary  
Washington State Ferries

**KING COUNTY,  
a home rule charter county and political subdivision of the State of Washington**

By: \_\_\_\_\_  
Michelle Allison  
General Manager, Metro Transit Department

Approved for Washington State Ferries:

By: \_\_\_\_\_  
Timothy P. McGuigan  
Contracts & Legal Services Manager

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

Approved to Form for King County:

By: \_\_\_\_\_  
Raam Wong, Senior Deputy Prosecuting Attorney

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

**EXHIBIT A**  
**PIER 48 SITE PLAN 2024**







## EXHIBIT C

### PARTIES' REPRESENTATIVES

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

#### **WASHINGTON STATE FERRIES**

##### Lease Management

Attn: Tim McGuigan  
Contracts & Legal Services Manager  
Washington State Ferries  
2901 Third Ave, Suite 500  
Seattle, WA 98121-3014

Mobile: 206. 915. 4718

E-mail: [mcguigan@wsdot.wa.gov](mailto:mcguigan@wsdot.wa.gov)

##### For Invoicing

Attn: Jamie Volpone  
Revenue Manager  
Washington State Ferries  
2901 Third Ave, Suite 500  
Seattle, WA 98121-3014

Office: 206. 389. 8509

Fax: 206. 515. 3969

E-mail: [volponj@wsdot.wa.gov](mailto:volponj@wsdot.wa.gov)

#### **KING COUNTY**

##### Lease Management & Invoice Routing

Attn: Transit Real Estate & Environmental  
King County Metro Transit Department  
201 S Jackson mailstop:KSC-TR-0431  
Seattle, WA 98104

Office: 206. 263.8272

E-mail: [transitproperty@kingcounty.gov](mailto:transitproperty@kingcounty.gov)

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