

DRAFT – 09-05-17

Item No. 3c attach 1
Meeting Date: September 12, 2017

LEASE AGREEMENT

Between

PORT OF SEATTLE

and

CITY OF SEATTLE

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LEASE AGREEMENT

THIS LEASE AGREEMENT (the “Lease”) is made as of this _____ day of _____ 2017 by and between the PORT OF SEATTLE, a Washington municipal corporation (the “Port”), and the CITY OF SEATTLE, a Washington municipal corporation (the “City”).

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

SECTION 1: LEASED PREMISES

1.1. Premises. The Port hereby leases to the City, and the City hereby leases from the Port, approximately 18,000 square feet of vacant land, being a portion of the following described premises (“Premises”) located on Port property commonly known as the Tsubota Property, a legal description of which is attached hereto as Exhibit A and depicted on attached Exhibit B. Exhibit A and Exhibit B are incorporated herein by this reference.

1.2. Acceptance of the Premises. The City has examined the Premises and accepts them in their present condition.

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

1.4. No Landlord-Tenant Relationship. The City acknowledges and agrees that this Lease does create a landlord-tenant subject to Chapter 59.18 RCW and that the Port is not the owner, lessor, or sublessor of any of the tiny houses or tents placed on the Premises by the City, and the Port is not the representative of the owner, lessor, or sublessor of the tiny houses placed on the Premises by the City.

SECTION 2: TERM

2.1. Lease Term. This Lease shall be for a term of one (1) year, beginning the first (1st) day of the month after the City obtains approval for the lease under the State Environmental Policy Act, (“Commencement Date”) and ending September 30, 2018. The parties shall document in writing the actual Commencement Date. The City shall have the right to terminate the Lease (“Termination Option”) at any time upon providing not less than fourteen (14) days prior written notice to the Port.

2.2. Option to Extend. If the City is in compliance with the terms and conditions of this Lease, the City has the option to extend the Lease term for one (1) additional one (1) year term. In the event the City wishes to extend the Lease term, the City shall provide the Port with written notice of the City’s exercise of its option no more than ninety (90) days and no less than sixty (60) days prior to the expiration of the Lease term.

2.3. Possession. If the Port shall be unable for any reason to deliver possession of the Premises, or any portion thereof, at the time of the commencement of the term of this Lease, the Port shall not be liable for any damage caused thereby to the City, nor shall the term specified herein be in any way extended. If the Port shall be unable to deliver possession of the Premises at the commencement of the term of this Lease, the City shall have the option to terminate this Lease by at least thirty (30) days’ written notice, unless the Port shall deliver possession of the Premises prior to the effective date of termination specified in such notice. If the City shall, with the Port’s consent, take possession of all or any part of the Premises prior to the commencement of the term of this Lease, all of the terms and conditions of this Lease shall immediately become applicable.

SECTION 3: RENT

3.1. Rent. The City agrees to pay as rent (“Rent”) for the Premises the sum of TEN DOLLARS (\$10.00) per year, plus applicable taxes, if any.

The Rent shall be paid to the Port in advance on or before the Commencement Date, without any prior demand.

SECTION 4: USE OF PREMISES

4.1. Use of Premises. The City shall use the Premises for the operation of Tent City 5, including the placement of thirty-five (35) tiny structure houses (“tiny homes”) and additional tents to provide residential housing to a total of eighty (80) residents and their pets, where applicable.

4.2. Standards Regarding Use.

4.2.1. The City shall occupy and use the entire Premises only for the purposes set forth in Section 5.1 during the entire term of this Lease.

4.2.2. The City shall not use or occupy or permit the Premises or any part thereof to be used or occupied, in whole or in part, in a manner which would in any way: (i) violate any present or future Legal Requirements, (ii) violate any of the covenants, agreements, provisions and conditions of this Lease, or (iii) constitute a public or private nuisance. For purposes of this Lease, the term “Legal Requirements” shall mean and refer to all laws, statutes and ordinances including building codes and zoning regulations and ordinances and the orders, rules, regulations and requirements of all federal, state, county, city or other local jurisdiction departments, agencies, bureaus, offices and other subdivisions thereof, or any official thereof, or of any other governmental, public or quasi-public authority, which may be applicable to or have jurisdiction over the Premises, or the sidewalks or streets adjacent thereto and all requirements, obligations and conditions of all instruments of record at any time during the term of this Lease.

4.2.3. Parking of vehicles is not permitted on the Premises. Notwithstanding the foregoing, the City may designate and use a portion of the Premises along 15th Avenue W. as a drop-off zone for delivery of donations and trash pick-up.

4.2.4. A trash dumpster serving the Premises shall be placed close to 15th Avenue W.

4.2.5. Portable toilets are permitted on the Premises. The City may build shower facilities as needed on the Premises.

4.2.6. The Premises shall be cleared of weeds and a layer of gravel spread across the Premises prior to residential occupancy of the tiny homes and tents. No digging, grading or modification into the soil on the Premises is permitted.

4.2.7. Removal of the fence on the Premises is not permitted.

4.2.8. The following activities are not permitted in or about the Common Area: overnight parking; equipment storage; storage of trash/recycling receptacles. The Common Area may not be used for sleeping, tenting, or camping, whether in a tent or in a vehicle.

4.3. Continuing Compliance. Throughout the term of this Lease, The City shall, at its own cost and expense, promptly and diligently observe and comply with: (i) all Legal Requirements; and (ii) all permits, licenses, franchises and other authorizations required for the City’s use of the Premises or any part thereof.

4.4. No Liens. The City will not directly or indirectly create or permit to be created

and/or to remain, a Lien upon the Premises. In the event any such Lien(s) have been created by or permitted by the City in violation of this provision, the City shall immediately discharge as of record, by bond or as otherwise allowed by law, any such Lien(s). The City shall also defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port from any action, suit or proceeding brought on or for the enforcement of such Lien(s). As used in this Section, “Lien” shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Premises.

4.5. Signs. No signs, symbols, canopies or other advertising matter shall be attached to or painted on or within the Premises.

4.6. The Port has an agreement with Clear Channel for the two (2) advertising boards located on the Premises. The City shall ensure that Clear Channel employees, agents, and contractors are provided access to the Premises to change and/or maintain the advertising boards.

SECTION 5: UTILITIES

5.1. Utilities. The City will provide all needed utilities to the Premises, including electricity, water, sewerage and drainage (which includes removal and disposal of sewerage, stormwater, and surface water), recycling, and garbage disposal, specifically including reasonable costs and charges associated with the management of such utility services. The Port shall have no responsibility whatsoever for utilities furnished to the Premises. The City shall be liable for and shall pay to each applicable provider throughout the term of this Lease, all charges for all utility services furnished or attributable to the Premises, including but not limited to, stormwater charges and fees.

SECTION 6: IMPROVEMENTS

6.1. Improvements Prohibited. The City shall make no improvements to the Premises.

SECTION 7: MAINTENANCE

7.1. Maintenance by the City.

7.1.1. The City shall keep the Premises neat, clean, and in sanitary condition, free from infestation of pests and conditions which might result in harborage for, or infestation of pests. As used in this Section, the word “pests,” shall include without limitation, rodents, insects, and birds in numbers to the extent that a nuisance is created. The City shall also specifically remove all snow and ice from the walkways and sidewalks in front of the Premises.

7.1.2. The City shall keep the stormwater and surface water drainage systems free of any substances that could contaminate stormwater. The stormwater drainage system includes catch basins, manholes, trenches, drain lines, and other related infrastructures that convey stormwater directly to other stormwater systems or to surface waters.

7.2. No Maintenance by the Port. The Port has no maintenance responsibility for the Premises whatsoever.

SECTION 8: TAXES

8.1. Payment of Taxes. The City shall be liable for, and shall pay throughout the term of this Lease, all license fees and all taxes payable for, or on account of, the activities conducted on the Premises, and all taxes on the property of the City on the Premises and any taxes on the Premises, if any. All tax amounts for which the Port is or will be entitled to reimbursement from the City shall be payable by the City to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided, that the City shall be entitled to a minimum of ten (10) days’ written notice of the amounts payable by it.

8.2. Personal Property Taxes. The City shall pay or cause to be paid, prior to delinquency, any and all taxes and assessments levied upon all personal property placed or installed in and upon the Premises by the City. If any such taxes on the City’s personal property are levied against the Port or the Port’s property, and if the Port pays the taxes based upon such

increased assessment, the City shall, upon demand, repay to the Port the taxes so levied.

SECTION 9: INSURANCE AND INDEMNITY

9.1. Indemnity.

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

9.1.2. Except as provided in Section 16, the City shall defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port and its Commissioners, officers, agents and employees from any and all loss, damages, expenses, attorneys' fees, consultants' fees, court costs and other costs for or from: (a) anything and everything whatsoever arising from the condition the Premises or out of the occupancy by the City or any agent, contractor, licensee, or invitee of the City; and (b) any accident, injury, death or damage to any party however caused in or about the Premises or upon the sidewalks adjacent to the Premises, whether or not caused by the negligence of the City or any third party; and (c) any fault or negligence by the City or any agent, contractor, licensee, or invitee of the City or of any officer, agent, employee, guest or invitee of any such person; and (d) any failure on the City's part to comply with any of the covenants, terms and conditions contained in this Lease; provided, however, nothing herein shall require the City to indemnify the Port from any accident, injury, death or damage arising out of the sole negligence of the Port or its Commissioners, officers, agents and employees. The City agrees that the foregoing indemnity specifically covers actions brought by its own employees, and thus the City expressly waives its immunity under industrial insurance, Title 51, as necessary to effectuate this indemnity.

9.1.3. Notwithstanding anything to the contrary in Section 9.1.2, in the event of the concurrent negligence of the City, any of its officers, employees, agents, contractors or licensees on the one hand and the negligence of the Port, its employees, agents, or contractors on the other hand, which concurrent negligence results in injury or damage to persons or property of any nature and howsoever caused, and relates to the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of the Premises such that RCW 4.24.115 is applicable, the City's obligation to indemnify the Port as set forth in this Section shall be limited to the extent of the City's negligence and that of any of the City's officers, agents, employees, contractors or licensees, including the City's proportional share of costs, court costs, attorneys' fees, consultants' fees and expenses incurred in connection with any claim, action or proceeding brought with respect to such injury or damage.

9.1.4. THE CITY AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION. The City's obligations under this Section shall survive the expiration or earlier termination of this Lease.

9.2. Insurance. [PENDING REVIEW BY PORT'S RISK MANAGER]

9.2.1. The City of Seattle maintains a fully funded self-insurance program (see Exhibit C: City of Seattle Self-Insurance Documentation), approved by the State of Washington, for the protection and handling of the City's liabilities including injuries to persons and damage to property. The Port acknowledges, agrees and understands that the City is self-funded for all of its liability exposures. The City agrees, at its own expense, to maintain, through its self-funded program, coverage for all of its liability exposures for this license. The City agrees to provide the Port with at least 30 days prior written notice of any material change in the City's self-funded program and will provide the Port with a letter of self-insurance as adequate proof of coverage. The Port further acknowledges, agrees and understands that the City does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore the City does not have the ability to add the Port as an additional insured. Should the City elect to cease self-insuring its liability exposures and purchase

Commercial General Liability insurance, the City agrees to add the Port as an additional insured.

SECTION 10: ASSIGNMENT AND SUBLEASE

10.1. Prohibition. The City shall not, in whole or in part, assign, sublet, or license all or any part of the Premises. The prohibition against assigning, subleasing or licensing contained in this Section 10 shall be construed to include a prohibition against any assignment, subleasing or licensing by operation of law.

10.2. Both Parties agree in advance that the City shall permit Low Income Housing Institute to operate and maintain the facilities as described in Section 4.1; the City shall share with the Port the signed agreement between the City of Seattle and Low Income Housing Institute upon the Port's request. Notwithstanding the foregoing, the City acknowledges and agrees that the agreement between the City and Low Income Housing Institute does not constitute a subtenant or assignee relationship under the Lease and, as between the Port and the City, the City shall remain the sole responsible party as tenant under the Lease.

SECTION 11: DEFAULT

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

11.1.1. The failure by the City to make any payment of Rent, or any other payment required by this Lease, when due.

11.1.2. The failure by the City to observe or perform any covenant, condition, or agreement to be observed or performed by the City in this Lease.

11.2. Remedies.

11.2.1. Whenever any default continues unremedied in whole or in part for thirty (30) days after written notice is provided by the Port to the City (or for ten (10) days after written notice in the case of default for failure to pay any Rent, or other required payment when due), this Lease and all of the City's rights under it will automatically terminate if the written notice of default so provides. Upon termination, the Port may reenter the Premises using such force as may be necessary and remove all persons and property from the Premises. The Port will be entitled to recover from the City all unpaid Rent or other payments and damages incurred because of the City's default ("Termination Damages") from the date such Termination Damages are incurred by the Port until paid.

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

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

SECTION 12: TERMINATION OTHER THAN FOR DEFAULT

12.1. Condemnation.

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

12.1.2. Partial Taking. In the case of a taking of a portion of the Premises which are not, in the Port's sole judgment, required for reasonable use of the Premises, this Lease shall continue in full force and effect.

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

12.1.4. Eminent Domain. The term "eminent domain" as used in this Section 12.1 shall include taking or damaging of property by, through or under any governmental or quasi-governmental authority and the purchase or acquisition in lieu thereof.

12.2. Court Decree. In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. The City is not entitled to any compensation at termination for the bargain value of the leasehold.

SECTION 13: ACCESS

13.1. Access to Premises. The Port shall have the right to show the Premises at all reasonable times with prior notice to the City to any prospective purchasers, tenants or mortgagees of the same. The Port may enter upon the Premises, or any part thereof, for the purpose of ascertaining the condition of the Premises or whether the City is observing and performing the obligations assumed by it under this Lease, all without hindrance or molestation from the City. The above-mentioned rights of entry shall be exercisable upon request made on reasonable advance notice to the City (except that no notice shall be required in the event of an emergency) or an authorized employee or agent of the City at the Premises, which notice may be given orally.

SECTION 14: NONWAIVER; RIGHT TO PERFORM

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

SECTION 15: SURRENDER AND HOLDING OVER

15.1. Surrender. At the expiration or sooner termination of this Lease, the City shall promptly: (i) surrender possession of the Premises to the Port in the same condition in which received, reasonable wear and tear excepted, and (ii) deliver to the Port all keys that it may have to the Premises. Notwithstanding the foregoing, the City may leave in place the layer of gravel it spread across the Premises. If the Premises are not surrendered as provided in this Section, the City shall indemnify and hold the Port harmless against loss or liability resulting from the delay by the City in so surrendering the Premises, including, without limitation, any claims made by any succeeding occupant founded on such delay.

15.2. Holding Over. If the City, with the consent of the Port, holds over after the expiration or sooner termination of this Lease, the resulting tenancy will, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis, and the City will continue to be bound by all of the provisions of this Lease.

SECTION 16: ENVIRONMENTAL STANDARDS

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

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

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

16.4. Inspection; Test Results. The Port shall have access to the Premises to conduct an annual environmental inspection. In addition, the City shall permit the Port access to the Premises at any time upon reasonable notice for the purpose of conducting environmental testing at the Port’s expense. The City shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Port’s written consent. The City shall promptly inform the Port of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to the City, and the City shall provide copies to the Port.

16.5. Removal of Hazardous Substances. Prior to vacation of the Premises, in addition to all other requirements under this Lease, the City shall remove any Hazardous Substances placed on the Premises during the term of this Lease or the City’s possession of the Premises, and shall demonstrate such removal to the Port’s satisfaction.

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

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

16.8. Stormwater Management. The City acknowledges that the Premises are subject to the requirements of the City of Seattle ordinance regarding stormwater drainage, source control and Citywide Best Management Practices, and other applicable City requirements, as well as the Clean Water Act and Washington State Department of Ecology (“Ecology”) stormwater regulations and permits. The City will comply with all applicable City, state, and federal stormwater regulatory requirements, including the preparation of and compliance with state Ecology’s Phase I Municipal Permit or the Industrial General Stormwater Permit, if applicable. It shall be the City’s sole responsibility to determine which requirements and permit(s) are applicable. If any regulatory authority (including but not limited to Ecology) or citizen cites the Port or alleges the Port has violated a requirement, ordinance, permit, or regulation, the City will fully defend and indemnify the Port for any damages, penalties, or other assessments made against the Port for the violations. The City will pay the Port’s attorneys’ fees in connection with any such claims, notices, citations, and/or enforcement actions.

16.9. Notwithstanding anything to the contrary in this Section 16 or otherwise in this Agreement, in no event shall the City be required to mitigate, remove, correct, remediate or otherwise take responsibility for or be obligated to indemnify, defend, or hold the Port harmless from any Environmental Claims arising out of (i) any Hazardous Substances present on, in, under, about, or migrating from or to the Premises as of the date of this Agreement or (ii) Hazardous Substances migrating to the Premises after the date of this Agreement unless such Hazardous Substances were released by the City.

SECTION 17: MISCELLANEOUS

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

To the Port:

Port of Seattle
Attn: Jeffrey Utterback
2711 Alaskan Way
Seattle, WA 98121

Facsimile: (206) 787-3280

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

Port of Seattle

P. O. Box 24507
Seattle, WA 98124-0507

To the City:

Facility Operations
PO BOX 94689
Seattle, WA 98124-4689

With a copy to:
City Attorney's Office
701 5th Avenue
Suite 2050
Seattle, WA 98104-7097

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

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

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

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

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

17.5. Recording. The City shall not record this Lease or any memorandum thereof.

17.6. Nondiscrimination – Services.

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

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

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

17.7.1. The City will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified individuals who are

members of racial or other minorities, and

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

17.8. Joint and Several Liability. Each and every party who signs this Lease, other than in a representative capacity, as the City, shall be jointly and severally liable hereunder. It is understood and agreed that for convenience the word “City” and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this Lease, regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual lessee or lessees under this agreement.

17.9. Captions. The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.

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

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

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

17.13. Survival of Indemnities. All indemnities provided in this Lease shall survive the expiration or any earlier termination of this Lease. In any litigation or proceeding within the scope of any indemnity provided in this Lease, the City shall, at the Port’s option, defend the Port at the City’s expense by counsel satisfactory to the Port.

17.14. Entire Agreement; Amendments. This Lease, together with any and all exhibits attached hereto, shall constitute the whole agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modification or amendment of this agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

17.15. Exhibits. Exhibits A and B are attached to this Lease after the signatures and by this reference incorporated herein.

SECTION 18: SIGNATURES

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

PORT OF SEATTLE

CITY OF SEATTLE

By: Its: _____

By: Its: _____

STATE OF WASHINGTON)
 : ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of the PORT OF SEATTLE, a municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20__.

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

STATE OF WASHINGTON)
 : ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of the CITY OF SEATTLE, a municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20__.

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

EXHIBIT A

– LEGAL DESCRIPTION –

EXHIBIT B

– PREMISES –

Exhibit C:

City of Seattle Self-Insurance Documentation