# King County

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

## Meeting Agenda

## Budget and Fiscal Management Committee

***Councilmembers: Dave Upthegrove, Chair; Kathy Lambert, Vice Chair; Claudia Balducci, Rod Dembowski, Larry Gossett and Joe McDermott***

***Staff: Wendy Soo Hoo, Lead Staff (206-477-0890)***
***Sharon Daly, Committee Assistant (206-477-0870)***

**9:30 AM** | **Wednesday, August 24, 2016** | **Room 1001**

**REVISED AGENDA**

**Pursuant to K.C.C. 1.24.035 A. and F., this meeting is also noticed as a meeting of the Metropolitan King County Council, whose agenda is limited to the committee business. In this meeting only the rules and procedures applicable to committees apply and not those applicable to full council meetings.**

To show a PDF of the written materials for an agenda item, click on the agenda item below.

**1. Call to Order**

**2. Roll Call**

**3. Public Comment**

**4. Approval of Minutes**

**Minutes of the July 27, 2016 meeting pp. 5-8**

## Discussion and Possible Action

**5. Proposed Ordinance No. 2016-0161 pp. 9-26**

AN ORDINANCE concerning the disposition of surplus land at 12th Avenue and Alder Street in Seattle, Washington.

***Sponsors:*** Ms. Balducci

*Katherine Cortes, Council Staff*

*Sign language and communication material in alternate formats can be arranged given sufficient notice (296-1000).*
*TDD Number 296-1024.*
*ASSISTIVE LISTENING DEVICES AVAILABLE IN THE COUNCIL CHAMBERS.*

**6.** **Proposed Ordinance No. 2016-0315 pp. 27-146**

AN ORDINANCE authorizing the King County executive to enter into a lease agreement with Hangar Two, LLC, as tenant, for county-owned land located at the King County international airport in council district eight.

***Sponsors:*** Mr. McDermott

*Lise Kaye, Council Staff*

**7.** **Proposed Ordinance No. 2016-0347 pp. 147-260**

AN ORDINANCE authorizing the King County executive to enter into a lease agreement with Mente, LLC, as tenant, for county-owned land located at the King County international airport in council district eight.

***Sponsors:*** Mr. Upthegrove

*Lise Kaye, Council Staff*

**8.** **Proposed Ordinance No. 2016-0373 pp. 261-306**

AN ORDINANCE relating to the authorization of a second amendment to an existing lease at 3203 S. 360th, Auburn, Washington, to support the Puget Sound Emergency Radio Network.

***Sponsors:*** Mr. Upthegrove

*Hiedi Popochock and Miranda Leskinen, Council Staff*

**9.** **Proposed Ordinance No. 2016-0396 pp. 307-448**

AN ORDINANCE authorizing the execution of a new lease to support the operations of the marine division.

***Sponsors:*** Mr. McDermott

*Patrick Hamacher, Council Staff*

**10.** **Proposed Ordinance No. 2016-0425 pp. 449-468**

AN ORDINANCE relating to the King County Courthouse electrical distribution system project; making a supplemental appropriation of $11,629,987 to the major maintenance reserve fund; and amending the 2015/2016 Budget Ordinance, Ordinance 17941, Section 129, as amended, and Ordinance 18289, Attachment A, as amended; and declaring an emergency.

***Sponsors:*** Mr. McDermott

*Wendy Soo Hoo, Council Staff*

**11.** **Proposed Ordinance No. 2016-0386 pp. 469-528**

AN ORDINANCE relating to solid waste fees charged at recycling and transfer facilities and at the Cedar Hills regional landfill; and amending Ordinance 12586, Section 2, as amended, and K.C.C. 10.12.021.

***Sponsors:*** Mr. Upthegrove

*Mike Reed and Hiedi Popochock, Council Staff*

## Other Business

## Adjournment

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# King County

1200 King County
Courthouse
516 Third Avenue
Seattle, WA 98104

## Meeting Minutes

## Budget and Fiscal Management Committee

***Councilmembers: Dave Upthegrove, Chair; Kathy Lambert, Vice Chair;***
***Claudia Balducci, Rod Dembowski, Larry Gossett and Joe McDermott***

***Staff: Wendy Soo Hoo, Lead Staff (206-477-0890)***
***Sharon Daly, Committee Assistant (206-477-0870)***

**9:30 AM** | **Wednesday, July 27, 2016** | **Room 1001**

**DRAFT MINUTES**

**Pursuant to K.C.C. 1.24.035 A. and F., this meeting is also noticed as a meeting of the Metropolitan King County Council, whose agenda is limited to the committee business. In this meeting only the rules and procedures applicable to committees apply and not those applicable to full council meetings.**

### 1. Call to Order

*Chair Upthegrove called the meeting to order at 9:34 a.m.*

### 2. Roll Call

**Present:** 5 - Ms. Balducci, Mr. Dembowski, Ms. Lambert, Mr. McDermott and Mr. Upthegrove

**Excused:** 1 - Mr. Gossett

### 3. Public Comment

*There were no speakers.*

### 4. Approval of Minutes

*Councilmember McDermott moved approval of the minutes of the July 13, 2016 meeting. Seeing no objections, the minutes were approved.*

## Discussion and Possible Action

**5. Proposed Motion No. 2016-0262**

A MOTION confirming the executive's appointment of Daniel Kaplan, who resides in council district four, to the King County investment pool advisory committee, as the county fund manager.

*Dan Kaplan, appointee to the Investment Pool Advisory Committee, provided remarks concerning his background and interest in serving on the committee and answered questions from the members. This item passed out of committee subject to signature.*

*This matter was expedited to the August 15, 2016 Council Agenda.*

**A motion was made by Councilmember McDermott that this Motion be Recommended Do Pass Consent. The motion carried by the following vote:**

**Yes:** 4 - Mr. Dembowski, Ms. Lambert, Mr. McDermott and Mr. Upthegrove

**Excused:** 2 - Ms. Balducci and Mr. Gossett

**6. Proposed Ordinance No. 2016-0309**

AN ORDINANCE authorizing the execution of a new lease to support the operation of the King County department of information technology.

*Lauren Mathisen, Council Staff, briefed the committee and answered questions from the members.*
*Councilmember Lambert moved amendment 1. The motion passed unanimously. This item passed out of committee subject to signature.*

*This matter was expedited to the August 15, 2016 Council Agenda.*

**A motion was made by Vice Chair Lambert that this Ordinance be Recommended Do Pass Substitute Consent. The motion carried by the following vote:**

**Yes:** 5 - Ms. Balducci, Mr. Dembowski, Ms. Lambert, Mr. McDermott and Mr. Upthegrove

**Excused:** 1 - Mr. Gossett

**7. Proposed Ordinance No. 2016-0257**

AN ORDINANCE authorizing the execution of a new sublease to support the operation of the King County department of executive services E-911 program.

*Wendy Soo Hoo, Council Staff, briefed the committee and answered questions from the members.*
*Councilmember Dembowski moved amendment 1. The motion passed unanimously. This item passed out of committee subject to signature.*

*This matter was expedited to the August 15, 2016 Council Agenda.*

**A motion was made by Councilmember Dembowski that this Ordinance be Recommended Do Pass Substitute Consent. The motion carried by the following vote:**

**Yes:** 5 - Ms. Balducci, Mr. Dembowski, Ms. Lambert, Mr. McDermott and Mr. Upthegrove

**Excused:** 1 - Mr. Gossett

**8. Proposed Ordinance No. 2016-0258**

AN ORDINANCE authorizing a supplemental appropriation of $1,033,220 to the building repair and replacement fund; and amending the 2015/2016 Budget Ordinance, Ordinance 17941, Section 129, as amended, and Ordinance 18239, Attachment A, as amended.

*Wendy Soo Hoo, Council Staff, briefed the committee and answered questions from the members. This item passed out of committee subject to signature.*

*This matter was expedited to the August 15, 2016 Council Agenda.*

**A motion was made by Councilmember Dembowski that this Ordinance be Recommended Do Pass Consent. The motion carried by the following vote:**

**Yes:** 5 - Ms. Balducci, Mr. Dembowski, Ms. Lambert, Mr. McDermott and Mr. Upthegrove

**Excused:** 1 - Mr. Gossett

**9. Proposed Ordinance No. 2016-0287**

AN ORDINANCE relating to the levy collection of the sales and use tax of one-tenth of one percent for the delivery of mental health and chemical dependency services, and therapeutic courts; continuing the sales and use tax by revising the expiration date of Ordinance 15949, as amended; and amending Ordinance 15949, Section 9.

*Wendy Soo Hoo, Council Staff, briefed the committee and answered questions from the members. Kelli Carroll, Strategic Advisor, Department of Community and Human Services, also answered questions from the members.*
*Councilmember Lambert moved amendment 1. The motion passed unanimously.*

**A motion was made by Vice Chair Lambert that this Ordinance be Recommended Do Pass Substitute. The motion carried by the following vote:**

**Yes:** 5 - Ms. Balducci, Mr. Dembowski, Ms. Lambert, Mr. McDermott and Mr. Upthegrove

**Excused:** 1 - Mr. Gossett

**10. Proposed Ordinance No. 2016-0161**

AN ORDINANCE concerning the disposition of surplus land at 12th Avenue and Alder Street in Seattle, Washington.

*Katherine Cortes, Council Staff, briefed the committee and answered questions from the members.*

**This matter was Deferred**

## Other Business

*There was no other business to come before the committee.*

## Adjournment

*The meeting was adjourned at 10:26 a.m.*

Approved this _____ day of _____.

Clerk's Signature

King County

# Metropolitan King County Council
# Budget and Fiscal Management Committee

## STAFF REPORT

| **Agenda Item:** | 5 | **Name:** | Katherine Cortes |
|---|---|---|---|
| **Proposed No.:** | 2016-0161 | **Date:** | August 24, 2016 |

## SUBJECT

Proposed Ordinance 2016-0161 would direct that proceeds from the sale of surplus land at the anticipated Children and Family Justice Center site at 12th and Alder be used for services to prevent youth involvement in the juvenile justice system, reduce the negative impacts of the involvement, and improve outcomes for King County youth.

## SUMMARY

Proposed Ordinance 2016-0161 addresses the anticipated sale of surplus land on the site of the Children and Family Justice Center (CFJC), following completion of construction of both the Superior Court and juvenile detention building and a parking structure (anticipated 2019).

The proposed ordinance states the County's commitment to preventing involvement in the juvenile justice system, reducing the negative effects of such involvement and improving outcomes for King County youth, particularly among youth in disproportionately affected communities. It directs that the proceeds of the sale of surplus land at the CFJC site be used to support youth services in keeping with this commitment.

The proposed ordinance was previously briefed in this committee on May 11, 2016, and a striking amendment was offered making technical changes to clarify context and process. Superior Court Presiding Judge Susan Craighead made remarks and responded to questions. At the direction of the sponsor, staff developed a substitute Striking Amendment (S2) further clarifying the funds to be used to support youth services in keeping with the suggestions of Superior Court. The committee was briefed again on July 27, 2016, but action was deferred.

## BACKGROUND

In August 2012, King County voters approved a nine-year property tax levy lid lift[1] to finance a new Children and Family Justice Center (CFJC) on the current site of the

[1] Ordinance 17304 authorized placement on the August 7, 2012 ballot.

Youth Services Center at 12th Avenue and Alder, on the southwestern edge of Seattle's Central District. At that time, the estimated cost for the project was $210 million and consisted of replacement of courtrooms, offices, parking, and the detention facility. The project was proposed to be completed as a design-build project.

In February 2015, the Council authorized the Executive to execute a contract for Phase 1 (base project, not including some office and courtroom expansion slated for Phase 2) of the CFJC with the design-builder (DB) Balfour Beatty dba Howard S. Wright (Ordinance 17972).[2]

In February 2016, Council passed Ordinance 18239, which included a supplemental appropriation of $7.5 million to the CFJC capital project to reflect the increased estimate of levy revenue collection to $219.5 million. This $7.5 million additional appropriation was restricted by proviso P15 on the Capital Improvement Program budget to pay for capital improvements for juvenile justice and family law services that improve access to services intended to prevent youth involvement with the criminal justice system, reduce the negative impacts of any involvement in the juvenile justice system and improve outcomes for King County youth. Such expenditure was restricted to follow final acceptance of Phase 1 of the CFJC project (base project, not including some office and courtroom expansion slated for Phase 2). The proviso also requires the Executive to transmit a plan for the expenditure of these “excess” levy proceeds for the indicated services, informed by the County’s Youth Action Plan and any applicable recommendations of the Juvenile Justice Equity Steering Committee or similar groups. This proviso is in keeping with the restriction on CFJC levy revenues that they must be used for capital purposes only.

## ANALYSIS

The CFJC project plan as bid calls for construction of a unified building for the courts and detention facility in the middle to northern part of the site, followed by demolition of the current structures on the southern portion of the site and construction of a parking structure. This plan anticipates that parcels in the northwest and along the southern edge of the site (three parcels across the 566.6 foot width of the site) would be unbuilt and available for future development. Attachment 4 is a site plan provided by the design-build contractor as part of their contract materials submittal in December 2014.

Proposed Ordinance 2016-0161 states the County’s commitment to preventing involvement in the juvenile justice system, reducing the negative effects of such involvement and improving outcomes for King County youth, particularly among youth in disproportionately affected communities.

[2] Also in February 2015, Council passed Ordinance 17973 adding $1.955 million to the CFJC capital project, and restricting $1 million in project funding for the creation and administration of an economic opportunity and empowerment program (EOEP) for the project. The stated purpose of the EOEP is to assist the design-builder in the achievement of contracted goals for training minorities, women, veterans and youth and small contracting and suppliers utilization goal. The plan required by Ordinance 17973 was transmitted to the Council in March and is currently under consideration by this committee.

It would direct that proceeds from the sale of surplus land on the site of the CFJC, following completion of construction (anticipated 2019) of both the Superior Court and juvenile detention building and a parking structure, be deposited in a dedicated fund.

Proceeds of this fund could expended or encumbered only to support youth services that are intended to prevent youth involvement in the juvenile justice system, reduce the negative impacts of the involvement and improve outcomes for King County youth, particularly targeting youth in disproportionately affected communities.

Finally, it would direct the executive to transmit a report making recommendations to the council for use of the proceeds to support these services, having sought input from the Juvenile Justice Equity Steering Committee formed in 2015 or any successor body, as well as from relevant community stakeholders. Transmittal of this report would be required 180 days prior to transmittal of any ordinance requesting council approval for the sale of any surplus real property from the project site.

## AMENDMENT

Striking Amendment S2 revises sections of PO 2016-0161 as introduced, in order to clarify both context and process. Section 1 is converted to a finding regarding Council intent for a portion of the CFJC site to be deemed surplus. Revisions to Section 2 direct what fund the sale proceeds are to go to, in accordance with existing code. Revisions to Section 3 provide direction as to what Council committee the report should be referred. References to the juvenile justice equity steering committee are clarified and made consistent with a news release announcing the creation of that entity.

This amendment would replace Striking Amendment S1 offered at the May 11 briefing of this committee. S2 is very similar to S1 but adds language clarifying that it applies to only those funds <u>not needed</u> for authorized capital costs of Phase 2 of the current CFJC capital project or any subsequently authorized capital project associated with the CFJC. For reference, Attachment 3 is a redline comparison of the substitute striking amendment S2 and S1 (the striking amendment introduced at the first briefing in May).

## ATTACHMENTS

1. Proposed Ordinance 2016-0161
2. Striking Amendment S2
3. Redline comparison of S2 and S1
4. Site plan for Children and Family Justice Center, submitted by Balfour Beatty dba Howard S. Wright, December 2014

## INVITED

1. Hon. Susan Craighead, Presiding Judge, King County Superior Court
2. Dwight Dively, Director, Office of Performance, Strategy and Budget

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# KING COUNTY

## Signature Report

**July 25, 2016**

**Ordinance**

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

**Proposed No.** 2016-0161.1 **Sponsors** Balducci

AN ORDINANCE concerning the disposition of surplus land at 12th Avenue and Alder Street in Seattle, Washington.

STATEMENT OF FACTS:

1. In August 2012, King County voters approved a nine-year property tax levy lid lift of seven cents per $1,000 of assessed value, which will raise approximately $210 million to replace the Youth Services Courthouse and Detention facility.

2. Located at 12th Avenue and Alder Street on Seattle's First Hill, the center will be constructed in phases adjacent to the existing facilities. Following relocation to new buildings the existing facilities will be demolished.

3. On February 9, 2015, the council enacted Ordinance 17972 approving a development contract for the Children and Family Justice Center. Ordinance 17972 noted that in addition to benefits from services delivered in the completed Children and Family Justice Center, the long-term goals for the ten-acre site include:

a. Anchoring economic revitalization sought by neighborhood leaders;

b. Potentially surplussing portions of the property for private development, consistent with zoning and neighborhood goals;

c. Exploring added housing on the property;

d. Expanding and enhancing open public spaces;

e. Reconnecting Alder Street between 12th and 14th Avenues;

f. Improving access through and around the campus; and

g. Supporting additional public transportation options.

4. King County leaders are committed to preventing youth from becoming involved in the juvenile justice system, and reducing the negative effects of such involvement, including by implementing recommendations from the county's Juvenile Justice Equity Steering Committee and those identified in the county's Youth Action Plan to end the school-to-prison pipeline and reducing the use of and moving toward eliminating, detention for nonviolent crimes of youth under age eighteen.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Following completion of the construction phase of Capital Improvement Program capital project 1117106, and in compliance with K.C.C. chapter 4.56 provisions governing the disposition of surplus property, the executive shall pursue the sale of portions of the property not needed for the Children and Family Justice Center facility and other appropriated portions of the capital project at fair market value.

SECTION 2. Proceeds from sale or other disposition of the property shall be used to support youth services intended to prevent involvement in the juvenile justice system,

reduce the negative effects of such involvement and improve outcomes for King County youth, particularly targeting youth in disproportionately affected communities.

SECTION 3. Not less than one hundred and eighty days before transmittal of an ordinance requesting council approval for the disposition of the property, and after seeking input from the juvenile justice equity steering committee or any successor bodies created by the executive or council to advise on strategies to reduce youth involvement in the juvenile justice system, as well as with relevant community stakeholders and stakeholder groups, the executive shall transmit a plan making recommendations to the

council for use of the proceeds to support the services contemplated in section 2 of this ordinance.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

_____

J. Joseph McDermott, Chair

ATTEST:

_____

Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, _____.

_____

Dow Constantine, County Executive

**Attachments:** None

S1 rev

**S2**

7/20/16

KMC

Sponsor: Balducci

Proposed No.: 2016-0161

**STRIKING AMENDMENT TO PROPOSED ORDINANCE 2016-0161, VERSION 1**

On page 1, beginning on line 4, strike everything through page 4, line 50, and insert:

"STATEMENT OF FACTS:

1. In August 2012, King County voters approved a nine-year property tax levy lid lift of seven cents per $1,000 of assessed value, which will raise approximately $219.5 million, to be used for juvenile justice and family law services capital projects, including replacing the existing youth services courthouse and detention facility.

2. Located at 12th Avenue and Alder Street on Seattle's First Hill, the new children and family justice center will be constructed in phases adjacent to the existing facilities. Following relocation of services and persons to new buildings, the existing facilities will be demolished.

3. On February 9, 2015, the council adopted Ordinance 17972 approving a development contract for the children and family justice center. Ordinance 17972 noted that in addition to benefits from services delivered

in the completed children and family justice center, the long-term goals for the approximate nine-acre project site include:

a. Anchoring economic revitalization sought by neighborhood leaders;

b. Potentially surplussing portions of the property for private development, consistent with zoning and neighborhood goals;

c. Exploring added housing on the property;

d. Expanding and enhancing open public spaces;

e. Reconnecting Alder Street between 12th and 14th Avenues;

f. Improving access through and around the campus; and

g. Supporting additional public transportation options.

4. The children and family justice center project site is bordered by E. Spruce Street on the south, 12th Avenue on the west, E. Remington Court on the north and 14th Avenue on the east.

5. King County leaders are committed to preventing youth involvement in the juvenile justice system and reducing the negative impacts of involvement in the juvenile justice system, including by implementing recommendations from the countywide Juvenile Justice Equity Steering Committee, formed in 2015 and charged with recommending solutions to a growing racial disparity in the regional juvenile justice system, and in the county's Youth Action Plan to end the school-to-prison pipeline and to move toward eliminating detention for nonviolent crimes of youth under age eighteen.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. **Findings:** The council finds that any real property of the approximate nine-acre project site that is not needed to complete the children and family justice center, which is part of capital improvement program project 1117106, and which is not necessary for any subsequently authorized capital project associated with the children and family justice center, should be deemed surplus and that the facilities management division should engage in the processes to surplus any such portion of the site, in accordance with the provisions of K.C.C. 4.56.070.

SECTION 2. In accordance with K.C.C. 4.56.130, the council directs the balance of proceeds from the sale of any real property surplussed from the children and family justice center project site, not necessary for any authorized capital costs of phase 2 of the project, as defined in the children and family justice center facility program (contract C00863C13) as approved by the council in Ordinance 17972, be deposited into a proper county fund under which the proceeds may be expended or encumbered only to support youth services that are intended to prevent youth involvement in the juvenile justice system, reduce the negative impacts of the involvement and improve outcomes for King County youth, particularly targeting youth in disproportionately affected communities.

SECTION 3. Not less than one hundred and eighty days before transmittal of an ordinance requesting council approval for the sale of any surplus real property from the project site, the executive shall transmit a report making recommendations to the council for use of the proceeds to support the services contemplated in section 2 of this ordinance. In developing the recommendations, the executive shall seek input from the countywide Juvenile Justice Equity Steering Committee, formed in 2015, or any successor body created by the executive or the council to advise on strategies to reduce

youth involvement in the juvenile justice system, as well as with relevant community stakeholders and stakeholder groups. The report shall be in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers, the council chief of staff, the policy staff director and the lead staff for the budget and fiscal management committee, or its successor."

EFFECT:

Section 1 is converted to a finding regarding Council intent for a portion of the CFJC site to be deemed surplus. Revisions to section 2 direct what fund the sale proceeds are to go to, in accordance with existing Code. Revisions to section 3 provide direction as to what committee the report should be referred. References to the juvenile justice equity steering committee are clarified and made consistent with a news release announcing the creation of that entity.

KM edits

**S1**

3/28/16

KMC

Sponsor: Balducci

Proposed No.: 2016-0161

REDLINE

**STRIKING AMENDMENT TO PROPOSED ORDINANCE 2016-0161, VERSION 1**

On page 1, beginning on line 4, strike everything through page 4, line 50, and insert:

"STATEMENT OF FACTS:

1. In August 2012, King County voters approved a nine-year property tax levy lid lift of seven cents per $1,000 of assessed value, which will raise approximately $219.5 million, to be used for juvenile justice and family law services capital projects, including replacing the existing youth services courthouse and detention facility.

2. Located at 12th Avenue and Alder Street on Seattle's First Hill, the new children and family justice center will be constructed in phases adjacent to the existing facilities. Following relocation of services and persons to new buildings, the existing facilities will be demolished.

3. On February 9, 2015, the council adopted Ordinance 17972 approving a development contract for the children and family justice center. Ordinance 17972 noted that in addition to benefits from services delivered

in the completed children and family justice center, the long-term goals for the approximate nine-acre project site include:

a. Anchoring economic revitalization sought by neighborhood leaders;

b. Potentially surplussing portions of the property for private development, consistent with zoning and neighborhood goals;

c. Exploring added housing on the property;

d. Expanding and enhancing open public spaces;

e. Reconnecting Alder Street between 12th and 14th Avenues;

f. Improving access through and around the campus; and

g. Supporting additional public transportation options.

4. The children and family justice center project site is bordered by E. Spruce Street on the south, 12th Avenue on the west, E. Remington Court on the north and 14th Avenue on the east.

5. King County leaders are committed to preventing youth involvement in the juvenile justice system and reducing the negative impacts of involvement in the juvenile justice system, including by implementing recommendations from the countywide Juvenile Justice Equity Steering Committee, formed in 2015 and charged with recommending solutions to a growing racial disparity in the regional juvenile justice system, and in the county's Youth Action Plan to end the school-to-prison pipeline and to move toward eliminating detention for nonviolent crimes of youth under age eighteen.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

REDLINE

SECTION 1. **Findings:** The council finds that any real property of the approximate nine-acre project site that is not needed to complete the children and family justice center, which is part of capital improvement program project 1117106, and which is not necessary for any subsequently authorized capital project associated with the children and family justice center, should be deemed surplus and that the facilities management division should engage in the processes to surplus any such portion of the site, in accordance with the provisions of K.C.C. 4.56.070.

SECTION 2. In accordance with K.C.C. 4.56.130, the council directs the balance of proceeds from the sale of any real property surplussed from the children and family justice center project site, not necessary for any authorized capital costs of phase 2 of the project, as defined in the children and family justice center facility program (contract C00863C13) as approved by council in ordinance 17972 (2015), be deposited into a proper county fund under which the proceeds may be expended or encumbered only to support youth services that are intended to prevent youth involvement in the juvenile justice system, reduce the negative impacts of the involvement and improve outcomes for King County youth, particularly targeting youth in disproportionately affected communities.

SECTION 3. Not less than one hundred and eighty days before transmittal of an ordinance requesting council approval for the sale of any surplus real property from the project site, the executive shall transmit a report making recommendations to the council for use of the proceeds to support the services contemplated in section 2 of this ordinance. In developing the recommendations, the executive shall seek input from the countywide Juvenile Justice Equity Steering Committee, formed in 2015, or any

REDLINE

successor body created by the executive or the council to advise on strategies to reduce youth involvement in the juvenile justice system, as well as with relevant community stakeholders and stakeholder groups. The report shall be in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers, the council chief of staff, the policy staff director and the lead staff for the budget and fiscal management committee, or its successor."

EFFECT:

Section 1 is converted to a finding regarding Council intent for a portion of the CFJC site to be deemed surplus. Revisions to section 2 direct what fund the sale proceeds are to go to, in accordance with existing Code. Revisions to section 3 provide direction as to what committee the report should be referred. References to the juvenile justice equity steering committee are clarified and made consistent with a news release announcing the creation of that entity.

REDLINE

ATTACHMENT 4

200'
100'
50'
25'
12' 6"
0'

# Site Plan

1" = 50'-0"

G-0.10

Balfour Beatty Construction Services US

Howard S. Wright a Balfour Beatty company

HKIS integrus ARCHITECTURE

King County

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King County

# Metropolitan King County Council
# Budget and Fiscal Management Committee

## STAFF REPORT

| | | | |
|---|---|---|---|
| **Agenda Item:** | 6 | **Name:** | Lise Kaye |
| **Proposed No.:** | 2016-0315 | **Date:** | August 24, 2016 |

## SUBJECT

An ordinance authorizing the King County executive to enter into a long-term lease agreement with Hangar Two, LLC for county-owned land located at the King County International Airport, located in council district 8.

## SUMMARY

The ordinance would approve a 35-year lease with Hangar Two, LLC a wholly owned subsidiary of Gateway USA, L.L.C. dba Clay Lacy Aviation ("Clay Lacy"). The lease approves demolition of existing improvements and construction of a hangar, offices and an aircraft parking ramp on a 4.71-acre parcel at King County International Airport (KCIA).

## BACKGROUND

Hangar Two, LLC, is a subsidiary of Gateway USA, LLC, d/b/a Clay Lacy Aviation (Clay Lacy). Clay Lacy has been at KCIA since May 2003 and currently leases three parcels to deliver aviation services, including private jet charter, aircraft management, aircraft fueling and maintenance. The current Clay Lacy leases consist of a 9.73-acre main operations site that expires in 2047, a .51-acre aircraft parking ramp lease that expires in July 2019, and a 5-year lease on the adjacent 4.71 acre parcel that is the premises of this lease, which expires in February 2017.

Clay Lacy plans to demolish six obsolete hangar buildings on the property and build approximately 110,000 square feet of hangar space and offices and an aircraft parking ramp, which will allow them to be more flexible in the types of aircraft they park and the services they provide. They have also indicated that this new facility could potentially attract a major aviation service company, but this is not a condition of the lease.

King County Code (KCC) identifies the conditions under which the County can lease its land and buildings. The code provisions for leasing are identified below.

KCC 4.56.010 and KCC 4.56.160 require that leases to commercial entities be at "fair market value" as determined by an appraisal. An independent appraisal identified the fair market value for this leasehold at $1.90 per square foot per year.

KCC 4.56.160 also requires that in general, properties available for lease be awarded pursuant to a competitive bid process. However, that same section of code does allow for a negotiated lease when it is in the best interests of the County. The relevant section of code is quoted below with the reference to the negotiated lease provision underlined (emphasis added).

> …the manager of the facilities management division shall determine whether the new lease, or renewal of an existing lease, is to be awarded by competitive bidding or by negotiation with interested parties without bidding. New leases shall be awarded by competitive bidding <u>unless the manager of the facilities management division determines it is advantageous to the county to negotiate without bidding. In the event the county negotiates the award of lease contracts, the facilities management division shall submit to the executive the reasons for recommending award through negotiation rather than competitive bidding.</u> At the option of the executive, competitive bidding may be required. The county shall give notice of its intention to execute a lease by publishing a notice in a legal newspaper at least once a week for the term of two weeks.

The Executive agreed with the recommendation of the Manager of the Facilities Management Division that a negotiated lease would be in the best interest of the County. The rationale for the decision will be discussed in the Analysis section of this report. As required by the code sections above, a public notice of intent to negotiate a lease was published in the Seattle Times on June 20 and June 27, 2016. (Attachment 6 is the affidavit of publication.)

KCC 4.56.170 requires the lessee to make a deposit. In this case, the proposed lease requires a deposit equal to two months of regular lease payments and excise tax.

KCC 4.56.180 allows the County to lease property for a term of 35 years if the property to be leased is improved or is to be improved and the value of the improvement is or will be at least equal to the value of the property to be leased. The most recent appraisal values the property at $5.13 million. This would represent the minimum investment the lessee would need to make in order to qualify for a 35-year lease.

## <u>ANALYSIS</u>

This analysis evaluates the proposed lease against two primary considerations: the first is whether or not it is in the County's interest to negotiate the lease rather than having a public bidding process; he second is whether or not all the provisions of code have been met.

<u>Bid versus Negotiation of Lease</u>. The following paragraphs describe and analyze the factors that lead the Director of the Facilities Management Division and the Executive to recommend a negotiated lease. The lease anticipates that Hangar II will:

1. Demolish all existing facilities on the parcel at their expense.
2. Construct 110,000 square foot of hangar space and an aircraft parking ramp. (At the end of the lease term, the hangar and all facilities become the property of King County.)
3. Construct improvements valued at a minimum of $8 million. This represents approximately $2.8 million in excess investment in the property, exceeding the requirement of KCC 4.56.180.
4. Pay full rent during the entire term of the lease, including during demolition and construction of the new improvements.

Clay Lacy Aviation has been located on Boeing Field since 2003. The firm is one of three Fixed Based Operators (FBO) that serve aircraft at KCIA with hangars and offices located on the airfield. As an FBO, Clay Lacy provides services for corporate jet travelers including aircraft sales and chartering, parking, fueling, maintenance, hangars, food, offices and ground transportation.

Clay employs 55 people and maintains an extensive customer base, including serving as the primary flight department for the Boeing Executive Fleet. The firm has also held a military contract for the last seven years, serving as the personnel portal for charter military flights. Table 1 below summarizes the benefits of this lease to King County.

**Table 1 - Total County Benefits**

| **Action** | **Benefit** |
|---|---|
| 55 Employees | Payroll |
| FBO Services since 2003 | Services to tenants and transient aircraft |
| Total Facility Investment | $8 million |
| Excess site improvement value | $2.8 million |
| Annual Lease Payment & Leasehold Tax | $440,000 |

Executive staff believes it is unlikely a public bid for the lease would have provided this level of benefit for King County.

Code Provisions. The lease appears to meet all relevant code provisions as identified in the Background section of this report including fair market value, level of investment, term of lease, rental deposit and public notice published in a newspaper for two consecutive weeks.

## FISCAL NOTE

The lease rent will adjust every fifth year based on a fair market value appraisal. During non-appraisal years the base rent of $1.90 per square foot per year will increase 2.5% annually on the anniversary of the commencement date.

## AMENDMENT

Amendment 1 would replace the Executive's recommended lease with a revised version incorporating a number of technical and clarifying changes recommended by Council's legal counsel and the Prosecuting Attorney's Office. The Lessee has approved these changes and signed the revised lease (see Attachment 3). Clarifying changes include:

- King County approves the conceptual plans; the drawings are shown in Exhibit B (previous transmittal included drawings of two options);
- Approval of the lease does not warrant that the Department of Permitting and Environmental Review will issue any required permit;
- If Lessee fails to achieve Substantial Completion of its building within a time frame set forth in the Lease, Lessee may terminate the Lease but will responsible for all costs associated with the uncompleted construction including environmental remediation;
- Provisions by which parties may disqualify arbitrators; and
- Specific actions related to any property condemnation will be overseen by the court having jurisdiction over the condemnation

## ATTACHMENTS

1. Proposed Ordinance 2016-0315 and attachment
2. Transmittal Letter
3. Amendment 1 and attachment
4. Direct Negotiation Letter
5. Fiscal Note
6. Affidavit of Publication
7. Property Summary

## INVITED

1. Randall Berg, Director, King County International Airport
2. Tony Wright, Facilities Management Director

# KING COUNTY

## Signature Report

**August 18, 2016**

**Ordinance**

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

**Proposed No.** 2016-0315.1 **Sponsors** McDermott

AN ORDINANCE authorizing the King County executive to enter into a lease agreement with Hangar Two, LLC, as tenant, for county-owned land located at the King County international airport in council district eight.

STATEMENT OF FACTS:

1. The facilities management division determined that the county should award a lease of the county-owned land located at 8465 Perimeter Road South, Seattle, Washington, through a negotiation with interested parties without bidding under K.C.C. 4.56.160.

2. The facilities management division successfully negotiated a lease for the county-owned land with Hangar Two, LLC.

3. The facilities management division gave notice of its intent to execute the lease by publishing a notice in the Seattle Times once a week for two weeks on June 20, 2016.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. In accordance with K.C.C. chapters 4.56 and 15.72, the executive is authorized to execute a lease for the county-owned land with Hangar Two, LLC,

substantially in the form of Attachment A to this ordinance, and to take all actions necessary to implement the terms of the lease.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

_____

J. Joseph McDermott, Chair

ATTEST:

_____

Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, _____.

_____

Dow Constantine, County Executive

**Attachments:** A. Lease Agreement

# ATTACHMENT A:

# LEASE AGREEMENT

**KING COUNTY INTERNATIONAL AIRPORT**
7277 Perimeter Road South
Seattle, Washington 98108
(206) 296-7380

**LEASE AGREEMENT**

1. PARTIES. This Lease ("Lease") effective the _____ day of _____ 2016, is entered into between King County (sometimes referred to the "County" or "Lessor"), a municipal corporation and a political subdivision of the State of Washington, and Hangar Two, LLC, a Washington limited liability company ("Lessee").

2. PREMISES. King County hereby rents to Lessee, upon the following terms and conditions, premises located in King County, Washington, legally described as follows (see "Exhibit A Legal Description of Premises Leased" attached and "Exhibit A-1 Diagram of Premises Under Lease"), and commonly known as:

**8453-8500** Perimeter Road South, Seattle WA 98108
Approximately **205,476** square feet

The Premises are situated within the King County International Airport with its principal place of business located at 7277 Perimeter Road South, Seattle, Washington ("Airport").

3. TERM. The term of this Lease is for thirty-five (35) years (the "Lease Term"). The Lease shall commence on February 18, 2017 (the "Commencement Date"), and end on the Thirty-Fifth (35th) anniversary of the Commencement Date, unless terminated earlier in accordance with this Lease or extended pursuant to Section 7.

4. RENT. Lessee shall pay to King County a rent of **$32,533.70 DOLLARS** payable in advance on or before the first day of each and every calendar month of the Lease Term. The rent is calculated on 205,476 square feet of raw land at $1.90/sf/year. Lessee shall also pay on the base rent a Leasehold Excise Tax levied pursuant to RCW Chapter 82.89A of **$4,177.33 DOLLARS** per month, which is based on the current Leasehold Excise Tax rate of 12.84%.

All rents and taxes shall be made payable to the KING COUNTY INTERNATIONAL AIRPORT and are to be received in the office of:

King County International Airport
7277 Perimeter Road South, Suite 200
Seattle, Washington 98108

Said rental is exclusive of any other sale, franchise, business or occupation, or other tax based on rents. Should any such taxes apply during the life of this Lease, the rent shall be increased by such amount.

5. SECURITY AND DAMAGE DEPOSITS. At the time of signing of this Lease, the Lessee shall pay the first (1st) month's rent and leasehold tax. In addition, the Lessee shall deposit with King County the sum of **$73,422.06 DOLLARS** as a deposit for performance of all obligations required by this Lease. The return of this deposit, or any portion of it, shall be conditioned on the performance of all the Lessee's duties. Within (60) days after termination of the tenancy and vacation of the premises King County will return any sum due the Lessee from this deposit retained by King County. Furthermore, the Lessee understands and agrees that all rents, late charges, utility bills owing, or any other obligation required under this Lease, including damage and cleaning may be deducted from the deposit at the time of Lessee's vacation of the Premises if any amount remains in that fund after subtraction of damage and cleaning costs with the balance paid to Lessee. The deposits need not be held in any special account and no interest will be paid thereon.

6. USE. Lessee shall use said Premises for the following permitted purposes and no others without prior written consent of King County, which shall not be unreasonably withheld, conditioned or delayed:

A. Aircraft sales (new and used)
B. Aircraft maintenance service, including engine and accessory overhaul
C. Flight training
D. Air taxi, charter and cargo operations
E. Aircraft parts and accessory sales
F. Transient aircraft service
G. Tie-down and hangar rental
H. Avionics sales and service
I. Aviation business related office and commercial space rental
J. Aircraft Fuel Sales and Storage
K. Personal or general services to aircraft customers, including any concessionaires such as snack bar services, coffee and car rental services, provided said car rental services shall be conducted under separate agreement with King County identical to the terms of King County's agreement with other car rental concessions at Boeing Field/KCIA, as amended from time to time.
L. Any other items in the future that may develop as a function of general aviation business, except that each usage must be approved in writing by King Count

All services must be approved or accredited by the Federal Aviation Administration (F.A.A.) where such approval or accreditation is necessary.

Lessee agrees to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided, that the Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

Lessee shall use the entire Premises in a businesslike and responsible manner during the entire term of this Lease, with the exception of temporary closures for such periods as may reasonably be necessary for repairs or redecoration or for reasons beyond Lessee's control.

Lessee shall obtain, at Lessee's sole cost and expense, any and all licenses and permits necessary for Lessee's contemplated use of the Premises. Lessee shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations to emanate from the Premises, nor take any other action which would constitute a nuisance or which would disturb or endanger any other tenants of the Airport, or unreasonably interfere with such other tenants' use of their respective space. Lessee agrees not to do or permit anything to be done in or about the Premises which will in any manner obstruct or interfere with the rights of other tenants or occupants of the Airport, or injure or unreasonably annoy them, or use or allow the Premises to be used for any unlawful or unreasonably objectionable purpose. Lessee shall neither commit nor suffer any waste to the Premises and shall, at its sole cost and expense, keep and maintain the Premises and all improvements thereon and all facilities appurtenant thereto in good order and repair and safe condition, and the whole of the Premises, including all improvements and landscaping, in a clean, sanitary and attractive condition.

No other uses, activities or operations, shall be conducted by the Lessee from the Premises without first obtaining the written consent of King County. To the best of King County's knowledge, there are no conditions, restrictions or encumbrances to which the Premises and Project are subject that would preclude the redevelopment and use of the Premises by Lessee as provided for in this Lease. Upon the Commencement Date, King County shall deliver the Premises to Lessee free and clear of all tenancies or occupancies of any kind.

The right of Tenant to sell and store fuel, as contemplated in Section 6(J), is granted solely on the Tenant's fueling and storage rights on Tenant's adjacent property (Lease No. 7017). Under no circumstances may Tenant's right to sell or store fuel be assigned or transferred with this Lease without the express written consent of King County, not to be unreasonably denied.

7. CONSTRUCTION OF IMPROVEMENTS. King County hereby approves the construction by Lessee of a hangar, offices and aircraft ramp on the Premises (the "Project"), as more specifically described in ("Exhibit C Site Plan") attached hereto. Lessee shall submit to King County's Department of Permitting and Environmental Review, a building permit application (including detailed plans and specifications) for the lease improvements described in Exhibit "C" within 60 days after execution of this Lease. Lessee shall also use commercially reasonable efforts to obtain all permits for the Project (in final, unappealable form) from agencies with jurisdiction in a form satisfactory to Lessee (the "Project Approvals") no later than one (1) year from the date of King County Council approval of the Lease (the "Outside Permit Date"), and shall commence demolition, at Lessee's sole expense, of existing improvements on the Premises within 30 days of the date all Project Approvals are obtained, or earlier at Lessee's option, provided Lessee has obtained the necessary permits (the "Demolition

Commencement Date"). Lessee shall thereafter undertake and complete the permitted improvements within a commercially reasonable amount of time following the later of: the date all Project Approvals are obtained or Demolition Commencement Date. All dates and timelines contemplated herein are subject to Acts of God and/or Force Majeure, including but not limited to labor issues, severe weather and any other significant and impactful issue or event not within the reasonable control or mitigation of Lessee. If Lessee determines, in its sole discretion, that it cannot obtain the Project Approvals to enable it to achieve Substantial Completion for the Project, as defined below, then Lessee may terminate this Lease by written notice to King County given within thirty (30) days following the Outside Permit Date, with all rents paid and costs incurred by Lessee, including but not limited to permit costs, design and development expenses, and costs associated with the demolition of the existing hangar, to be forfeited by Lessee. If Lessee has timely filed applications for the Project Approvals but the Project Approvals have not been issued within thirty (30) days following the Outside Permit Date, then Lessee may extend the Outside Permit Date one time by an additional six (6) months.

If within the required time periods identified in this Section 7, Lessee fails to achieve Substantial Completion of the improvements within a reasonable amount of time as required by this Lease (as determined solely by King County), and fails to cure such lack of Substantial Completion within ninety (90) days after written notice from King County (or if such cure cannot reasonably be effected within said 90-day period, then Lessee shall commence such cure within said 90-day period and prosecute such cure to completion with diligence), then at the election of King County, this Lease may be terminated and all rentals paid shall be forfeited to King County, including funds expended by Lessee for the demolition of the existing hangar, and any improvements made to the Property, including environmental remediation. In the event King County or Lessee exercises termination rights under this Section 7, Lessee shall have no obligation or liability with respect to reconstructing improvements or continuing to pursue the construction of new improvements on the Property in the event Lessee has commenced or completed the demolition on the existing improvements in accordance with this Lease at the time of such termination. For the purposes of this Lease, "Substantial Completion" will be achieved upon acquiring a Certificate of Occupancy from the applicable permitting jurisdiction for the improvements made on the Premises.

The total value of the improvements described in this section shall be at least $8,000,000.00, as evidenced by written documentation to be approved of by King County prior to the commencement of construction. In accordance with King County Code 4.56.180(3), Lessee may request, and Lessor, in its sole discretion not to be unreasonably denied (taking into consideration economic development, fiscal benefits, job creation, additional airport revenue and other elements that result from Lessee's proposed business development that serves major airport purpose), may offer Lessee an extension of the 35-year Lease Term equal to the estimated useful life of any required improvements described in this Section, but not to exceed a total of fifty (50) years. If Lessee accepts the extension of the Lease Term, Lessee may propose renegotiating the Fair Market Rental Value after due consideration of all element reasonably affecting value as set forth in King County Code 4.56.010. The "value of the improvements" as used in this section, includes actual demolition costs, as well as permitting and actual costs associated with

the improvements made to or permanently erected on the Premises. Lessee shall be required to provide King County with a Contractor's Performance and Payment surety bond for the cost of these initial improvements pursuant to the terms of Section 21 below.

Notwithstanding the provisions of Section 42(B)(7), Lessee is solely responsible for all environmental remediation on the Premises during the initial construction of improvements, regardless of the source of the Hazardous Material being remediated or the party responsible for its generation, provided that nothing in this Lease (including the hold harmless provisions set for in Section 15, 18 and 42 of this Lease) shall preclude Lessee from seeking contribution and/or reimbursement from any other party, except King County, potentially responsible for the costs of Hazardous Materials remediation under any Environmental Law. The "value of the improvements," as used in this section, includes reasonable and necessary remedial action costs, up to a maximum of $500,000.00, to develop the contemplated improvements. Remedial action costs that may be included in the value of improvements shall be limited to costs to investigate, sample or test, segregate, export, dispose of or otherwise manage any soil, groundwater, surface water or sediment containing Hazardous Materials that exceed the costs of handling or managing the soil, groundwater, surface water or sediment had it not contained Hazardous Materials. For purposes of including remediation costs toward the "value of improvements", environmental remediation does not include remediation of Hazardous Materials caused or generated by Lessee during its control of the Premises. Lessee shall remediate Hazardous Materials under this Section to the applicable cleanup standards under Environmental Laws that will allow for unrestricted use of the Premises with no environmental covenant or other deed restriction required to be recorded, unless Lessee, in its sole discretion, agrees otherwise in writing. In no event shall Lessee pursue costs recovery or contribution action against King County for environmental remediation performed pursuant to this Section 7.

8. ENTIRE AGREEMENT AMENDMENTS. This Lease and any and all exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole agreement between the parties. There are no terms, current or past representations, obligations, covenants or conditions other than those contained herein. No modification or amendment of this Lease shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

9. NOTICES. Required notices except legal notices shall be given in writing to the following respective addresses:

| | |
|---|---|
| TO COUNTY: | King County, Real Estate Services<br>500 Fourth Avenue, Suite 830<br>Seattle, WA 98104-2337<br>Attention: Lease Administration |
| With a copy to: | Airport Director<br>King County International Airport<br>7277 Perimeter Road South |

Seattle, WA 98108-3844

TO LESSEE: Hangar Two, LLC
c/o Gateway USA, LLC
8285 Perimeter Road South
Seattle, Washington 98108

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices sent by mail shall be deemed to have been given when properly mailed.

10. LATE PAYMENT, TAXES, LICENSES, FEES AND ASSESSMENTS.

A. LATE PAYMENTS. Lessee acknowledges that the late payment by Lessee to King County of any rent or other sums due under this Lease will cause King County to incur administrative, collection, processing and accounting costs and expenses not contemplated under this Lease, the exact amounts of which are extremely difficult and impractical to fix. Therefore, if any rent or other sum due under this Lease is not received by King County from Lessee by the tenth calendar day of the month in which said rent or other sum is due ("the Delinquency Date"), Lessee shall immediately on the Delinquency Date pay to King County a late charge equal to the greater of (i) five percent (5%) of the amount of such rent or other sum, or (ii) Five Hundred Dollars ($500.00). King County and Lessee agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to King County for its loss caused by Lessee's nonpayment. Should Lessee pay said late charge but fail to pay contemporaneously therewith all unpaid amounts of rent or other sums due under this Lease, King County's acceptance of this late charge shall not constitute a waiver of Lessee's default with respect to Lessee's nonpayment or prevent King County from exercising all other rights and remedies available to King County under this Lease or under law. Additionally, all such delinquent rent or other sums, and all late charges not paid when due, shall bear interest for each day following their Delinquency Date until paid at a percentage rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted under applicable laws. Waiver of the late charge or interest with respect to any delinquent payment will not be deemed to constitute a waiver of the late charge or interest with respect to any subsequent delinquent payment. Any payments of any kind returned for insufficient funds will be subject to an additional charge of $50.00 payable by Lessee to King County. In addition, if payments are received by check or draft from Lessee, and two (2) or more of such checks or drafts are dishonored by the bank or other financial institution they were drawn upon in any twelve (12) month period, King County may thereafter require all rent and other payments due hereunder from Lessee to King County to be made by bank cashier's or bank certified check or other similar means of payment

and King County shall not be required to accept any checks or drafts of Lessee which do not comply with such requirements.

B. LEASEHOLD TAX. A Leasehold Excise Tax, if applicable, is levied pursuant to the Revised Code of Washington (R.C.W.) Chapter 82.29A. The Lessee agrees to pay this tax to King County. If the State of Washington changes the Leasehold Excise Tax or if King County receives authorization to levy this tax, the tax payable shall be correspondingly changed.

C. LICENSE, TAXES AND FEES. Throughout the term of this Lease, Lessee shall pay all applicable taxes and all license and excise and other applicable fees including, but not limited to, fuel flowage fees and landing fees, covering the business conducted on the Premises as provided for in King County Code Title 15 as now existing and as it may be amended.

D. MITIGATION ASSESSMENTS. Lessee shall, subject to sixty (60) days prior notice and reasonable opportunity to object, pay any mitigation assessment now in effect or hereafter established, by any municipality, agency or organization, including King County, which includes the King County Council, having jurisdiction over King County International Airport. Lessee's portion of the assessment will be based on their contribution, or pro rata share, of the condition and/or circumstance which is being mitigated and/or their proportionate use of the improvement requiring mitigation investment.

11. RENT ADJUSTMENT. To ensure a fair rent based upon the fair market value of the Premises, King County shall adjust the rent (*i.e.,* by increasing or decreasing the rent) to the then current Fair Market Rental Value (as defined below) no sooner than every five years. The first adjustment will occur no sooner than the anniversary of the Lease Commencement Date in 2022 and each subsequent Rent Adjustment Date, as defined below (the "FMV Adjustment"). Subsequent adjustments will take effect no sooner than the fifth anniversary of the previous FMV Adjustment. The date on which a FMV Adjustment becomes effective is referred to hereafter as "**Rent Adjustment Date**". The five year period commencing on the Rent Adjustment Date is referred to hereafter as "**the Succeeding Period**".

A. FAIR MARKET RENTAL VALUE DEFINED. For all purposes required under this Lease, "**Fair Market Rental Value**" is defined as: An amount in the competitive market that a well-informed and willing lessor, who desires but is not required to lease, would accept, and which a well-informed and willing lessee, who desires but is not required to lease, would pay for the temporary use of the Premises (excluding improvements to the Premises constructed at Lessee's expense made during the term of the lease), after due consideration of all the elements reasonably affecting value

B. NOTICE OF RENTAL ADJUSTMENT. When it elects to adjust the rent, King County will give Lessee at least thirty days written notice of the adjusted rent for the Succeeding Period. The rent as adjusted shall take effect on the Rent Adjustment Date specified in the notice. Unless Lessee, within thirty days following receipt of notice from King County, gives King County written notice of its rejection of the adjusted rent together with Lessee's statement of the amount Lessee considers to be the Fair Market Rental Value, the rent as adjusted by King County will become the rent for the Succeeding Period. If Lessee so notifies King County of its rejection of the adjusted rent, the parties may negotiate in good faith in an attempt to agree upon the rent adjustment.

C. ARBITRATION.

1) If, thirty days after King County receives Lessee's notice of its rejection of the rent as adjusted by King County, Lessee and King County cannot agree upon the rent adjustment, the rent for the Succeeding Period will be adjusted by arbitration. Lessee and King County will each select one disinterested arbitrator, and the two selected arbitrators will select a third.

2) King County will give Lessee written notice of the name and address of its selected arbitrator and his or her qualifications. Unless otherwise agreed in writing by King County, Lessee shall give King County written notice of the name and address of Lessee's selected arbitrator and his or her qualifications within thirty days after Lessee's receipt of King County's notice. If Lessee fails to so provide its written notice to King County, Lessee shall be deemed to waive its right to arbitration, the arbitration shall not proceed, and the rent as adjusted by King County shall become the rent for the Succeeding Period.

3) If the two arbitrators have not selected a third arbitrator within thirty days after the selection of the last selected of the two, either Lessee or King County will apply to the Presiding Judge of the Superior Court in King County for the appointment of a third arbitrator.

4) Each arbitrator will be a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, or other appraisal society or association having equivalent ethical and professional standards. If, in the future, a licensing requirement for real estate appraisers is imposed by any legislative body with jurisdiction, each arbitrator shall also be licensed. The arbitrators shall not only be impartial, but also shall not have been an employee of, or retained under contract by, either party (King County International Airport or Lessee) for a period of one year

before the arbitration, and shall have no financial interest in the subject of the arbitration. Each party shall have the right to disqualify any arbitrator who does not meet the requirements of this section by sending a written notice to the other party and to all the arbitrators stating the grounds for disqualification. If the disqualified arbitrator is a party-appointed arbitrator, then that party shall, within fourteen days after its receipt of the other party's notice of disqualification, appoint another arbitrator who meets the requirements of this section to serve in place of the party's disqualified arbitrator. If the disqualified arbitrator is the third arbitrator, then the two party-appointed arbitrators shall, within fourteen days after their receipt of a party's notice of disqualification, select a third arbitrator who meets the requirements of this section to serve in place of the disqualified arbitrator.

5) The arbitrators shall give the parties sixty days' notice in writing of the date on which the arbitration is to commence. Unless otherwise agreed in writing by King County and Lessee, each party shall, no later than thirty days before the arbitration is scheduled to commence, provide the other party with a copy of an appraisal report prepared by a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, or other appraisal society or association having equivalent ethical and professional standards, that supports that party's claim of Fair Market Rental Value. If Lessee fails to so provide a copy of its appraisal report to the County, Lessee shall be deemed to waive its right to arbitration, the arbitration shall not proceed, and the rent as adjusted by King County shall become the rent for the Succeeding Period.

6) The three arbitrators will determine a fair rent for the Premises for the Succeeding Period based upon the Fair Market Rental Value as defined in as defined in Section 11(A) hereof, which is in accordance with King County Code 4.56.010. The decision of a majority of the arbitrators will bind both Lessee and King County. Both King County and the Lessee agree that all non-mandatory provisions of RCW 7.04A are waived and that, unless requested by a majority of the arbitration panel, no formal hearing will be held, no witnesses will testify, no attorneys will participate in the arbitration, and the arbitrators will be the final determiners of both fact and law. At the conclusion of the arbitration, the arbitrators will submit a written report in counterpart copies to Lessee and King County, which shall state their determination of the rent to be paid by Lessee for the Succeeding Period. The report shall contain all pertinent evidence that led to their conclusion together with an explanation of their reasoning for such conclusion.

COST OF ARBITRATION. Each party shall pay for its appraisal and shall bear the expense of its own counsel, and any other of its representatives and/or experts that may be required to prepare for or, in the event it is requested by the arbitration panel, participate in the arbitration. Each party shall also pay the fees and expenses of its selected arbitrator. The fees and expenses of the third arbitrator and all other costs of the arbitration will be divided equally between Lessee and King County.

D. RENT PENDING ADJUSTMENT AND RETROACTIVITY. In the event resolution of the rental adjustment is not completed either by negotiation or arbitration prior to the Rent Adjustment Date:

1) Lessee shall, pending resolution of such rent adjustment, continue to pay King County the rent then in effect;

2) The adjusted rent, as determined either by negotiation or arbitration, shall be retroactive to the Rent Adjustment Date; and

3) King County, at its option, may elect to require Lessee to pay interest in the amount of twelve percent per annum commencing on the Rent Adjustment Date on any sum due as a result of a retroactive increase.

E. ANNUAL RENT ADJUSTMENTS DURING NON-APPRAISAL YEARS. The annual rent increase for intervening years between fair market value appraisals is 2.5 percent. If the rent adjustment is made due to a new fair market value appraisal, and that value is greater than the prior year's rent, then the new fair market value appraisal becomes the new rent, and the new base for the application of future adjustments. Rents shall be adjusted on January 1 of each year and shall take effect on the anniversary of the Rent Adjustment Date. Annual rental adjustments made under this section F are not subject to arbitration.

12. COMPLIANCE WITH ALL LAWS AND REGULATIONS. In using the Premises, Lessee will comply with all applicable laws, ordinances, and regulations from any and all authorities having jurisdiction. Lessee specifically agrees to comply and pay all costs associated with achieving such compliance without any notice from King County, and further agrees that King County does not waive this section by giving notice of demand for compliance in any instance.

13. UTILITIES. Lessee shall pay for all costs, expenses, fees, services, and charges of all kinds for heat, light, water, gas, and telephone, and for all other public utilities used on said Premises so that the same shall not become a lien against the leased Premises.

14. IMPROVEMENTS AND ALTERATIONS.

A. Except as approved by King County under Section 7 of the Lease or otherwise contemplated in the Lease, and other than alterations, improvements and fixtures located entirely inside improvements

constructed by Lessee in accordance with the provisions of the Lease, Lessee shall make no significant alterations or improvements to or upon the Premises, or install any fixtures (other than trade fixtures which can be removed without injury to the Premises) without first obtaining prior written approval from King County, approval which will not be unreasonably denied or delayed.

B. All improvements and alterations erected or made on the Premises by Lessee shall be and remain the property of Lessee during the term of this Lease. Unless otherwise stipulated, all improvements or alterations erected or made on the Premises (not including personal property, equipment and removable fixtures, which shall remain the property of Lessee) shall, upon expiration or earlier termination of this Lease, belong to King County without compensation to Lessee; however, King County shall have the option, to be exercised on expiration or earlier termination of the Lease, to require Lessee, at Lessee's expense, to remove any or all such improvements or alterations.

C. Lessee agrees to comply with the notification and review requirements contained in Part 77 of the Federal Aviation Regulations in the event that any future structure or building is planned for the Premises, or in the event of any modification or alteration of any future building or structure situated on the Premises.

D. Lessee covenants and agrees that no equipment or fixtures shall be installed or operated on the Leased Premises which would produce electromagnetic radiation or radio signals, telecommunication signals, or the like, that would violate any FAA rules and regulations.

E. Lessee agrees to furnish King County with as-built drawings for all improvements within 60 days of completion of construction. As-built drawings will be provided in electronic and paper format as requested by King County.

15. CONDITION OF PREMISES.

A. Lessee has inspected and knows the condition of the Premises, and accepts the Premises "AS IS".

B. Lessee acknowledges that the Premises may contain Hazardous Materials, as defined in Section 42 of this Lease, and Lessee accepts the Premises "AS IS", including, without limitation, the presence of any Hazardous Materials or underground storage tanks, or the actual or threatened release, deposit, seepage, migration or escape of Hazardous Materials at, from or into the Premises, and the compliance or noncompliance of the Premises with applicable federal, state, county and local laws and regulations including, without limitation, the Environmental Laws as defined in Section 42 of this Lease.

C. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE, KING COUNTY DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PREMISES, AND NO OFFICIAL, EMPLOYEE, REPRESENTATIVE OR AGENT OF KING COUNTY IS AUTHORIZED OTHERWISE. WITHOUT LIMITATION, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE, THE FOREGOING SPECIFICALLY DISCLAIMS WARRANTIES WITH RESPECT TO THE CONDITION OF THE PREMISES FOR DEVELOPMENT AND/OR USE BY LESSEE, THE PRESENCE OF ANY HAZARDOUS MATERIALS OR UNDERGROUND STORAGE TANKS, OR THE ACTUAL OR THREATENED RELEASE, DEPOSIT, SEEPAGE, MIGRATION OR ESCAPE OF HAZARDOUS MATERIALS AT, FROM OR INTO THE PREMISES, AND THE COMPLIANCE OR NONCOMPLIANCE OF THE PREMISES WITH APPLICABLE FEDERAL, STATE, COUNTY AND LOCAL LAWS AND REGULATIONS, INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL LAWS.

D. King County shall not have any obligation to Lessee to make any changes or improvements, or to incur any expenses whatsoever for the maintenance, monitoring, repair or remediation of the Premises.

E. Lessee acknowledges and agrees that King County shall have no liability to Lessee for, and that Lessee shall have no recourse against King County for, any defect or deficiency of any kind whatsoever in the Premises without regard to whether such defect or deficiency was discoverable by Lessee or King County.

F. King County reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or opinions of Lessee, and without interference or hindrance by Lessee. (FAA Order 5190.6B - AGL-600).

G. King County reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard. (FAA Order 5190.6B - AGL-600).

16. CONSTRUCTION DEFECTS. King County shall not be liable to Lessee for claims or damages arising from any defect in the construction of or the present condition of the Premises, whether known or unknown, or for damage by storm, rain, or leakage or any other occurrence.

17. MAINTENANCE.

A. Throughout the term of this Lease, Lessee shall, without cost or expense to King County, keep and maintain the leased Premises and all improvements, landscaping, fixtures and equipment which may now or hereafter exist thereon, in a neat, clean, and sanitary condition and shall, except for reasonable wear and tear, at all times preserve the Premises in good and safe repair except for any demolition of improvements contemplated by Section 7 of the Lease. Upon the expiration or sooner termination of the Lease, Lessee shall forthwith return the same in as good condition as existed at the commencement of occupancy, ordinary wear and tear excepted, except for any demolition of improvements contemplated by Section 7 of the Lease.

B. If, after thirty (30) days' notice from King County, or immediately in case of potential harm to life safety or property, Lessee fails to maintain or repair any part of the leased Premises or any improvement, landscaping, fixtures or equipment thereon, King County may, but shall not be obligated to, enter upon the leased Premises and perform such maintenance or repair, and Lessee agrees to pay the costs thereof to King County upon receipt of a written demand. Any unpaid sums under this section shall be payable as additional rent on the next rent payment date due following the written demand and will bear interest at a percentage rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted under applicable laws.

18. GENERAL INDEMNITY AND HOLD HARMLESS. Lessee agrees to indemnify and hold King County harmless as provided herein to the maximum extent possible under law. Accordingly, Lessee agrees for itself, its agents, successors, and assigns, to defend, indemnify, and hold harmless King County, its appointed and elected officials, and its employees and agents, from and against liability for all claims, demands, suits, and judgments, including costs of defense and attorney fees thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to Lessee's exercise of rights and privileges granted by this Lease, except to the extent of King County's sole negligence. The Lessee's obligations under this section shall include:

A. The duty to promptly accept tender of defense and provide defense to the County at Lessee's own expense, including attorney fees;

B. Indemnification of claims made by Lessee's own employees or agents; and,

C. Waiver of Lessee's immunity under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify King County, which waiver has been mutually negotiated by the parties.

Lessee agrees to hold harmless and indemnify King County for any and all costs associated with damage to owned, non-owned or hired aircraft in Lessee's care, custody and control.

In the event it is necessary for the County to incur attorney's fees, legal expenses or other costs to enforce the provisions of this section, all such fees, expenses and costs shall be recoverable from Lessee.

In the event it is determined that R.C.W. 4.24.115 applies to this Lease, Lessee agrees to defend, hold harmless, and indemnify King County to the maximum extent permitted thereunder. Further, Lessee agrees to defend, indemnify, and hold the County harmless for claims by Lessee's employees and agrees to waive, as respects the County only, its immunity under Title 51 R.C.W., which waiver has been mutually negotiated by the parties.

Lessee shall include the same indemnification language in this Section 18 in its sub-leases protecting, indemnifying and defending King County, its appointed and elected officials, and its employees and agents.

The provisions of this Section 18, "Indemnity and Hold Harmless", shall survive the expiration or termination of this Lease with respect to any event that occurs prior to, or on the date of, such expiration or termination.

Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

19. INSURANCE REQUIREMENTS – LESSEE/LEASEHOLD. By the date of execution of this Lease, Lessee shall procure and maintain for the duration of this Lease, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with exercise of the rights and privileges granted by this Lease, by Lessee, its agents, representatives, employees/subcontractors. The insurance required to be provided by Lessee under this Lease may be provided under blanket policies that cover Lessee and the Premises as well as other entities and properties. The cost of such insurance shall be paid by or on behalf of Lessee. If there is any inconsistency between the minimum insurance requirements set forth below in this Lease and the insurance required by King County in any other Airport agreement to which Lessee is a party, Lessee shall maintain the most stringent insurance required.

In consideration of the duration of this Lease, the parties agree that the Insurance Requirements Section herein, at the discretion of the King County Risk Manager, may be reviewed and adjusted with each amendment and within 90 days of the end of the first Five (5) year period of the Lease Term and the end of each successive Five (5) year period thereafter.

Any adjustments made as determined by the King County Risk Manager, with regard to limits, scope and types of insurance, shall be in accordance with reasonably prudent risk management practices and aviation insurance industry standards and shall be effective on the first day of each successive 5 year period.

Adjustment, if any, in insurance premium(s) shall be the responsibility of Lessee. Any failure by the County to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE. Lessee shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to Lessee under this Contract. Lessee shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions and environmental impairment , may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, Lessee warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of termination of this lease. Insurance coverage shall be at least as broad as stated below and with limits no less than:

**1) Commercial General Liability (Aviation General Liability).** Coverage in the amount of $5,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a $5,000,000 aggregate limit shall be maintained.

**2) Aircraft Liability.** (Owned, Leased and Non-owned Aircraft) Aircraft liability for bodily injury, death, property damage, contractual and passenger liability.

Aircraft Liability (combined single-limit per occurrence other than passenger liability in accordance with the following table)

| Maximum Gross Take-off Weight | Minimum Requirement: (each Occurrence) |
|---|---|
| Over 25,000 lbs. | $25,000,000 |
| 15,001 -25,000 | $15,000,000 |
| 10,001 – 15,000 lbs. | $10,000,000 |
| 5,000 - 10,001 lbs. | $5,000,000 |
| Under 5,000 lbs. | $1,000,000 |

**3) Aircraft Hull and Machinery**. Lessee agrees to insure owned and/or leased aircraft commensurate with the value of the aircraft and machinery and waive all rights of subrogation against the Lessor.

**4) Liquor Liability.** Required if alcoholic beverages are sold or distributed, a limit of $1,000,000 per occurrence and for those policies with aggregate limits, a $1,000,000 limit.

**5) Automobile Liability.** Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. $5,000,000 combined single limit per accident. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90.

**6) Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

**7) Employer's Liability or "Stop Gap".** Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

**8) Hangar Keepers Liability.** Bailee's coverage for non-owned aircraft held in Lessee's care, custody and control at a limit equal to maximum value of aircraft hangared at any one time per occurrence, and in the aggregate.

**9) Environmental Impairment.** Pollution coverage for all clean-up and remediation costs and expense arising out of Lessee's use of leased Premises for both sudden and accidental discharges or gradual or repeated contamination. $1,000,000 per claim and in the aggregate.

**10) Property Insurance.** Lessee will carry "All Risk" property insurance in an amount equal to the full replacement value of all improvements, structures, and buildings located on the Premises and business interruption coverage to provide for the continued payment of rent to the owner, in an amount equal to twelve month's rental payment obligation. . Coverage shall include the perils of earthquake and flood provided the limits of flood coverage may be a reasonable amount that is less than full replacement value. King County will not carry insurance on Lessee's property or business personal property. Waiver of subrogation must be shown on evidence of insurance. King County shall be named as loss payee on Lessee's property insurance as its interests may appear.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to King County. The deductible and or self-insured retention of the policies shall not limit or apply to Lessee's liability to the County and shall be the sole responsibility of Lessee.

C. OTHER INSURANCE PROVISIONS. The insurance policies required in this Lease are to contain or be endorsed to contain the following provisions:

1) All liability policies except workers compensation:

a. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Lessee in connection with this Lease.

b. Lessee's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with Lessee's insurance or benefit Lessee in any way.

c. Lessee's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2) All Policies:

a. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits below those required by this Lease, without replacement of the coverage in question with insurance that satisfies the requirements of the Lease until after thirty (30) days prior written notice has been given to the County.

D. ACCEPTABILITY OF INSURERS. Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or if not rated with Bests' with minimum surpluses, the equivalent of Bests' surplus size VIII. If at any time, any of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, Lessee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements for approval.

E. VERIFICATION OF COVERAGE. Lessee shall furnish the County with certificate(s) of insurance and endorsement(s) required by this Lease. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County and are to be received and approved by the County prior to the commencement of activities associated with the Lease.

F. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, King County and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective property insurance policies, including any extended coverage endorsements hereto; provided that this agreement shall be inapplicable if it would have the effect of invalidating any insurance coverage of King County or Lessee.

20. INSURANCE REQUIREMENTS - BUILDINGS/STRUCTURES/FACILITIES UNDER CONSTRUCTION.

Prior to commencement of any construction and until construction is complete and accepted by Lessee, Lessee shall cause its construction contractor(s) to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to said construction. The cost of such insurance shall be paid by Lessee and/or any of Lessee's contractors.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE. Lessee shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to Lessee under this Contract. Lessee shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, Lessee warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the work which is the subject of this Lease. Insurance coverage shall be at least as broad as stated below and with limits no less than:

**1) General Liability**. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 covering **COMMERCIAL GENERAL LIABILITY.** $5,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a $5,000,000 aggregate limit. Coverage shall not exclude explosion collapse and underground damage (XCU).

**2) Automobile Liability.** Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. $5,000,000 combined single limit per accident. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90.

**3) Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

**4) Employer's Liability or "Stop Gap".** Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

**5) Professional Liability Errors and Omissions.** In the event that services delivered pursuant to this Contract either directly or indirectly involve or require Professional services, Professional Liability Errors and Omissions coverage shall be provide at a limit of $1,000,000 per claim and in the aggregate..

**6) Builder's Risk/Installation Floater.** Lessee or Contractor shall procure and maintain during the life of the Contract, or until acceptance of the project by King County, whichever is longer, "All Risk" Builders Risk or Installation Floater Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft, off-site storage and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for 100% of the replacement value thereof and include earthquake and flood. The policy shall be endorsed to cover the interests, as they may appear, of King County, Contractor and subcontractors of all tiers with King County and sub-contractors listed as a Named Insured. In the event of a loss to any or all of the work and/or materials therein and/or to be provided at any time prior to the final close-out of the Contract and acceptance of the project by

King County, the Contractor shall promptly reconstruct, repair, replace or restore all work and/or materials so destroyed. Nothing herein provided for shall in any way excuse the Contractor or its surety from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Contract.

**7) Contractor's Pollution Liability.** $1,000,000 per claim/aggregate. Lessee and/or contractor shall provide contractor's pollution liability coverage to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, clean up costs and the loss of use of tangible property that has not been physically injured or destroyed. If asbestos, lead or PCB's are a potential exposure, such insurance shall not exclude pollution arising out of such substances.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to King County. The deductible and or self-insured retention of the policies shall not limit or apply to Lessee's liability to the County and shall be the sole responsibility of Lessee.

C. OTHER INSURANCE PROVISIONS. The insurance policies required in this Lease are to contain or be endorsed to contain the following provisions:

1) All liability policies except workers compensation and professional liability:

a. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Lessee in connection with this Lease.

b. The contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with Lessee's insurance or benefit Lessee in any way.

c. The contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2) All Policies:

a. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits below those required by this Lease, without replacement of the coverage in question with insurance that satisfies the requirements of the Lease until after thirty (30) days prior written notice has been given to the County.

D. ACCEPTABILITY OF INSURERS. Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or if not rated with Bests' with minimum surpluses, the equivalent of Bests' surplus size VIII. If at any time, any of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, Lessee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements for approval.

E. VERIFICATION OF COVERAGE. Prior to commencement of construction Lessee shall furnish the County with certificate(s) of insurance and endorsement(s) required by this Lease. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County and are to be received and approved by the County prior to the commencement of activities associated with the Lease.

F. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, King County and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective property insurance policies, including any extended coverage endorsements hereto; provided that this agreement shall be inapplicable if it would have the effect of invalidating any insurance coverage of King County or the Lessee.

21. CONTRACTOR'S SURETY BOND. Prior to commencing construction of any of Lessee's Improvements, Lessee shall furnish to King County a Contractor's Performance and Payment surety bond in the amount of the total estimated construction costs of the subject Improvements. The surety bond shall be acceptable to the King County in its commercially reasonable discretion and shall state the following:

(i) Lessee and King County shall be named as dual obligee on described surety bond.

(ii) That it is conditioned to secure the completion of the proposed construction, free from all liens and claims of contractors, subcontractors, mechanics, laborers, and material suppliers.

(iii) That the construction work shall be fully and faithfully performed by Lessee, the general contractor, or, on their default, the surety.

(iv) That in default of such completion and payment, such part of the amount of the bond as shall be required to complete the work shall be paid to King County as liquidated and agreed damages for the nonperformance of this Agreement; it being agreed that the amount of King County's damages is extremely difficult to ascertain and determine.

That the surety will defend and indemnify King County against all loss, costs, damage, expense, claims, and liabilities arising out of or connected with the construction by Lessee.

In lieu of a surety bond, Lessee may provide construction surety bonds supplied by Lessee's general contractor or contractors, provided such bonds contain the same conditions, are issued jointly to Lessee and King County, and are in an amount equal to the total estimated construction cost of the Improvements.

Should Lessee act as owner/builder then all subcontractors shall provide construction surety bonds on the same condition as above stated for construction surety bonds to be provided by Lessee's general contractor.

All Surety Bonds must be issued by a surety company licensed to do business in the State of Washington, acceptable to King County in its commercially reasonable discretion, and shall remain in effect until the entire cost of the subject Improvements shall have been paid in full and the new Improvements shall have been insured as provided in this Lease.

In lieu of the above surety bond, Lessee may provide some other instrument satisfactory to King County or cash deposit which shall guarantee to King County completion of the subject Improvements.

22. PROPERTY RECONSTRUCTION FOLLOWING CASUALTY. In the event of the total or partial destruction by casualty or otherwise of the building, structures, or facilities currently on the Premises or subsequently constructed by Lessee, Lessee shall have the obligation to reconstruct such facilities to their former condition and usability and proceed with reasonable diligence to prepare plans and specifications for and carry out, all work necessary (a) to repair and restore the building and/or improvements on the Premises damaged by the casualty to their former condition, or (b) to replace said building and/or improvements with a new building and/or improvements on the Premises of a like quality and usefulness of the building and/or improvements which were damaged. The foregoing notwithstanding, if, upon completion of the repair and reconstruction required by this Section, there would be five (5) or fewer years remaining in the term of the Lease, Lessee shall have the right to elect, by written notice given to King County within ninety (90) days after the casualty, not to repair or reconstruct the building, structures and facilities on the Premises, provided, however, that Lessee has

maintained the property insurance required by Section 20(A) above. If, under the preceding sentence, Lessee timely and validly elects not to repair or reconstruct the building, structures and facilities on the Premises after a casualty, (1) the Lease shall terminate on the date Lessee gives notice of its election or upon such later date as Lessee may specify in such notice (not to be more than ninety (90) days after such notice is given) and (2) Lessee shall assign to King County all proceeds of Lessee's property insurance payable in respect of the casualty in question and deliver to King County all of such proceeds received by Lessee and not applied to the preservation and protection of the building, structures and facilities on the Premises prior to the date on which the Lease terminates.

23. SURRENDER OF PREMISES. Upon expiration or termination as contemplated herein, Lessee shall surrender to Lessor the Premises and Improvements, structures, fixtures and building equipment supplied by Lessee as part of the Premises and Improvements, together with all alterations and replacements thereof without compensation, allowance or credit, subject to Lessee's covenants to maintain and repair accruing to the date of expiration or termination of the Term as provided in this Lease. Except for Improvements allowed to remain under Section 14(B) above Lessee shall remove all improvements, structures, fixtures, building equipment or any other items belonging to Lessee unless allowed to remain on the Premises as agreed upon in writing from Lessor. Upon expiration or termination, all right, title and interest to the Premises and Improvements shall vest in Lessor, free and clear of any liens and encumbrances.

24. DEFAULT AND RE-ENTRY. If any rents above reserved or other obligations provided herein, or any part thereof shall be and remain unpaid when the same shall become due, or if Lessee shall violate or default on any of the covenants and agreements herein contained, then King County may terminate this Lease upon giving five (5) days' notice (in the case of monetary defaults) and thirty (30) days' notice (in the case of non-monetary defaults). Lessee may cure any such default by its payment or performance within said periods, provided that if a non-monetary default cannot be cured within said 30-day period, then Lessee shall not be in default if Lessee commences its cure within said 30-day period and takes actions and steps to cure the non-monetary default within a commercially reasonable amount of time. Upon an uncured default, King County may re-enter said Premises using such force as may be required. Notwithstanding such re-entry by King County, the liability of the Lessee for the rent provided for herein shall not be extinguished for the balance of the term of this Lease, and Lessee covenants and agrees to make good to King County any deficiency arising from a re-entry and reletting of the Premises at a lesser rental than agreed to herein. Lessee shall pay such deficiency each month as the amount thereof is ascertained by King County. In the event it becomes reasonably necessary to make any changes, alterations, or additions to the Premises or any part thereof for the purpose of reletting said Premises or any part thereof, Lessee shall also be responsible for such cost.

25. ASSURANCE OF PERFORMANCE. In the event a default in the performance of any obligation under this Lease which remains uncured for a period longer than specified in Section 24 above, King County may request and Lessee shall provide adequate assurance of the future performance of all obligations under this Lease. The adequacy of

any assurance shall be determined according to commercially reasonable standards for lessors of real property in the County of King, State of Washington. Adequate assurance shall include, but not be limited to, a deposit in escrow, a guarantee by a third party acceptable to King County, a surety bond, or a letter of credit. Lessee's failure to provide adequate assurance within twenty (20) days of receipt of a request shall constitute a material breach and King County may in its discretion terminate this Lease.

26. ADVANCES BY KING COUNTY FOR LESSEE. If Lessee fails to pay any fees or perform any of its obligations under this Lease other than payment of rent, King County will mail notice to Lessee of its failure to pay or perform. Twenty (20) days after mailing notice, if Lessee's obligation remains unpaid or unperformed, King County may, but is not obligated to, pay or perform these obligations at Lessee's expense. Upon written notification to Lessee of any costs incurred by King County under this section, Lessee will reimburse King County within twenty (20) days. Failure to comply with this Section 26 will result in a Lease default subject to the terms and conditions set forth in Section 24 Default and Re-entry.

27. NON-WAIVER. It is hereby agreed that no waiver of any condition or covenant in this Lease or any breach thereof, shall be taken to constitute waiver of any subsequent breach.

28. SIGNS. No sign, advertisement, notice, or other lettering will be exhibited, inscribed, painted, or affixed by Lessee on any part of the outside of the Premises without the prior written consent of King County, provided that such consent shall not be unreasonably withheld. If Lessee violates this provision, King County may remove the sign without any liability and may charge the expense incurred by such removal to Lessee; provided, however, King County shall give Lessee written notice of Lessee's violation of this provision and Lessee shall have forty-eight (48) hours after receiving said notice to comply with the terms of this provision. All signs erected or installed by Lessee shall be subject to any federal, state or local statutes, ordinances or regulations applicable to signs.

29. INSPECTION AND "FOR RENT" SIGNS. King County reserves the right to inspect the Premises at any and all reasonable times throughout the term of this Lease, provided that King County shall give Lessee not less than twenty four (24) hours prior notice (except in an emergency, in which case King County shall give such advance notice as is practicable under the circumstances), shall not interfere unduly with Lessee's operations and shall use reasonable efforts to cooperate with any security measures Lessee may then have in effect. The right of inspection reserved to King County hereunder shall impose no obligation on King County to make inspections to ascertain the condition of the Premises, and shall impose no liability upon King County for failure to make such inspections. King County shall have the right to place and maintain "For Rent" signs in conspicuous places on the Premises for one hundred and eighty (180) days prior to the expiration or sooner termination of this Lease.

30. LIENS. It is understood and agreed that this Lease is executed and delivered upon the express condition that Lessee will not and cannot contract any debt or debts for

labor, materials, services, or otherwise which will or may become a lien against the interest of King County in the Premises, and King County hereby denies to Lessee any right, power, or authority to do any act, or contract any obligation or liability which would in any way subject the interest of King County in the Premises to any lien, claim, or demand whatsoever.

31. ASSIGNMENTS.

A. Lessee shall not assign or transfer this Lease or any interest therein, nor grant an option for such an assignment or transfer for the whole or any part of the Premises, nor shall this Lease or any interest hereunder be assignable or transferable by operation of law, or by any process or proceeding of any court or otherwise without the prior written consent of King County, which consent shall not be unreasonably withheld, conditioned or delayed. If Lessee is a corporation, partnership, limited liability company or other entity, Lessee further agrees that if at any time during the term of this Lease one-half (1/2) or more of the outstanding shares of any class of stock, partnership interests, membership interests or other equity interests of Lessee's corporation, partnership, limited liability company or other form of entity shall belong to any stockholders, partners, members or other owners, as the case may be, other than those who own one-half (1/2) or more of the outstanding shares of that class of stock, partnership interests, membership interests or other equity interests at the time of the execution of this Lease, such change in the ownership shall be deemed an assignment of this Lease within the meaning of this section.

1) The foregoing notwithstanding, the following (each, an "Exempt Transfer") shall not be deemed an assignment and shall not require King County's consent and without right of termination or entitlement to any consideration: (a) a transfer of stock, partnership interests, membership interests or other equity interests in Lessee (i) by reasons of the death of the person holding such interests or (ii) to any member or members of the immediate family of a person holding such interests or to trusts for their benefit or (iii) pursuant to an employee stock ownership plan, sale or exchange on a national exchange, or exchange of stock with Lessee's parent company, subsidiary or affiliate, (b) an assignment of the Lease for collateral purposes to a recognized lending institution in connection with the financing of King County approved redevelopment of the Premises or the lending institution's subsequent realization on such collateral assignment, (c) pursuant to a sale, reorganization, merger or consolidation of Lessee, (d) any assignment of the Lease to an affiliate of Lessee which is controlled by the same persons or entities who control Lessee, or (e) the sale of substantially all of Lessee's stock, interests or assets in at least the general geographical region in which the Premises are located.

2) As used in this Section 31, "control" (and derivatives thereof) shall mean the direct or indirect ownership of more than fifty percent (50%) of the issued and outstanding voting equity interests in an entity.

3) If King County shall give its consent to any assignment or transfer or if an assignment or transfer is made pursuant to this Section 31 that does not require King County's consent, this Section 31 shall nevertheless continue in full force and effect and no further assignment or transfer shall be made except in compliance with this Section 31.

B. If Lessee desires to assign or transfer, or grant an option for assignment or transfer, for the whole or part of the Premises, or any portion of this Lease or any interest herein, and such assignment or transfer requires King County's consent under Section 31(A) above, Lessee shall notify King County in writing of said desire and the details of the proposed agreement at least sixty (60) days prior to the proposed date of assignment or transfer, or grant of an option therefor, to a third party. The notification shall include but not be limited to a financial statement of the third party, including but not limited to a full disclosure of the monetary payment or any other consideration involved, and an affidavit from the third party stating it has examined this Lease, and, understanding this Lease, agrees to assume and be bound by all of Lessee's obligations and covenants under this Lease, the same as if it were the original Lessee hereunder, and the proposed date of assignment, transfer or grant of an option therefor. Lessee shall also provide any financial or other information regarding the proposed assignment or the assignee reasonably requested by King County.

C. Except pursuant to a transfer or assignment to an Exempt Transfer, King County reserves the right of first refusal in the event Lessee attempts to assign or transfer this Lease or any interest herein, or grant an option therefor, in a transaction that, under Section 31(A) above requires King County's consent. If King County exercises the right of first refusal, Lessee shall assign or transfer to King County, and King County shall acquire, the Lease or the interest therein, or the option therefor, on and subject to all of the terms and conditions of the proposed assignment or transfer or option therefor.

D. If Lessee assigns or transfers its interest, Lessee (Assignor) shall pay King County seventy-five percent (75%) of the Assignment Premium derived from that assignment or transfer. "**Assignment Premium**" shall mean (1) all rent, additional rent, and/or other moneys, property, and other consideration of every kind whatsoever received by Lessee (Assignor) from the assignee/transferee for, or by reason of, the assignment or transfer (including all amounts received by Lessee (Assignor) for any

Included Property), less (2) the credits detailed in Section 31(E) below. "**Included Property**" means only the leasehold improvements and fixtures and all machinery, equipment, furniture, furnishings, supplies, inventory and other personal property, tangible and intangible, owned by Lessee that are transferred to the assignee or transferee as part of the transaction. Lessee shall pay the Assignment Premium to King County as and when Lessee receives payment from such assignee or transferee.

E. Credits. The following shall be subtracted from the consideration that otherwise would be included in the calculation of the Assignment Premium:

1) Any transactional costs, fees or commissions actually paid by Lessee (Assignor) to procure the assignment or transfer, including, without limitation, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County;

2) The actual cost of alterations and leasehold improvements undertaken by Lessee, or undertaken by the transferee or assignee to the extent paid for or reimbursed by Lessee, solely to prepare the space for the assignee or transferee, including, without limitation, costs of planning, design, permitting and construction, including labor, materials and Washington state sales and use taxes, (amortized, if the consideration for the assignment or transfer is to be paid in installments, over the period of payment, commencing with the date on which the assignment or transfer commences);

3) The greater of either: a) the unamortized cost of the Included Property determined on a straight-line basis over the term of the Lease as certified to King County by Lessee's independent certified public accountant; or b) the fair market value of the Included Property as determined by an appraisal conducted by an independent and certified appraiser. Lessee shall pay the cost of such certification or appraisal and may deduct such costs from the Assignment Premium. If King County disputes the unamortized cost or fair market value of the Included Property as determined by the certified public accountant or appraiser, the procedures set

forth in Section 11(C), Arbitration shall be followed to determine the appropriate cost or fair market value;

4) The unamortized transactional costs, fees or commissions, determined on a straight-line basis over the original term of the Lease, actually paid by Lessee (Assignor) to procure the Lease itself (or, if only an interest in the Lease is being assigned or transferred, a ratable portion of such costs, fees and commissions), including, without limitation and without duplicating any of the costs included in Section 31(E)(1) above, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County; and

5) The "Goodwill Value" or Going Concern Value" of any business being sold or transferred as a part of the assignment. Unless otherwise agreed to by Lessee and King County, "Goodwill Value" or "Going Concern Value" shall be determined by a qualified valuation expert employing standard and generally recognized methods of business valuation. Lessee shall pay the cost of such valuation and may deduct such costs from the Assignment Premium.

F. Once King County has received all necessary information and documentation pursuant to this Section 31 of this Lease, King County will review the request and respond with either an approval or disapproval of the request (or, if King County so elects, King County's exercise of the right of first refusal provided for in Section 31(C) above) by the earlier of: thirty (30) days from the request or not later than ten (10) days prior to the proposed date of the assignment or transfer. Approval of any such request will not be unreasonably withheld and Lessee may in good faith dispute the reasonableness of King County's disapproval of a request. King County has the option, in its sole discretion, to charge to Lessee a reasonable fee for administrative costs actually incurred reviewing and processing any requests for assignment or transfer pursuant to this section, not to exceed, however, $1500.00.

Tenant's sole remedy for King County's failure to timely respond to a request for assignment shall be declaratory relief or specific performance, and shall not include monetary or consequential damages.

32. SUBLEASES.

A. Unless the sublease sought to be entered into is to an entity that controls, is controlled by or is under common control with Lessee (an "Exempt Sublease"); Lessee shall not sublet the whole or any part of the Premises, nor grant an option for sublease for the whole or any part of the Premises without the prior written consent of King County, which consent shall not be unreasonably withheld, conditioned or delayed. King County shall not withhold its consent to a proposed sublease or grant of an option for sublease on the ground of the subtenant's proposed use if such use is identified as a permitted use in the Lease. If King County shall give its consent to any sublease, this section shall nevertheless continue in full force and effect and no further sublease shall be made without the County's consent. No sublease authorized under this section shall relieve or release Lessee from any obligation or responsibility required of Lessee under this Lease.

B. Except with respect to an Exempt Sublease, if Lessee desires to sublease, or grant an option for sublease, for the whole or part of the Premises, or any portion of this Lease or any interest therein, Lessee shall notify King County in writing of said desire and the details of the proposed agreement at least sixty (60) days prior to the proposed date of sublease, or grant of an option therefor, to a third party. The notification shall include but not be limited to a financial statement of the third party, including but not limited to a full disclosure of the monetary payment or any other considerations involved, the proposed date of the sublease, and a copy of the sublease agreement between Lessee and new tenant. Lessee shall also provide any financial or other information regarding the proposed sublease or the sublessee reasonably requested by King County.

C. Anything in Sections 32(A) or 32(B) to the contrary notwithstanding, if King County shall consent to a sublease to a subtenant that engages in the business of letting office space, hangar space and/or tiedown spaces to third parties, no further notice to or consent from King County shall be required in connection with any such lettings, but Lessee shall provide or cause such subtenant to provide King County upon request with the names and addresses of the third parties to which such subtenant is then letting office space, hangar space and/or tiedown space.

D. King County reserves the right of first refusal in the event Lessee attempts to sublease, or grant an option therefor, any unimproved portion of the Premises to any party other than in an Exempt Sublease. A sublease of an unimproved portion of the Premises that is not an Exempt Sublease is hereinafter referred to as a "Ground Sublease."

E. If Lessee subleases all or any portion of the Premises in a Ground Sublease (other than in an Exempt Sublease), Lessee shall pay King

County seventy-five percent (75%) of the Sublease Premium derived from that sublease. "Sublease Premium" shall mean (1) all rent, additional rent, and/or other moneys, property, and other consideration of every kind whatsoever received by Lessee from the sublessee for, or by reason of, the sublease (excluding all amounts received by Lessee for any Included Property) less (2) the credits detailed in Section 32(F) below. Lessee shall pay the Sublease Premium to King County as and when Lessee receives payment from such sublessee.

F. Credits. The allocable portion of the credits set forth in Sections 31(E)(2), (3) and (5) above, as applicable, and without duplicating any such allocable portion, the following shall be subtracted from what otherwise would be included in the consideration used to calculate the Sublease Premium:

1) Any costs, fees or commissions actually paid by Lessee (Sublessor) to procure the sublease, including, without limitation, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to procuring the sublease in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County;

2) An allocable portion (based on the square footage subject to the proposed Ground Sublease as compared to the square footage of the entire Premises) of the unamortized transactional costs, fees or commissions, determined on a straight-line basis over the original term of the Lease, actually paid by Lessee (Sublessor) to procure the Lease itself, including, without limitation, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County; and

3) The Base Rent, other amounts payable under the Lease as rent and leasehold excise tax allocable to the space covered by such sublease (as reasonably determined by King County) and paid by Lessee to King County after the date of such sublease.

G. Once King County has received all necessary information and documentation pursuant to this Section 32 of this Lease, King County will review the request and respond with either an approval or disapproval of the request not later than ten (10) days prior to the proposed date of the sublease. Disapproval of any such request shall be final and binding on Lessee and not subject to any arbitration, provided that any approval will not be unreasonably withheld and Lessee may in good faith dispute the reasonableness of King County's disapproval of a request. King County, at its sole discretion, may charge to Lessee a reasonable fee for administrative costs in reviewing and processing any sublease, or grant of an option therefor, not to exceed $1500.00.

Lessee's sole remedy for King County's failure to timely respond to a request to sublease shall be declaratory relief or specific performance, and shall not include monetary or consequential damages.

33. CONDEMNATION.

A. King County and Lessee will immediately notify the other in writing of the receipt of notice of any proceedings with respect to a condemnation or intent of any authority to exercise the power of eminent domain.

B. If all of the Premises are taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Lease, this Lease terminates as of the date condemnor takes possession, and Lessee will have no claim or interest in or to any award of just compensation except that Lessee will be entitled to an amount equal to the fair market value of Lessee's leasehold interest in any improvement taken by the condemnor made to the Premises by the Lessee, but not to exceed the amount of that part, if any, of the award attributable to the value of the improvements.

C. If part of the Premises is taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Lease, and such taking results in a material adverse effect on Lessee's use or enjoyment of the Premises, Lessee may choose to terminate this Lease as of the date the condemnor takes possession. If Lessee does not elect to terminate this Lease, the rent will be reduced in the same proportion that the value of the portion of the Premises to be taken bears to the value of the entire Premises as of the date condemnor takes possession. Lessee will have no claim or interest in or to any award of just compensation or damages except that Lessee will be entitled to an amount equal to the fair market value of Lessee's leasehold interest in the part taken by the condemnor of any improvements made to the Premises by Lessee, but not to exceed the amount of that part, if any, of the award attributable to the value of the improvements.

D. If temporary use of all or a portion of the Premises is taken by any lawful authority for a period which would reduce the leasehold and, consequently, would cause the Premises to be untenantable for the use by Lessee for the purposes set forth in the section of this Lease titled "Use," then, at Lessee's determination, Lessee may choose to terminate this Lease. If Lessee elects to terminate the Lease, the Lease will terminate the date the condemnor takes possession and Lessee will have no claim or interest in or to any award of just compensation except that Lessee will be entitled to an amount equal to the fair market value of Lessee's leasehold interest in any improvements made to the Premises by Lessee. If Lessee does not elect to terminate this Lease, the Lease will continue in full force and Lessee will be entitled to receive any award from the condemnor for the use of all or part of the Premises, EXCEPT that Lessee may elect to have the rents reduced by the amount proportionally attributable to any partial temporary taking, in which event Lessee shall not be entitled to any portion of the award attributable to said use.

E. It is understood and agreed that Lessee shall not be party to any negotiation or proceedings at law wherein King County claims compensation other than that which is defined statutorily as constituting "just compensation."

34. TERMINATION BY KING COUNTY. King County reserves the right to terminate this Lease upon twelve (12) months' notice in writing to Lessee or the persons in possession of the Premises if the Premises are required by King County for the improvement or development of KCIA for public airport uses and purposes, and under such termination Lessee or persons in possession of Premises shall be reimbursed by King County for the fair market value, as defined in Section 11(A) of this Lease which shall include the additional value of the Improvements added per Section 7, of any improvements placed on the Premises by Lessee in accordance with the terms of this Lease. In the event that King County and Lessee cannot agree upon the value of said improvements, King County and Lessee shall submit to have the fair market value adjusted by arbitration in the manner described in Section 11(C).

35. NON-DISCRIMINATION.

A. Lessee shall not discriminate against any person on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expressions, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits. Lessee shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations which prohibit such discrimination. These laws include, but are not limited to, Chapter 49.60 of the Revised Code of Washington, and Titles VI and VII of the Civil Rights Act of 1964.

B. Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a U.S. Department of Transportation ("**DOT**") program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

C. Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expressions, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereof, no person on the grounds of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expressions, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

D. Lessee assures that in its use of the Premises it will substantially observe and promptly comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expressions, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal

assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

E. In addition, this Lease is subject to certain grant assurances resulting from King County's receipt of funding from the federal government. In accordance with those grant assurances, in furnishing services to the public at the Airport, Lessee shall furnish said services on a reasonable and not unjustly discriminatory basis to all users of the Airport and shall charge reasonable and not unjustly discriminatory prices for each unit or service; provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions, by way of example and not limitation, to volume purchasers, based aircraft, or charter customers.

F. Lessee will include the provisions of this Section 35, "Non-Discrimination", in all subleases of all or part of the Premises, and in all agreements at any tier for the use of all or part of the Premises.

G. Any violation of this Section 35, "Non-Discrimination", shall be considered a default of this Lease and, in addition to any other remedies available to the County, shall be grounds for termination of this Lease by the County, and may result in ineligibility for further County agreements.

36. HEIRS, AGENTS, AND ASSIGNS. Without limiting any provisions of this Lease pertaining to assignment, transfer and subletting, the provisions of this Lease bind the heirs, successors, agents and assigns of the parties to this Lease.

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

38. TIME IS OF THE ESSENCE. Time is of the essence of this Lease, and in the event of the failure of Lessee to pay any charges at the time in the manner herein specified, or to keep any of the covenants or agreements herein set forth, the Lessee shall be in default.

39. CUMULATIVE REMEDIES. No provision of this Lease precludes King County from pursuing any other remedies for Lessee's failure to perform his obligations.

40. ATTORNEY'S FEES/DEFAULT CHARGE. In the event legal action is brought by either party to enforce any of the terms, conditions, or provisions of this Lease, the prevailing party shall recover against the other party in addition to the costs allowed by law, its litigation expenses and such sum as the court may adjudge to be a reasonable attorney's fee. In addition to all other charges, Lessee shall pay a charge of $500.00 to King County for preparation of a notice of default.

41. HOLDING OVER. If the Lessee holds over after the expiration or earlier termination of this Lease, Lessee shall become a tenant from month-to-month at a rental

rate equal to one hundred-fifty percent (150%) of the rent in effect upon the date of such expiration or termination, and otherwise subject to the terms, covenants, and conditions of this Lease, except those clearly inapplicable to the month-to-month tenancy. Acceptance by King County of rent after such expiration or earlier termination shall not result in a renewal of this Lease, nor affect King County's right of re-entry or any rights of King County hereunder or as otherwise provided by law. If Lessee fails to surrender the Premises upon the expiration of this Lease despite demand to do so by King County, Lessee shall indemnify and hold King County harmless from all loss or liability including, without limitation, any claim made by any succeeding Lessee founded on or resulting from such failure to surrender, together with interest, reasonable attorney's fees, costs, and expenses.

42. HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE.

A. Definitions. "**Hazardous Materials**" as used herein shall mean:

1) Any toxic substances or waste, sewage, petroleum products, radioactive substances, heavy metals, medical, corrosive, noxious, acidic, bacteriological or disease-producing substances; or

2) Any dangerous waste or hazardous waste as defined in:

a. Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105); or

b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

c. Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or

3) Any hazardous substance as defined in:

a. Comprehensive Environmental Response, Compensation and Liability Act as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); or

b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

4) Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.

For purposes of this Section 42, "Lessee" shall mean Lessee, sublessees, contractors, agents, employees, representatives, or affiliates.

B. Environmental Compliance.

1) In the conduct of its business at the Airport, and in its use and occupancy of the Premises and the areas of the Airport outside the Premises that are available for use by Lessee and others ("the Public Areas"), Lessee shall, at Lessee's own expense, comply with all federal, state and local laws, ordinances, regulations, permits, decrees or other governmental requirements now or hereafter in effect related to Hazardous Materials and other environmental laws, including, but not limited to, laws and regulations pertaining to stormwater discharges as set by the U.S. Environmental Protection Agency and the Washington Department of Ecology, as well as such rules concerning environmental matters as may be promulgated by the Airport Manager ("the Environmental Laws"). Lessee warrants that its business and all its activities to be conducted or performed in, on, or about the Premises and the Public Areas shall comply with all of the Environmental Laws. Lessee agrees to change, reduce, or stop any non-complying activity, or install necessary equipment, safety devices, pollution control systems, or other installations as may be necessary at any time during the term of this Lease to comply with the Environmental Laws.

2) Lessee shall not without first obtaining the County's prior written approval use, generate, handle, store, treat, transport, or sell any Hazardous Materials in, on, or about the Premises or the Public Areas. In the event, and only in the event, that the County approves any of the foregoing, Lessee agrees that such activity shall occur safely and in compliance with the Environmental Laws. King County hereby approves the use by Lessee at the Premises of the Hazardous Materials identified on Exhibit C hereto.

3) Lessee shall not cause or permit to occur any violation of the Environmental Laws on, under, or about the Premises and the Public Areas, or arising from Lessee's use or occupancy of the Premises and the Public Areas. Lessee shall not undertake, or allow others to undertake by Lessee's permission, acquiescence, or failure to act, or negligence activities that result in a release or threatened release of Hazardous Materials. If Lessee's act, omission or breach of obligation under this Lease results in a release of Hazardous Materials into the environment on, about, or migrating from the Premises or the Airport that exceeds regulatory cleanup levels for use of the Premises, Lessee shall, at Lessee's expense, promptly take all actions necessary to fully and

completely remove (and to dispose of such in accordance with applicable law) all of such Hazardous Materials.

4) Lessee shall, in a timely manner and at Lessee's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental or regulatory authorities ("the Authorities" or "Authority") with jurisdiction under the Environmental Laws. If Lessee fails to fulfill any duty imposed under this section within the time specified by applicable law, or if no time is specified within a reasonable time, the County may take action; and in such case, the Lessee shall cooperate with the County in order to prepare all documents the County deems necessary or appropriate to determine the applicability of the Environmental Laws to the Premises and/or the Public Areas and Lessee's use thereof, and for compliance with the Environmental Laws, and Lessee shall execute all documents promptly upon the County's request. No such action by the County and no attempt made by the County to mitigate damages shall constitute a waiver of any of Lessee's obligations under this Section 42, Hazardous Materials and Environmental Compliance. Lessee shall immediately notify County if Lessee becomes aware of any of the following: (a) a release or threatened release of Hazardous Materials on the Premises; (b) any actual or alleged violation of any of the Environmental Laws, including any inspection reports or any other notice received from any Authority that Lessee may be in violation of any Environmental Law; and (c) any notification from any Authority that investigation, remediation or removal of Hazardous Materials is or may be required at the Premises.

5) Should any Authority demand that a remedial investigation and/or cleanup or remediation plan be prepared and that a cleanup or remediation be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials that occurs during the term of this Lease and arises from Lessee's use or occupancy of the Premises, or which arises at any time from Lessee's use or occupancy of the Premises and/or the Public Areas, then Lessee shall, in a timely manner and at Lessee's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and Lessee shall carry out all such investigation and/or cleanup or remediation plans. Any such plans are subject to the County's prior written approval. Although the County reserves the right to review and approve such plans, the County assumes no responsibility for such plans or their compliance with the Environmental Laws.

6) If King County determines in its sole discretion that an emergency exists (i) because of the deposit, spill, discharge or other release of

Hazardous Materials at or from the Premises or (ii) which arises from Lessee's use or occupancy of the Premises and/or the Public Areas, King County will take such action as King County, in its sole discretion, considers reasonable to contact Lessee and advise it of the emergency situation. If Lessee is unreachable, or is unwilling to take immediate action, King County may, but is not required to, take immediate action to address the emergency situation, and Lessee will reimburse the County for all of its costs and expenses related thereto, provided, with respect to clause (i) above, that the deposit, spill, discharge or other release of Hazardous Materials arises from Lessee's use or occupancy of the Premises. The fact that King County takes immediate action shall not relieve Lessee of any of its responsibilities under this Lease and the Environmental Laws including, without limitation, Lessee's responsibility for complying with reporting requirements.

7) In the event Lessee discovers Hazardous Materials on or under the Premises during Lessee's construction of improvements on the Premises (including during demolition and grading activities associated with such construction), not caused by Lessee or generated or released during Lessee's control of the Premises, then Lessee shall promptly notify King County of such discovery (the "Environmental Notice Date"). Lessee may terminate this Lease by written notice to King County given within 90 days of the Environmental Notice Date, during which 90-day period all rent under this Lease shall abate. If Lessee does not so terminate this Lease within said 90-day period, then this Lease shall remain in full force and effect. In the event of termination under this section, and in Lessor's sole discretion, any improvements or structures erected by Lessee shall be removed at Lessee's sole expense. Lessee shall remove and appropriately handle and dispose of, and not stockpile or otherwise leave on site, any Hazardous Materials that have been excavated or otherwise disturbed by Lessee. Lessee shall leave the Premises in substantially the same condition as prior to Lessee's discovery of Hazardous Materials, and shall not leave any Hazardous Materials uncovered or otherwise exposed to humans or to the environment.

C. Indemnification and Release.

Lessee shall be fully and completely liable to the County for, and shall indemnify, hold harmless and release the County from and against, any and all claims, liabilities, lawsuits, damages, demands, suits, losses, judgments, and costs, including but not limited to removal, remedial action, or other costs recoverable under CERCLA or MTCA; any and all other requirements, charges, interest, fees, oversight costs, or penalties (civil or criminal or

both) imposed by any Authority; and all other expenses including but not limited to claims for bodily injury or death, property damage, diminution in value or loss of use, including attorney's fees and other costs of defense ("Claims") caused by or arising from (1) the use, disposal, transportation, generation, past, present or future release or threatened release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by Lessee in, on, around, about, or emanating from the Premises, including but not limited to Lessee's remediation activities conducted under Section 7 or Section 42 of this Lease, or from Lessee's activities on adjoining property, occurring during the term of the this Lease or at any time if caused by Lessee, including exacerbation or disturbance of existing Hazardous Materials that were released in, on or about the Premises prior to the Lease; or (2) Lessee's failure to comply with any obligation in Section 42 of this Lease; or (3) any actions by County under Sections 42(B)(6) or 42(C) of this Lease; provided that the foregoing shall be subject to the provisions of Section 42(B)(7). Without limiting the generality of the foregoing, the Parties acknowledge that Claims, as defined herein, are not limited to third party Claims, but include Claims made or incurred by Lessee. Lessee's duties under this paragraph 42(C) include the duty to pay or reimburse County's direct and indirect costs to monitor or oversee Lessee's cleanup or other corrective work, including but not limited to engineering and other consulting services, sampling and studies, confirmatory testing, compliance monitoring, and administrative costs and expenses incurred in procuring and managing the same.

D. Reporting Requirements. Lessee shall comply with the Environmental Laws requiring the submission, reporting, or filing of information concerning Hazardous Materials with the Authorities, and shall provide to the County a full copy of any such submission, filing or report as submitted within 15 days of such submission.

E. Right to Check on the Lessee's Environmental Compliance. The County expressly reserves the right to conduct, and Lessee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the Premises as the County, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems.

F. Remedies. Upon any default by Lessee under this Section 42, Hazardous Materials and Environmental Compliance, and the expiration of the notice and cure period provided in Section 24 above, Default and Re-Entry, the County shall be entitled to the following rights and remedies in addition to any other rights and remedies that may be available to the County:

1) At the County's option, to terminate this Lease pursuant to Section 34 above, but effective immediately; and/or,

2) At the County's option, to perform such action as is required to bring the Premises and any other areas of the Airport affected by Lessee's default into compliance with the Environmental Laws and to recover from Lessee all of the County's costs and expenses in connection therewith; and/or

3) To recover from Lessee any and all damages associated with the default, including but not limited to, response, remediation and cleanup costs, expenses and charges, civil and criminal penalties and fees, adverse impacts on marketing the Premises or any other areas of the Airport, loss of business and sales by the County and other Lessees of property at the Airport, diminution of value of the Premises and/or other areas of the Airport, the loss of or restriction of useful space in the Premises and/or other areas of the Airport, and any and all damages and claims asserted by third parties, and the County's reasonable attorneys' fees, costs and expenses.

G. Remediation on Termination of Lease. Upon the expiration or termination of this Lease, Lessee shall remove, remediate or clean up any Hazardous Materials on, or emanating from, the Premises caused by Lessee as required by applicable laws ("Termination Cleanup"). The process for such Termination Cleanup is subject to the County's prior written approval. Although the County reserves the right to review and approve the Termination Cleanup process, the County assumes no responsibility for it or its compliance with the Environmental Laws.

If Lessee fails or refuses to commence the Termination Cleanup process, or fails to reasonably proceed toward completion of such process, within the time specified by law or within a reasonable time if no time is specified, the County may elect to perform such Termination Cleanup after providing Lessee with written notice of the County's intent to commence Termination Cleanup, and after providing Lessee a reasonable opportunity, which shall not be less than ninety (90) days after such notice (unless the County is given notice by a government or regulatory agency with jurisdiction over such matter that Termination Cleanup must commence within a shorter time), to commence or resume the Termination Cleanup process. If the County performs such Termination Cleanup after said notice and Lessee's failure to perform same, Lessee shall pay all of the County's costs and expenses.

H. Survival. Lessee's obligations and liabilities under this Section 42, Hazardous Materials and Environmental Compliance, shall survive the expiration or termination of this Lease.

43. PUBLIC USE AIRPORT. The Premises and KCIA are subject to the terms of certain sponsor's assurances made to guarantee the public use of the public airport area of KCIA as incidental to grant agreements between King County and the United States of America; provided, that in the event at any time during the term of this Lease the terms of such assurances should effectively prohibit Lessee's use of the Premises in the general manner contemplated by the parties to this Lease, then such effective prohibition shall be considered as taking by the public and Lessee or person or persons in lawful possession of the Premises may, upon thirty (30) days prior written notice given to King County, terminate this Lease.

44. RIGHT OF FLIGHT. There is hereby reserved to Lessor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

The right of free passage of aircraft shall be in the airspace over the above described property at the height prescribed by Part 77 of the Federal Aviation Regulations to an infinite height above said mean sea level and shall be for the exclusive benefit of Lessor, its successors and assigns (the "Aviation Right of Way"). Lessor represents that the Project, as defined in the Lease, does not and, upon completion, will not interfere with the Lessor's Aviation Right of Way. Lessor explicitly waives its continuing right to prevent, abate, or remove the Project and any Lessor approved alterations or improvements in connection with Lessor's Aviation Right of Way.

Lessor shall have the continuing right to prevent the erection or growth upon the Premises of any building, structure, trees or any other object extending into the airspace above said surface at the height prescribed by Part 77 and to remove from said airspace, or at the sole option of Lessor, to mark and light as obstructions to air navigation, any such building, structure, trees or other objects now upon, or which in the future may be upon the Premises, together with the right of ingress to and egress from and passage over all the Premises (airspace and surface space) for such purposes.

In the event Lessee (or anyone holding through Lessee) interferes with Lessor's right of free passage, Lessor reserves the right to enter upon the Premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Lessee.

Lessee by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the Premises in any manner that might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, Lessor reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of Lessee.

45. EMPLOYEE CONDUCT. Lessee shall require and be responsible for the full compliance by its officers, agents, employees, customers and guests with the rules and regulations of the Federal Aviation Administration and KCIA.

46. SEVERABILITY. If any term or provision of this Lease or the application of any term or provision to any person or circumstance is invalid or unenforceable, the remainder of this Lease, or the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and will continue in full force.

47. GOVERNING LAW/VENUE. This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington. Venue for any legal proceeding shall be exclusively in King County Superior Court, Seattle, Washington.

48. QUIET ENJOYMENT. So long as Lessee is not in default under this Lease, subject to Sections 48(A) and (B) below, King County shall at all times during the term and subject to the provisions of this Lease ensure that Lessee shall peacefully and quietly have and enjoy the possession of the Premises without any encumbrance or hindrance.

A. This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of said Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

B. This Lease shall be subordinate to the provisions of and requirements of any existing or future agreement between Lessor and the United States relative to the development, operation, or maintenance of the Airport. (FAA Order 5190.6AB- AGL-600).

IN WITNESS WHEREOF, the parties hereto have subscribed their names effective as of the _____ day of _____, 2016.

LESSEE:

HANGAR TWO, LLC,
of the
a Washington limited liability company

BY: _____
Chuck Kegley, Manager

DATE: 6-15-16

LESSOR:

KING COUNTY, a political subdivision
State of Washington

BY: _____
Anthony Wright, Director
Facilities Management Division

DATE: _____

CONSENT:

KING COUNTY INTERNATIONAL AIRPORT

BY: _____
Randall D. Berg, A.A.E., Director

DATE: _____

APPROVED AS TO FORM:

BY: _____
Ian Taylor, Senior Deputy
King County Prosecuting Attorney

DATE: _____

STATE OF WASHINGTON )
) ss.
COUNTY OF KING )

On this ____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Anthony Wright, to me known to be the Director of the King County Facilities Management Division, a Political Subdivision of the State of Washington, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that said person was authorized to execute the said instrument for King County.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

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

STATE OF WASHINGTON )
) ss.
COUNTY OF KING )

On this 15 day of June, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Chuck Kegley, to me known to be the Manager of Hangar Two, LLC, a limited liability company, who executed the foregoing instrument and acknowledge the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that said person was authorized to execute said instrument on behalf of Hangar Two, LLC.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Evelin Godinez
Printed Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle WA
My Commission Expires: 7-22-2017

Notary Public
State of Washington
EVELIN GODINES
MY COMMISSION EXPIRES
July 22, 2017

STATE OF WASHINGTON )
) ss.
COUNTY OF KING )

On this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Joe Clark, to me known to be a member of Hangar Two, LLC, a limited liability company, who executed the foregoing instrument and acknowledge the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that said person was authorized to execute said instrument on behalf of Hangar Two, LLC.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

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

## EXHIBIT A

## LEGAL DESCRIPTION OF PREMISES UNDER LEASE

A tract of land in the East half (E1/2) of Section 33, Township 24 North, Range 4 East, Willamette Meridian, (Sec.33, T.24 N., R. 4E., W.M.) described as follows:

Commencing at a concrete monument designated as monument "E" and having U.S. Coast and Geodetic Survey coordinate values of: x equals 1,638,709.88; y equals 193,999.64; thence North 27°12'26" East 841.27 feet to a point; thence North 2°52'05" East 197.12 feet to a point; thence North 29°52'38" West 41.98 feet to a point; said point being the TRUE POINT OF BEGINNING; thence South 60°07'22" West 112.5 feet to a point on the apron limit line which is 150 feet from the centerline of the SE Taxiway; thence North 29°52'38" West along said line 449 feet; thence North 60°07'22" East along the common lease line of Flightcraft, Inc. 508.35 feet, more or less, to a point that is 15.0 feet from the centerline of Perimeter Road; thence running parallel to said road South 17°08'44" East 460.30 feet; thence South 60°07'22" West along the common lease line of Seattle Air Corporation 294.41 feet, more or less, to the TRUE POINT OF BEGINNING; said tract of land contains an area of 205,476 square feet.

# EXHIBIT A-1

## DIAGRAM OF PREMISES UNDER LEASE

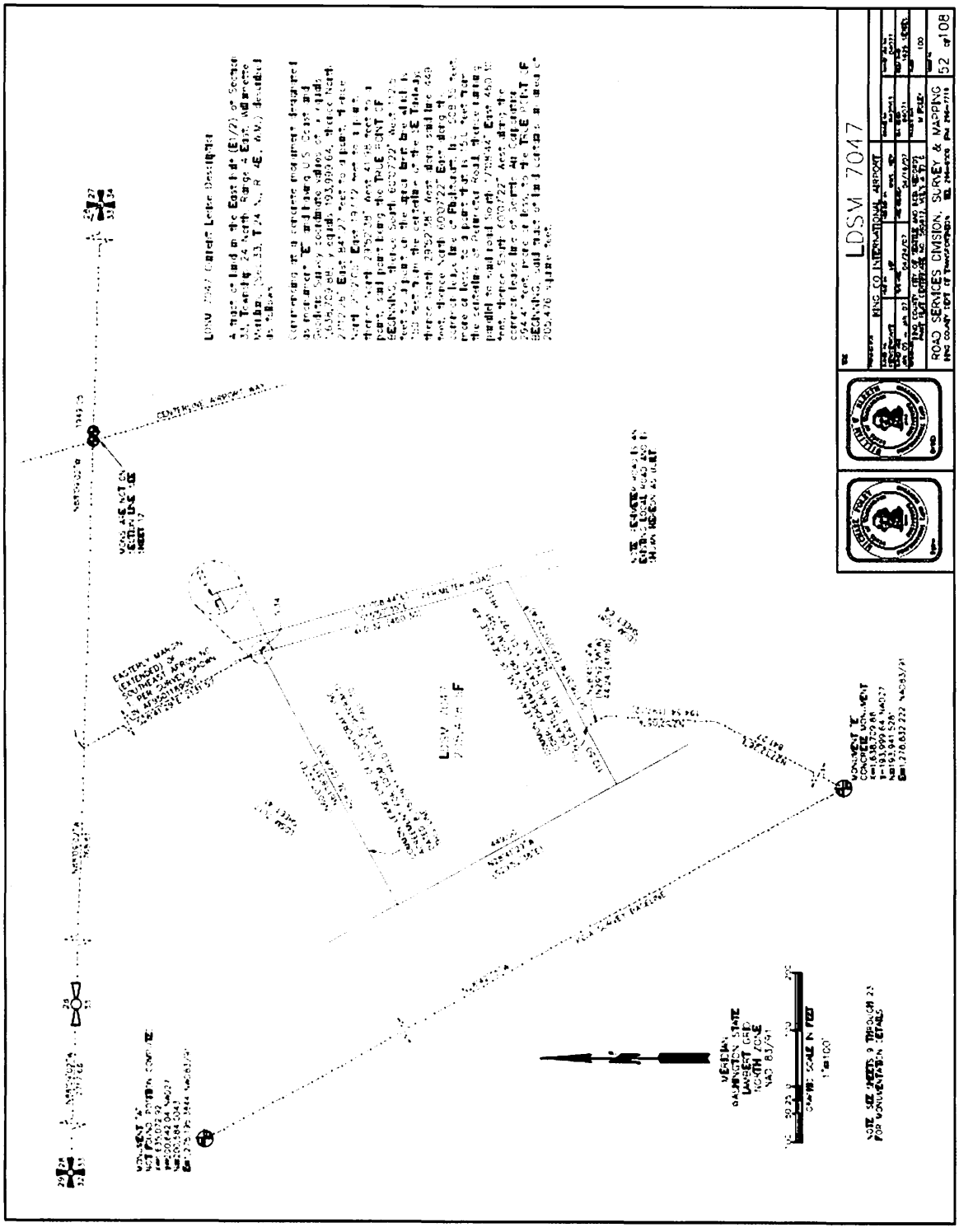
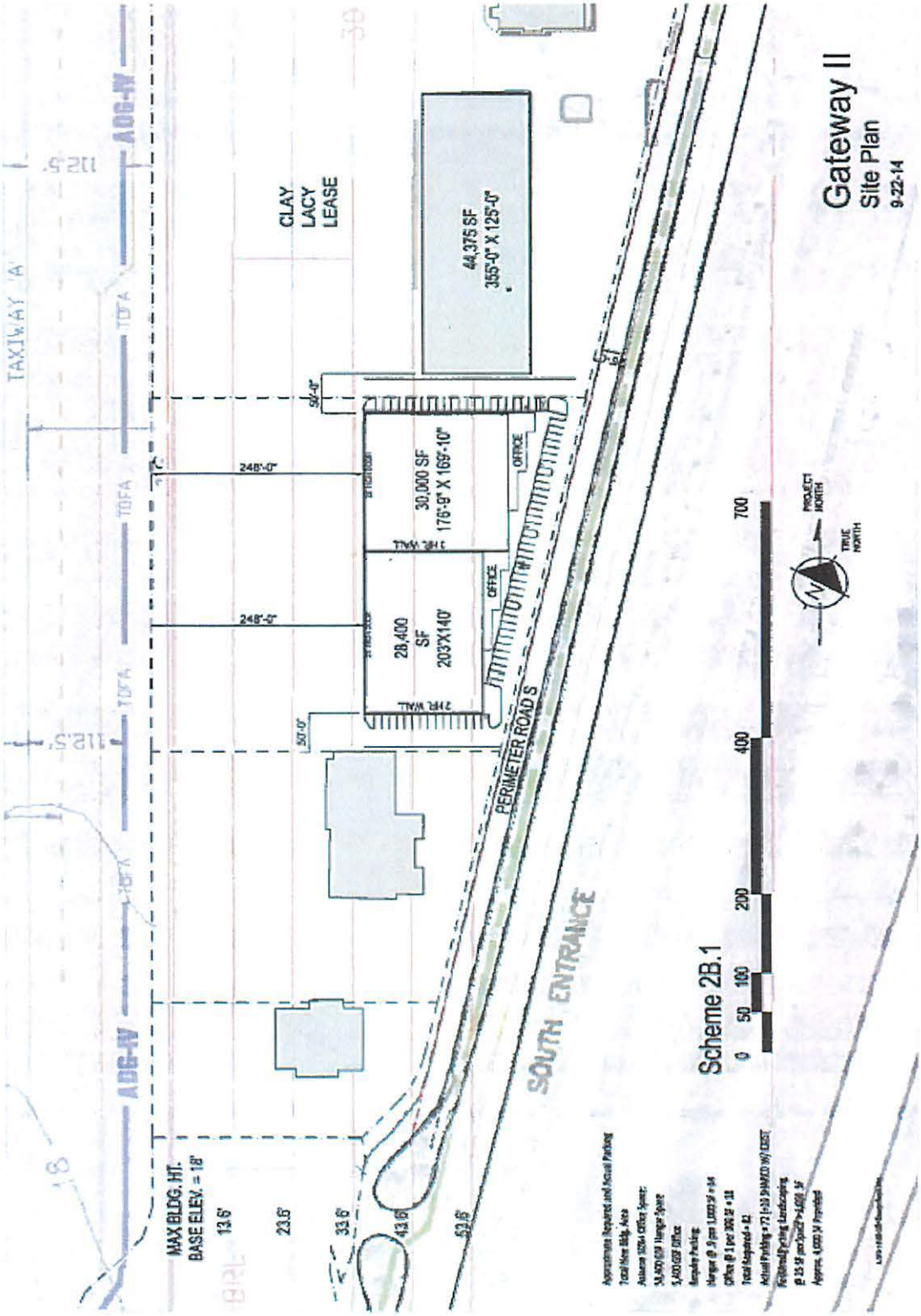
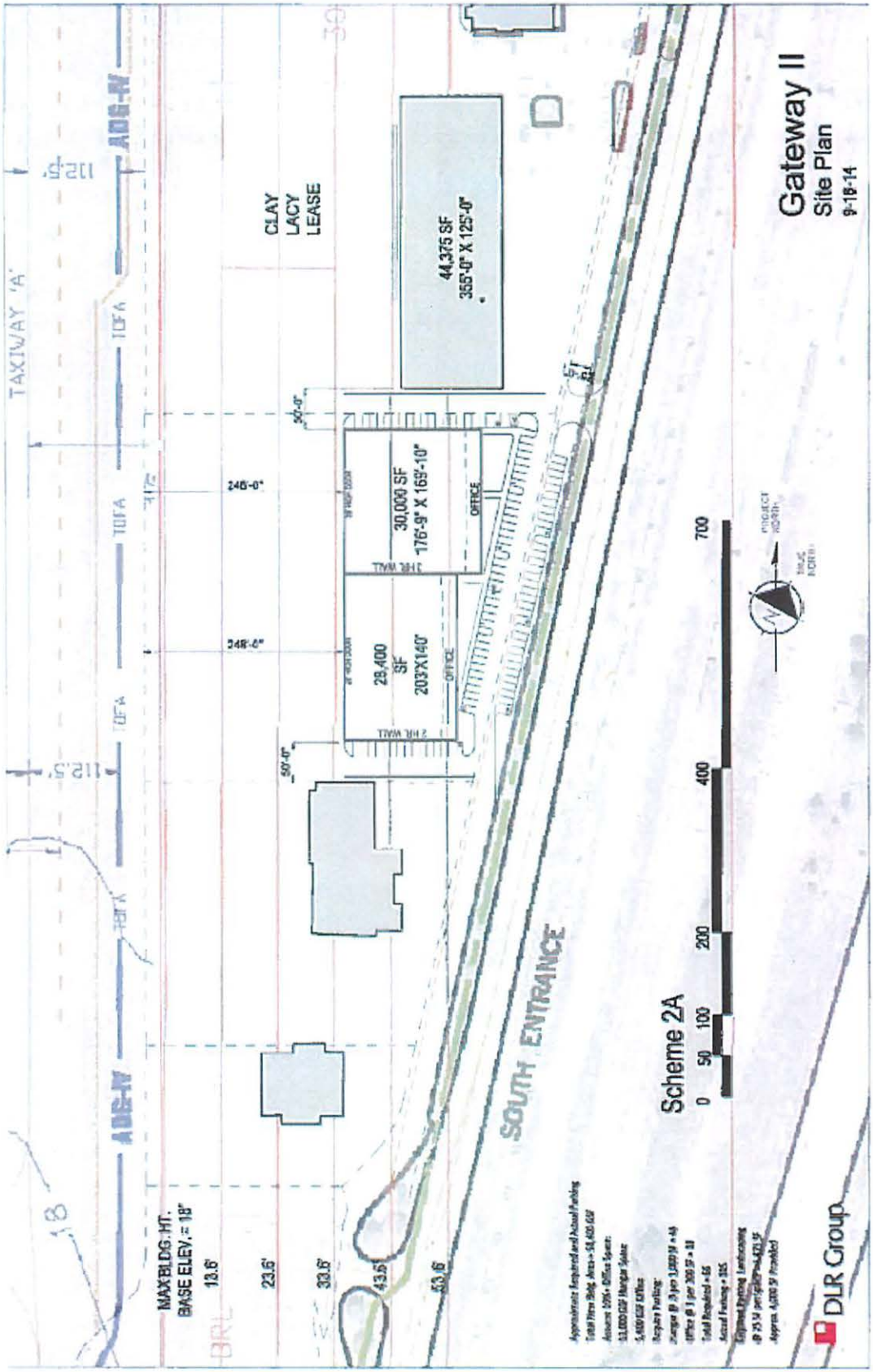


**EXHIBIT B**

**SITE PLAN**




Gateway II
Site Plan
9-18-14
TAXIWAY 'A'
CLAY
LACY
LEASE
44,375 SF
355'-0" X 125'-0"
30,000 SF
176'-9" X 169'-10"
28,400
SF
203'X140'
OFFICE
SOUTH ENTRANCE
Scheme 2A
0 50 100 200 400 700
MAX BLDG. HT.
BASE ELEV. = 18'
13.6'
23.6'
33.6'
43.6'
53.6'
DLR Group

## EXHIBIT C

### LIST OF APPROVED HAZARDOUS MATERIALS

Gateway USA, LLC Potential Hazardous Materials

| | A | B |
|---|---|---|
| 1 | TYPE/ITEM NAME | MANUFACTURE |
| 2 | BUTANE FUEL | RONSON |
| 3 | AEROSPACE SEALANT AC-665 B-2 BASE | 3M |
| 4 | AEROSPACE SEALANT AC-665 B-2 CATALYST | 3M |
| 5 | POLYGONE 300-AG POLYSULFIDE STRIPPER | RPM TECHNOLOGY |
| 6 | AEROSPACE SEALANT AC-665 B-1/2 | 3M |
| 7 | DOT 3 BRAKE FLUID | NAPA |
| 8 | GREEN ZINC CHROMATE METAL PRIMER | SPRAY |
| 9 | METHYL ETHYL KETONE (MEK) | CSD INC |
| 10 | ACETONE | SUNNYSIDE |
| 11 | MINERAL SPIRITS TYPE 1 | HISCO CO. |
| 12 | VARSOL | RANDOLPH PRODUCTS |
| 13 | CP AGE MASTER NO.1 RUBBER PROTECTIVE AGENT | GOODRICH |
| 14 | ICEX II | GOODRICH |
| 15 | SHINE MASTER PREP | GOODRICH |
| 16 | SHINE MASTER | GOODRICH |
| 17 | MIL-H-5606A HYDRAULIC FLUID | ROYCO |
| 18 | SKYDROL LD-4 | SOLUTIA INC |
| 19 | 586 M MINERAL OIL EC135 | NOT AVAILABLE |
| 20 | TURBO OIL 2380 | BP |
| 21 | TURBINE OIL 808 | ROYCO |
| 22 | JET OIL II | MOBIL |
| 23 | | |

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ATTACHMENT 2

June 24, 2016

The Honorable Joe McDermott
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember McDermott:

This letter transmits an ordinance that will enable King County to lease a portion of King County International Airport property to Hangar Two, LLC, in support of the provision of King County operations and services.

This transaction is recommended per the rationale and considerations provided in the attached property summary.

Leasing of this property furthers the King County Strategic Plan guiding principle of Financial Sustainability and goal of of delivering a seamless network of transportation options to get people where they need to go when they need to get there.

A direct negotiation letter regarding this transaction with Hangar Two, LLC, is attached. The intent to execute this lease was advertised for two weeks in a public newspaper as required in KC.C. 4.56.160.B.

Thank you for your consideration of this ordinance.

If you have any questions, please feel free to contact Anthony Wright, Director, Facilities Management Division, at 206-477-9352.

Sincerely,

Dow Constantine
King County Executive

Enclosures

cc: King County Councilmembers
ATTN: Carolyn Busch, Chief of Staff
Anne Noris, Clerk of the Council
Carrie S. Cihak, Chief of Policy Development, King County Executive Office
Dwight Dively, Director, Office of Performance, Strategy and Budget
Caroline Whalen, County Administrative Officer, Department of Executive Services (DES)
Anthony Wright, Director, Facilities Management Division (FMD), DES
Hien Dung, Interim Manager, Real Estate Services, FMD, DES
Harold Taniguchi, Director, Department of Transportation (DOT)
Randall Berg, Airport Division Director, DOT

8/17/16

Hangar II new Att A

**1**

Sponsor: McDermott

LK

Proposed No.: 2016-0315

**AMENDMENT TO PROPOSED ORDINANCE 2016-0315, VERSION 1**

Delete Attachment A, Lease Agreement, and insert Attachment A, Lease Agreement, dated August 11, 2016.

**Effect: Replaces the original lease with a revised lease.**

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**KING COUNTY INTERNATIONAL AIRPORT**
7277 Perimeter Road South
Seattle, Washington 98108
(206) 296-7380

**LEASE AGREEMENT**

1. PARTIES. This Lease ("Lease") effective the _____ day of _____ 2016, is entered into between King County (sometimes referred to as "County" or "Lessor"), a municipal corporation and a political subdivision of the State of Washington, and Hangar Two, LLC, a Washington limited liability company ("Lessee").

2. PREMISES. King County hereby rents to Lessee, upon the following terms and conditions, premises located in King County, Washington, (hereinafter referred to as "Premises"), legally described as follows (see Exhibit A "Legal Description of Premises Leased" attached and "Exhibit A-1 Diagram of Premises Under Lease"), and commonly known as:

**8453-8500** Perimeter Road South, Seattle WA 98108
Approximately **205,476** square feet

The Premises are situated within the King County International Airport with its principal place of business located at 7277 Perimeter Road South, Seattle, Washington ("Airport").

3. TERM. The term of this Lease is for thirty-five (35) years (the "Lease Term"). The Lease shall commence on February 18, 2017 (the "Commencement Date"), and end on the Thirty-Fifth (35th) anniversary of the Commencement Date, unless terminated earlier in accordance with this Lease or extended pursuant to Section 7.

4. RENT. Lessee shall pay to King County a rent of **$32,533.70 DOLLARS** payable in advance on or before the first day of each and every calendar month of the Lease Term. The rent is calculated on 205,476 square feet of raw land at $1.90/sf/year. Lessee shall also pay on the base rent a Leasehold Excise Tax levied pursuant to RCW Chapter 82.89A of **$4,177.33 DOLLARS** per month, which is based on the current Leasehold Excise Tax rate of 12.84%.

All rents and taxes shall be made payable to the KING COUNTY INTERNATIONAL AIRPORT and are to be received in the office of:

King County International Airport
7277 Perimeter Road South, Suite 200
Seattle, Washington 98108

Said rental is exclusive of any other sale, franchise, business or occupation, or other tax based on rents. Should any such taxes apply during the life of this Lease, the rent shall be increased by such amount.

5. SECURITY AND DAMAGE DEPOSITS. At the time of signing of this Lease, the Lessee shall pay the first (1st) month's rent and leasehold tax. In addition, the Lessee shall deposit with King County the sum of **$73,422.06 DOLLARS** as a deposit for performance of all obligations required by this Lease. The return of this deposit, or any portion of it, shall be conditioned on the performance of all the Lessee's duties. Within (60) days after termination of the tenancy and vacation of the premises King County will return any sum due the Lessee from this deposit retained by King County. Furthermore, the Lessee understands and agrees that all rents, late charges, utility bills owing, or any other obligation required under this Lease, including damage and cleaning may be deducted from the deposit at the time of Lessee's vacation of the Premises if any amount remains in that fund after subtraction of damage and cleaning costs with the balance paid to Lessee. The deposits need not be held in any special account and no interest will be paid thereon.

6. USE. Lessee shall use said Premises for the following permitted purposes and no others without prior written consent of King County, which shall not be unreasonably withheld, conditioned or delayed:

A. Aircraft sales (new and used)
B. Aircraft maintenance service, including engine and accessory overhaul
C. Flight training
D. Air taxi, charter and cargo operations
E. Aircraft parts and accessory sales
F. Transient aircraft service
G. Tie-down and hangar rental
H. Avionics sales and service
I. Aviation business related office and commercial space rental
J. Aircraft Fuel Sales and Storage
K. Personal or general services to aircraft customers, including any concessionaires such as snack bar services, coffee and car rental services, provided said car rental services shall be conducted under separate agreement with King County identical to the terms of King County's agreement with other car rental concessions at Boeing Field/KCIA, as amended from time to time.
L. Any other items in the future that may develop as a function of general aviation business, except that each usage must be approved in writing by King Count

All services must be approved or accredited by the Federal Aviation Administration (F.A.A.) where such approval or accreditation is necessary.

Lessee agrees to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided, that the Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

Lessee shall use the entire Premises in a businesslike and responsible manner during the entire term of this Lease, with the exception of temporary closures for such periods as may reasonably be necessary for repairs or redecoration or for reasons beyond Lessee's control.

Lessee shall obtain, at Lessee's sole cost and expense, any and all licenses and permits necessary for Lessee's contemplated use of the Premises. Lessee shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations to emanate from the Premises, nor take any other action which would constitute a nuisance or which would disturb or endanger any other tenants of the Airport, or unreasonably interfere with such other tenants' use of their respective space. Lessee agrees not to do or permit anything to be done in or about the Premises which will in any manner obstruct or interfere with the rights of other tenants or occupants of the Airport, or injure or unreasonably annoy them, or use or allow the Premises to be used for any unlawful or unreasonably objectionable purpose. Lessee shall neither commit nor suffer any waste to the Premises and shall, at its sole cost and expense, keep and maintain the Premises and all improvements thereon and all facilities appurtenant thereto in good order and repair and safe condition, and the whole of the Premises, including all improvements and landscaping, in a clean, sanitary and attractive condition.

No other uses, activities or operations, shall be conducted by the Lessee from the Premises without first obtaining the written consent of King County. To the best of King County's knowledge, there are no conditions, restrictions or encumbrances to which the Premises and Project are subject that would preclude the redevelopment and use of the Premises by Lessee as provided for in this Lease. Upon the Commencement Date, King County shall deliver the Premises to Lessee free and clear of all tenancies or occupancies of any kind.

The right of Tenant to sell and store fuel, as contemplated in Section 6(J), is granted solely on the Tenant's fueling and storage rights on Tenant's adjacent property (Lease No. 7017). Under no circumstances may Tenant's right to sell or store fuel be assigned or transferred with this Lease without the express written consent of King County, not to be unreasonably denied.

7. CONSTRUCTION OF IMPROVEMENTS. King County hereby approves the conceptual plans for the proposed improvements by Lessee of a hangar, offices and aircraft ramp ("Improvements") on the Premises ("Project"), as more specifically described in ("Exhibit B Site Plan 2B.1") attached hereto. Lessee acknowledges that King County's Department of Permitting and Environmental Review ("DPER") is the building permitting agency for the Project. Lessee shall submit to DPER a building permit application (including detailed plans and specifications) for the Improvements described in Exhibit "B" within 60 days after execution of this Lease; however, by entering into this Lease, the County does not warrant DPER will issue any required permit. Lessee shall also use commercially reasonable efforts to obtain all permits for the Project (in final, unappealable form) from agencies with jurisdiction, including the requirements set forth in Section 14(C) of this Lease, in a form satisfactory to the County (the "Project Approvals") no later than one (1) year from the date of King County Council approval of

the Lease (the "Outside Permit Date"), and shall commence demolition, at Lessee's sole expense, of existing improvements on the Premises within 30 days of the date all Project Approvals are obtained, or earlier at Lessee's option, provided Lessee has obtained the necessary permits (the "Demolition Commencement Date"). Lessee shall thereafter undertake and complete the permitted Improvements within a commercially reasonable amount of time following the later of: the date all Project Approvals are obtained or Demolition Commencement Date. All dates and timelines contemplated herein are subject to Acts of God and/or Force Majeure, including but not limited to labor issues, severe weather and any other significant and impactful issue or event not within the reasonable control or mitigation of Lessee. If Lessee determines, in its sole discretion, that it cannot obtain the Project Approvals to enable it to achieve Substantial Completion for the Project, which for the purposes of this Lease means the date on which Lessee first obtains a Certificate of Occupancy from the applicable permitting jurisdiction for the Improvements, then Lessee may terminate this Lease by written notice to King County given within thirty (30) days following the Outside Permit Date, with all rents paid, forfeited by Lessee to King County and Lessee responsible for all costs it incurred arising out of or related to the Lease, including but not limited to permit costs, design and development expenses, construction costs, environmental remediation, and costs associated with the demolition of the existing hangar. If Lessee has timely filed applications for the Project Approvals but the Project Approvals have not been issued within thirty (30) days following the Outside Permit Date, then Lessee may extend the Outside Permit Date one time by an additional six (6) months.

If Lessee fails to achieve Substantial Completion of the Improvements within a reasonable amount of time, as determined solely by King County, and fails to cure such lack of Substantial Completion within ninety (90) days after written notice from King County (or if such cure cannot reasonably be effected within said 90-day period, then Lessee shall commence such cure within said 90-day period and prosecute such cure to completion with diligence), then at the election of King County, this Lease may be terminated and all rentals paid shall be forfeited by Lessee to King County and Lessee shall be responsible for all costs it incurred arising out of or related to the Lease, including but not limited to permit costs, design and development expenses, construction costs, environmental remediation costs and costs associated with the demolition of the existing hangar.

In the event King County or Lessee exercises termination rights under this Section 7, Lessee shall have no obligation or liability with respect to reconstructing improvements or continuing to pursue the construction of new improvements on the Premises in the event Lessee has commenced or completed the demolition on the existing improvements in accordance with this Lease at the time of such termination.

The total value of the Improvements described in this Section shall be at least $8,000,000.00, as evidenced by written documentation to be approved of by King County prior to the commencement of construction. In accordance with King County Code 4.56.180(3), Lessee may request, and Lessor, in its sole discretion not to be unreasonably denied (taking into consideration economic development, fiscal benefits, job creation, additional airport revenue and other elements that result from Lessee's proposed business

development that serves major airport purpose), may offer Lessee an extension of the 35-year Lease Term equal to the estimated useful life of any required Improvements described in this Section, but not to exceed a total of fifty (50) years. If Lessee accepts the extension of the Lease Term, Lessee may propose renegotiating the Fair Market Rental Value after due consideration of all element reasonably affecting value as set forth in King County Code 4.56.010. The "value of the Improvements" as used in this Section, includes actual demolition costs, as well as permitting and actual costs associated with the permanent improvements erected on the Premises. In accordance with Section 21, Lessee shall be required to provide King County with a Contractor's Performance and Payment surety bond for the cost of the Improvements.

Notwithstanding the provisions of Section 42(B)(7), Lessee is solely responsible for all environmental remediation on the Premises during the construction of the Improvements, regardless of the source of the Hazardous Material being remediated or the party responsible for its generation, provided that nothing in this Lease (including the hold harmless provisions set for in Section 15, 18 and 42 of this Lease) shall preclude Lessee from seeking contribution and/or reimbursement from any other party, except King County, potentially responsible for the costs of Hazardous Materials remediation under any Environmental Law. The "value of the improvements," as used in this Section, includes reasonable and necessary remedial action costs, up to a maximum of $500,000.00, to develop the Improvements. Remedial action costs that may be included in the value of improvements shall be limited to costs to investigate, sample or test, segregate, export, dispose of or otherwise manage any soil, groundwater, surface water or sediment containing Hazardous Materials that exceed the costs of handling or managing the soil, groundwater, surface water or sediment had it not contained Hazardous Materials. For purposes of including remediation costs toward the "value of improvements", environmental remediation does not include remediation of Hazardous Materials caused or generated by Lessee during its control of the Premises. Lessee shall remediate Hazardous Materials under this Section to the applicable cleanup standards under Environmental Laws that will allow for unrestricted use of the Premises with no environmental covenant or other deed restriction required to be recorded, unless Lessor, in its sole discretion, agrees otherwise in writing. In no event shall Lessee pursue costs recovery or contribution action against King County for environmental remediation performed pursuant to this Section 7.

8. ENTIRE AGREEMENT AMENDMENTS. This Lease and any and all exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole agreement between the parties. There are no terms, current or past representations, obligations, covenants or conditions other than those contained herein. No modification or amendment of this Lease shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

9. NOTICES. Required notices except legal notices shall be given in writing to the following respective addresses:

TO COUNTY: King County, Real Estate Services
500 Fourth Avenue, Suite 830

Seattle, WA 98104-2337
Attention: Lease Administration

With a copy to: Airport Director
King County International Airport
7277 Perimeter Road South
Seattle, WA 98108-3844

TO LESSEE: Hangar Two, LLC
c/o Gateway USA, LLC
8285 Perimeter Road South
Seattle, Washington 98108

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices sent by mail shall be deemed to have been given when properly mailed.

10. LATE PAYMENT, TAXES, LICENSES, FEES AND ASSESSMENTS.

A. LATE PAYMENTS. Lessee acknowledges that the late payment by Lessee to King County of any rent or other sums due under this Lease will cause King County to incur administrative, collection, processing and accounting costs and expenses not contemplated under this Lease, the exact amounts of which are extremely difficult and impractical to fix. Therefore, if any rent or other sum due under this Lease is not received by King County from Lessee by the tenth calendar day of the month in which said rent or other sum is due ("the Delinquency Date"), Lessee shall immediately on the Delinquency Date pay to King County a late charge equal to the greater of (i) five percent (5%) of the amount of such rent or other sum, or (ii) Five Hundred Dollars ($500.00). King County and Lessee agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to King County for its loss caused by Lessee's nonpayment. Should Lessee pay said late charge but fail to pay contemporaneously therewith all unpaid amounts of rent or other sums due under this Lease, King County's acceptance of this late charge shall not constitute a waiver of Lessee's default with respect to Lessee's nonpayment or prevent King County from exercising all other rights and remedies available to King County under this Lease or under law. Additionally, all such delinquent rent or other sums, and all late charges not paid when due, shall bear interest for each day following their Delinquency Date until paid at a percentage rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted under applicable laws. Waiver of the late charge or interest with respect to any delinquent payment will not be deemed to constitute a waiver of the late charge or interest with respect to any subsequent delinquent payment. Any payments of any kind returned for insufficient funds will be subject to an additional charge of $50.00 payable by Lessee

to King County. In addition, if payments are received by check or draft from Lessee, and two (2) or more of such checks or drafts are dishonored by the bank or other financial institution they were drawn upon in any twelve (12) month period, King County may thereafter require all rent and other payments due hereunder from Lessee to King County to be made by bank cashier's or bank certified check or other similar means of payment and King County shall not be required to accept any checks or drafts of Lessee which do not comply with such requirements.

B. LEASEHOLD TAX. A Leasehold Excise Tax, if applicable, is levied pursuant to the Revised Code of Washington (R.C.W.) Chapter 82.29A. The Lessee agrees to pay this tax to King County. If the State of Washington changes the Leasehold Excise Tax or if King County receives authorization to levy this tax, the tax payable shall be correspondingly changed.

C. LICENSE, TAXES AND FEES. Throughout the term of this Lease, Lessee shall pay all applicable taxes and all license and excise and other applicable fees including, but not limited to, fuel flowage fees and landing fees, covering the business conducted on the Premises as provided for in King County Code Title 15 as now existing and as it may be amended.

D. MITIGATION ASSESSMENTS. Lessee shall, subject to sixty (60) days prior notice and reasonable opportunity to object, pay any mitigation assessment now in effect or hereafter established, by any municipality, agency or organization, including King County, having jurisdiction over King County International Airport. Lessee's portion of the assessment will be based on their contribution, or pro rata share, of the condition and/or circumstance which is being mitigated and/or their proportionate use of the improvement requiring mitigation investment.

11. RENT ADJUSTMENT. To ensure a fair rent based upon the fair market value of the Premises, King County shall adjust the rent (*i.e.,* by increasing or decreasing the rent) to the then current Fair Market Rental Value (as defined below) no sooner than every five years. The first adjustment will occur no sooner than the anniversary of the Lease Commencement Date in 2022 and each subsequent Rent Adjustment Date, as defined below (the "FMV Adjustment"). Subsequent adjustments will take effect no sooner than the fifth anniversary of the previous FMV Adjustment. The date on which a FMV Adjustment becomes effective is referred to hereafter as "**Rent Adjustment Date**". The five year period commencing on the Rent Adjustment Date is referred to hereafter as "**the Succeeding Period**".

A. FAIR MARKET RENTAL VALUE DEFINED. For all purposes required under this Lease, "**Fair Market Rental Value**" is defined as: An amount in the competitive market that a well-informed and willing lessor, who desires but is not required to lease, would accept, and which a well-informed and willing lessee, who desires but is not required to lease,

would pay for the temporary use of the Premises (excluding improvements to the Premises constructed at Lessee's expense made during the term of the lease), after due consideration of all the elements reasonably affecting value

B. NOTICE OF RENTAL ADJUSTMENT. When it elects to adjust the rent, King County will give Lessee at least thirty days written notice of the adjusted rent for the Succeeding Period. The rent as adjusted shall take effect on the Rent Adjustment Date specified in the notice. Unless Lessee, within thirty days following receipt of notice from King County, gives King County written notice of its rejection of the adjusted rent together with Lessee's statement of the amount Lessee considers to be the Fair Market Rental Value, the rent as adjusted by King County will become the rent for the Succeeding Period. If Lessee so notifies King County of its rejection of the adjusted rent, the parties may negotiate in good faith in an attempt to agree upon the rent adjustment.

C. ARBITRATION.

1) If, thirty days after King County receives Lessee's notice of its rejection of the rent as adjusted by King County, Lessee and King County cannot agree upon the rent adjustment, the rent for the Succeeding Period will be adjusted by arbitration. Lessee and King County will each select one disinterested arbitrator, and the two selected arbitrators will select a third.

2) King County will give Lessee written notice of the name and address of its selected arbitrator and his or her qualifications. Unless otherwise agreed in writing by King County, Lessee shall give King County written notice of the name and address of Lessee's selected arbitrator and his or her qualifications within thirty days after Lessee's receipt of King County's notice. If Lessee fails to so provide its written notice to King County, Lessee shall be deemed to waive its right to arbitration, the arbitration shall not proceed, and the rent as adjusted by King County shall become the rent for the Succeeding Period.

3) If the two arbitrators have not selected a third arbitrator within thirty days after the selection of the last selected of the two, either Lessee or King County will apply to the Presiding Judge of the Superior Court in King County for the appointment of a third arbitrator.

4) Each arbitrator will be a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, or other appraisal society or association having equivalent ethical and professional standards. If, in the future, a licensing requirement

for real estate appraisers is imposed by any legislative body with jurisdiction, each arbitrator shall also be licensed. The arbitrators shall not only be impartial, but also shall not have been an employee of, or retained under contract by, either party (King County International Airport or Lessee) for a period of one year before the arbitration, and shall have no financial interest in the subject of the arbitration. Within fourteen days of a party receiving the written notice of the other party's selected arbitrator or within 14 days of the appointment of the third arbitrator, either party shall have the right to disqualify the other party's selected arbitrator or the appointed third arbitrator who does not meet the requirements of this Section by sending a written notice to the other party and to all the arbitrators stating the grounds for disqualification. If the disqualified arbitrator is a party-appointed arbitrator, then that party shall, within fourteen days after its receipt of the other party's notice of disqualification, appoint another arbitrator who meets the requirements of this Section to serve in place of the party's disqualified arbitrator. If the disqualified arbitrator is the third arbitrator, then the two party-appointed arbitrators shall, within fourteen days after their receipt of a party's notice of disqualification, select a third arbitrator who meets the requirements of this Section to serve in place of the disqualified arbitrator.

5) The arbitrators shall give the parties sixty days' notice in writing of the date on which the arbitration is to commence. Unless otherwise agreed in writing by King County and Lessee, each party shall, no later than thirty days before the arbitration is scheduled to commence, provide the other party with a copy of an appraisal report prepared by a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, or other appraisal society or association having equivalent ethical and professional standards, that supports that party's claim of Fair Market Rental Value. If Lessee fails to so provide a copy of its appraisal report to the County, Lessee shall be deemed to waive its right to arbitration, the arbitration shall not proceed, and the rent as adjusted by King County shall become the rent for the Succeeding Period.

6) The three arbitrators will determine a fair rent for the Premises for the Succeeding Period based upon the Fair Market Rental Value as defined in as defined in Section 11(A) hereof, which is in accordance with King County Code 4.56.010. The decision of a majority of the arbitrators will bind both Lessee and King County. Both King County and the Lessee agree that all non-mandatory provisions of RCW 7.04A are waived and that, unless requested by a majority of the arbitration panel, no formal hearing will be held,

no witnesses will testify, no attorneys will participate in the arbitration, and the arbitrators will be the final determiners of both fact and law. At the conclusion of the arbitration, the arbitrators will submit a written report in counterpart copies to Lessee and King County, which shall state their determination of the rent to be paid by Lessee for the Succeeding Period. The report shall contain all pertinent evidence that led to their conclusion together with an explanation of their reasoning for such conclusion.

D. COST OF ARBITRATION. Each party shall pay for its appraisal and shall bear the expense of its own counsel, and any other of its representatives and/or experts that may be required to prepare for or, in the event it is requested by the arbitration panel, participate in the arbitration. Each party shall also pay the fees and expenses of its selected arbitrator. The fees and expenses of the third arbitrator and all other costs of the arbitration will be divided equally between Lessee and King County.

E. RENT PENDING ADJUSTMENT AND RETROACTIVITY. In the event resolution of the rental adjustment is not completed either by negotiation or arbitration prior to the Rent Adjustment Date:

1) Lessee shall, pending resolution of such rent adjustment, continue to pay King County the rent then in effect;

2) The adjusted rent, as determined either by negotiation or arbitration, shall be retroactive to the Rent Adjustment Date; and

3) King County, at its option, may elect to require Lessee to pay interest in the amount of twelve percent per annum commencing on the Rent Adjustment Date on any sum due as a result of a retroactive increase.

F. ANNUAL RENT ADJUSTMENTS DURING NON-APPRAISAL YEARS. The annual rent increase for intervening years between fair market value appraisals is 2.5 percent. If the rent adjustment is made due to a new fair market value appraisal, and that value is greater than the prior year's rent, then the new fair market value appraisal becomes the new rent, and the new base for the application of future adjustments. Rents shall be adjusted on January 1 of each year and shall take effect on the anniversary of the Rent Adjustment Date. Annual rental adjustments made under this Subsection F are not subject to arbitration.

12. COMPLIANCE WITH ALL LAWS AND REGULATIONS. In using the Premises, Lessee will comply with all applicable laws, ordinances, and regulations from any and all authorities having jurisdiction. Lessee specifically agrees to comply and pay all costs associated with achieving such compliance without any notice from King County, and further agrees that King County does not waive this Section by giving notice of demand for compliance in any instance.

13. UTILITIES. Lessee shall pay for all costs, expenses, fees, services, and charges of all kinds for heat, light, water, gas, and telephone, and for all other public utilities used on said Premises so that the same shall not become a lien against the Leased Premises.

14. IMPROVEMENTS AND ALTERATIONS.

A. Other than alterations, improvements and fixtures located entirely inside the Improvements, Lessee shall make no significant alterations or improvements to or upon the Premises, or install any fixtures (other than trade fixtures which can be removed without injury to the Premises) without first obtaining prior written approval from King County, approval which will not be unreasonably denied or delayed.

B. All improvements and alterations erected or made on the Premises by Lessee shall be and remain the property of Lessee during the term of this Lease. Unless otherwise stipulated, all improvements or alterations erected or made on the Premises (not including personal property, equipment and removable fixtures, which shall remain the property of Lessee) shall, upon expiration or earlier termination of this Lease, belong to King County without compensation to Lessee; however, King County shall have the option, to be exercised on expiration or earlier termination of the Lease, to require Lessee, at Lessee's expense, to remove any or all such improvements or alterations.

C. Lessee agrees to comply with the notification, review and approval requirements contained in Title 14 CFR, Part 77 of the Federal Aviation Regulations (Safe, Efficient Use, and Preservation of the Navigable Airspace) and Form Federal Aviation Administration ("FAA") 7460-1 (Notice of Proposed Construction or Alteration) in the event that any future structure or building is planned for the Premises, or in the event of any modification or alteration of any future building or structure situated on the Premises.

D. Lessee covenants and agrees that no equipment or fixtures shall be installed or operated on the Premises which would produce electromagnetic radiation or radio signals, telecommunication signals, or the like, that would violate any FAA rules and regulations.

E. Lessee agrees to furnish King County with as-built drawings for all Improvements within 60 days of completion of construction. As-built drawings will be provided in electronic and paper format as requested by King County.

15. CONDITION OF PREMISES.

A. Lessee has inspected and knows the condition of the Premises, and accepts the Premises "AS IS".

B. Lessee acknowledges that the Premises may contain Hazardous Materials, as defined in Section 42 of this Lease, and Lessee accepts the Premises "AS IS", including, without limitation, the presence of any Hazardous Materials or underground storage tanks, or the actual or threatened release, deposit, seepage, migration or escape of Hazardous Materials at, from or into the Premises, and the compliance or noncompliance of the Premises with applicable federal, state, county and local laws and regulations including, without limitation, the Environmental Laws as defined in Section 42 of this Lease.

C. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE, KING COUNTY DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PREMISES, AND NO OFFICIAL, EMPLOYEE, REPRESENTATIVE OR AGENT OF KING COUNTY IS AUTHORIZED OTHERWISE. WITHOUT LIMITATION, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE, THE FOREGOING SPECIFICALLY DISCLAIMS WARRANTIES WITH RESPECT TO THE CONDITION OF THE PREMISES FOR DEVELOPMENT AND/OR USE BY LESSEE, THE PRESENCE OF ANY HAZARDOUS MATERIALS OR UNDERGROUND STORAGE TANKS, OR THE ACTUAL OR THREATENED RELEASE, DEPOSIT, SEEPAGE, MIGRATION OR ESCAPE OF HAZARDOUS MATERIALS AT, FROM OR INTO THE PREMISES, AND THE COMPLIANCE OR NONCOMPLIANCE OF THE PREMISES WITH APPLICABLE FEDERAL, STATE, COUNTY AND LOCAL LAWS AND REGULATIONS, INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL LAWS.

D. King County shall not have any obligation to Lessee to make any changes or improvements, or to incur any expenses whatsoever for the maintenance, monitoring, repair or remediation of the Premises.

E. Lessee acknowledges and agrees that King County shall have no liability to Lessee for, and that Lessee shall have no recourse against King County for, any defect or deficiency of any kind whatsoever in the Premises without regard to whether such defect or deficiency was discoverable by Lessee or King County.

F. King County reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or opinions of Lessee, and without interference or hindrance by Lessee. (FAA Order 5190.6B - AGL-600).

G. King County reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the Airport and all publicly

owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard. (FAA Order 5190.6B - AGL-600).

16. CONSTRUCTION DEFECTS. King County shall not be liable to Lessee for claims or damages arising from any defect in the construction of or the present condition of the Premises, whether known or unknown, or for damage by storm, rain, or leakage or any other occurrence.

17. MAINTENANCE.

A. Throughout the term of this Lease, Lessee shall, without cost or expense to King County, keep and maintain the Premises and all improvements, landscaping, fixtures and equipment which may now or hereafter exist thereon, in a neat, clean, and sanitary condition and shall, except for reasonable wear and tear, at all times preserve the Premises in good and safe repair except for any demolition of improvements contemplated by Section 7 of the Lease. Upon the expiration or sooner termination of the Lease, Lessee shall forthwith return the same in as good condition as existed at the commencement of occupancy, ordinary wear and tear excepted, except for any demolition of improvements contemplated by Section 7 of the Lease.

B. If, after thirty (30) days' notice from King County, or immediately in case of potential harm to life safety or property, Lessee fails to maintain or repair any part of the Premises or any improvement, landscaping, fixtures or equipment thereon, King County may, but shall not be obligated to, enter upon the Premises and perform such maintenance or repair, and Lessee agrees to pay the costs thereof to King County upon receipt of a written demand. Any unpaid sums under this Section shall be payable as additional rent on the next rent payment date due following the written demand and will bear interest at a percentage rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted under applicable laws.

18. GENERAL INDEMNITY AND HOLD HARMLESS. Lessee agrees to indemnify and hold King County harmless as provided herein to the maximum extent possible under law. Accordingly, Lessee agrees for itself, its agents, successors, and assigns, to defend, indemnify, and hold harmless King County, its appointed and elected officials, and its employees and agents, from and against liability for all claims, demands, suits, and judgments, including costs of defense and attorney fees thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to Lessee's rights and obligations under this Lease, except to the extent of King County's sole negligence. The Lessee's obligations under this Section shall include:

A. The duty to promptly accept tender of defense and provide defense to the County at Lessee's own expense, including attorney fees;

B. Indemnification of claims made by Lessee's own employees or agents; and,

C. Waiver of Lessee's immunity under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify King County, which waiver has been mutually negotiated by the parties.

Lessee agrees to hold harmless and indemnify King County for any and all costs associated with damage to owned, non-owned or hired aircraft in Lessee's care, custody and control.

In the event it is necessary for the County to incur attorney's fees, legal expenses or other costs to enforce the provisions of this Section, all such fees, expenses and costs shall be recoverable from Lessee.

In the event it is determined that R.C.W. 4.24.115 applies to this Lease, Lessee agrees to defend, hold harmless, and indemnify King County to the maximum extent permitted thereunder. Further, Lessee agrees to defend, indemnify, and hold the County harmless for claims by Lessee's employees and agrees to waive, as respects the County only, its immunity under Title 51 R.C.W., which waiver has been mutually negotiated by the parties.

Lessee shall include the same indemnification language in this Section 18 in its sub-leases protecting, indemnifying and defending King County, its appointed and elected officials, and its employees and agents.

The provisions of this Section 18 shall survive the expiration or termination of this Lease with respect to any event that occurs prior to, or on the date of, such expiration or termination.

Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

19. INSURANCE REQUIREMENTS – LESSEE/LEASEHOLD. By the date of execution of this Lease, Lessee shall procure and maintain for the duration of this Lease, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with Lessee's rights and obligations under this Lease, by Lessee, its agents, representatives, and/or employees/subcontractors. The insurance required to be provided by Lessee under this Lease may be provided under blanket policies that cover Lessee and the Premises as well as other entities and properties. The cost of such insurance shall be paid by or on behalf of Lessee. If there is any inconsistency between the minimum insurance requirements set forth below in this Lease and the insurance required by King County in any other Airport agreement to which Lessee is a party, Lessee shall maintain the most stringent insurance required.

In consideration of the duration of this Lease, the parties agree that the Insurance Requirements Section herein, at the discretion of the King County Risk Manager, may be reviewed and adjusted with each amendment and within 90 days of the end of the first

Five (5) year period of the Lease Term and the end of each successive Five (5) year period thereafter.

Any adjustments made as determined by the King County Risk Manager, with regard to limits, scope and types of insurance, shall be in accordance with reasonably prudent risk management practices and aviation insurance industry standards and shall be effective on the first day of each successive 5 year period.

Adjustment, if any, in insurance premium(s) shall be the responsibility of Lessee. Any failure by the County to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE. Lessee shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to Lessee under this Contract. Lessee shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions and environmental impairment , may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, Lessee warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of termination of this lease. Insurance coverage shall be at least as broad as stated below and with limits no less than:

**1) Commercial General Liability (Aviation General Liability).** Coverage in the amount of $5,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a $5,000,000 aggregate limit shall be maintained.

**2) Aircraft Liability.** (Owned, Leased and Non-owned Aircraft) Aircraft liability for bodily injury, death, property damage, contractual and passenger liability.

Aircraft Liability (combined single-limit per occurrence other than passenger liability in accordance with the following table)

| Maximum Gross Take-off Weight | Minimum Requirement: (each Occurrence) |
|---|---|
| Over 25,000 lbs. | $25,000,000 |
| 15,001 -25,000 | $15,000,000 |
| 10,001 – 15,000 lbs. | $10,000,000 |
| 5,000 - 10,001 lbs. | $5,000,000 |
| Under 5,000 lbs. | $1,000,000 |

**3) Aircraft Hull and Machinery**. Lessee agrees to insure owned and/or leased aircraft commensurate with the value of the aircraft and machinery and waive all rights of subrogation against the Lessor.

**4) Liquor Liability.** Required if alcoholic beverages are sold or distributed, a limit of $1,000,000 per occurrence and for those policies with aggregate limits, a $1,000,000 limit.

**5) Automobile Liability.** Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. $5,000,000 combined single limit per accident. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90.

**6) Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

**7) Employer's Liability or "Stop Gap".** Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

**8) Hangar Keepers Liability.** Bailee's coverage for non-owned aircraft held in Lessee's care, custody and control at a limit equal to maximum value of aircraft hangared at any one time per occurrence, and in the aggregate.

**9) Environmental Impairment.** Pollution coverage for all clean-up and remediation costs and expense arising out of Lessee's use of the Premises for both sudden and accidental discharges or gradual or repeated contamination. $1,000,000 per claim and in the aggregate.

**10) Property Insurance.** Lessee will carry "All Risk" property insurance in an amount equal to the full replacement value of all improvements, structures, and buildings located on the Premises and business interruption

coverage to provide for the continued payment of rent to the owner, in an amount equal to twelve month's rental payment obligation. . Coverage shall include the perils of earthquake and flood provided the limits of flood coverage may be a reasonable amount that is less than full replacement value. King County will not carry insurance on Lessee's property or business personal property. Waiver of subrogation must be shown on evidence of insurance. King County shall be named as loss payee on Lessee's property insurance as its interests may appear.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to King County. The deductible and or self-insured retention of the policies shall not limit or apply to Lessee's liability to the County and shall be the sole responsibility of Lessee.

C. OTHER INSURANCE PROVISIONS. The insurance policies required in this Lease are to contain or be endorsed to contain the following provisions:

1) All liability policies except workers compensation:

a. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Lessee in connection with this Lease.

b. Lessee's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with Lessee's insurance or benefit Lessee in any way.

c. Lessee's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2) All Policies:

a. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits below those required by this Lease, without replacement of the coverage in question with insurance that satisfies the requirements of the Lease until after thirty (30) days prior written notice has been given to the County.

D. ACCEPTABILITY OF INSURERS. Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or if not rated with

Bests' with minimum surpluses, the equivalent of Bests' surplus size VIII. If at any time, any of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, Lessee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements for approval.

E. VERIFICATION OF COVERAGE. Lessee shall furnish the County with certificate(s) of insurance and endorsement(s) required by this Lease. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County and are to be received and approved by the County prior to the commencement of activities associated with the Lease.

F. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, King County and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective property insurance policies, including any extended coverage endorsements hereto; provided that this agreement shall be inapplicable if it would have the effect of invalidating any insurance coverage of King County or Lessee.

20. INSURANCE REQUIREMENTS - BUILDINGS/STRUCTURES/FACILITIES UNDER CONSTRUCTION.

Prior to commencement of any construction and until construction is complete and accepted by Lessee, Lessee shall cause its construction contractor(s) to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to said construction. The cost of such insurance shall be paid by Lessee and/or any of Lessee's contractors.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE. Lessee shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to Lessee under the construction contract between Lessee and its General Contractor. Lessee shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each insurance policy

shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, Lessee warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the work which is the subject of this Lease. Insurance coverage shall be at least as broad as stated below and with limits no less than:

**1) General Liability**. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 covering **COMMERCIAL GENERAL LIABILITY.** $5,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a $5,000,000 aggregate limit. Coverage shall not exclude explosion collapse and underground damage (XCU).

**2) Automobile Liability.** Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. $5,000,000 combined single limit per accident. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90.

**3) Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

**4) Employer's Liability or "Stop Gap".** Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

**5) Professional Liability Errors and Omissions.** In the event that services delivered pursuant to this Contract either directly or indirectly involve or require Professional services, Professional Liability Errors and Omissions coverage shall be provide at a limit of $1,000,000 per claim and in the aggregate..

**6) Builder's Risk/Installation Floater.** Lessee shall procure and maintain, or cause its General Contractor to procure and maintain, during the life of the contract to construct the Improvements ("construction contract"), or until acceptance of the Project by Lessee, whichever is

longer, "All Risk" Builders Risk or Installation Floater Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft, off-site storage and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for 100% of the replacement value thereof and include earthquake and flood. The policy shall be endorsed to cover the interests, as they may appear, of Lessee, King County and the General Contractor as a named insured. In the event of a loss to any or all of the work and/or materials therein and/or to be provided at any time prior to the final close-out of the contract and acceptance of the project by Lessee, the Lessee shall require contractor to promptly reconstruct, repair, replace or restore all work and/or materials so destroyed. Nothing herein provided for shall in any way excuse the Lessee or its surety from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the construction contract.

**7) Contractor's Pollution Liability.** $1,000,000 per claim/aggregate. Lessee and/or its contractor shall provide contractor's pollution liability coverage to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, clean up costs and the loss of use of tangible property that has not been physically injured or destroyed. If asbestos, lead or PCB's are a potential exposure, such insurance shall not exclude pollution arising out of such substances.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to King County. The deductible and or self-insured retention of the policies shall not limit or apply to Lessee's liability to the County and shall be the sole responsibility of Lessee.

C. OTHER INSURANCE PROVISIONS. The insurance policies required in this Lease are to contain or be endorsed to contain the following provisions:

1) All liability policies except workers compensation and professional liability:

a. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Lessee in connection with this Lease.

b. The contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees

or agents shall not contribute with Lessee's insurance or benefit Lessee in any way.

c. The contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2) All Policies:

a. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits below those required by this Lease, without replacement of the coverage in question with insurance that satisfies the requirements of the Lease until after thirty (30) days prior written notice has been given to the County.

D. ACCEPTABILITY OF INSURERS. Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or if not rated with Bests' with minimum surpluses, the equivalent of Bests' surplus size VIII. If at any time, any of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, Lessee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements for approval.

E. VERIFICATION OF COVERAGE. Prior to commencement of construction Lessee shall furnish the County with certificate(s) of insurance and endorsement(s) required by this Lease. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County and are to be received and approved by the County prior to the commencement of activities associated with the Lease.

F. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, King County and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective property insurance policies, including any extended coverage endorsements hereto; provided that this agreement shall be inapplicable if it would have the effect of invalidating any insurance coverage of King County or the Lessee.

21. CONTRACTOR'S SURETY BOND. Prior to commencing construction of any of the improvements, Lessee shall furnish to King County a General Contractor's

performance and payment surety bond in the amount of the total estimated construction costs for the Improvements. The Performance and Payment surety bond shall be acceptable to the King County in its commercially reasonable discretion and shall state the following:

(i) Lessee and King County shall be named as dual obligee on the performance and payment surety bond.

(ii) That it is conditioned to secure the completion of the proposed construction, free from all liens and claims of contractors, subcontractors, mechanics, laborers, and material suppliers.

(iii) That the construction work shall be fully and faithfully performed by Lessee, the general contractor, or, on their default, the surety.

(iv) That in default of such completion and payment, such part of the amount of the surety bond as shall be required to complete the work shall be paid to King County as liquidated and agreed damages for the nonperformance of this Lease; it being agreed that the amount of King County's damages is extremely difficult to ascertain and determine.

That the surety will defend and indemnify King County against all loss, costs, damage, expense, claims, and liabilities arising out of or connected with the construction by Lessee.

In lieu of a single performance and payment surety bond, Lessee may furnish multiple payment and performance surety bonds supplied by Lessee's General Contractor and/or its subcontractors, provided such payment and performance surety bonds contain the same conditions as stated in (i) through (iv) above, are issued jointly to Lessee and King County, and in the aggregate equal to the total estimated construction cost of the Improvements.

All payment and performance surety bonds required by this Section must be issued by a surety company licensed to do business in the State of Washington, acceptable to King County in its commercially reasonable discretion, and shall remain in effect until the entire cost of the improvements shall have been paid in full and the new improvements shall have been insured as provided in this Lease.

In lieu of the above performance and payment surety bonds, Lessee may provide some other instrument satisfactory to King County or cash deposit which shall guarantee to King County completion of the improvements.

22. PROPERTY RECONSTRUCTION FOLLOWING CASUALTY. In the event of the total or partial destruction by casualty or otherwise of the building, structures, or facilities currently on the Premises or subsequently constructed by Lessee, Lessee shall have the obligation to reconstruct such facilities to their former condition and usability

and proceed with reasonable diligence to prepare plans and specifications for and carry out, all work necessary (a) to repair and restore the building and/or improvements on the Premises damaged by the casualty to their former condition, or (b) to replace said building and/or improvements with a new building and/or improvements on the Premises of a like quality and usefulness of the building and/or improvements which were damaged. The foregoing notwithstanding, if, upon completion of the repair and reconstruction required by this Section, there would be five (5) or fewer years remaining in the term of the Lease, Lessee shall have the right to elect, by written notice given to King County within ninety (90) days after the casualty, not to repair or reconstruct the building, structures and facilities on the Premises, provided, however, that Lessee has maintained the property insurance required by Section 19(A) above. If, under the preceding sentence, Lessee elects not to repair or reconstruct the building, structures and facilities on the Premises after a casualty, (1) the Lease shall terminate on the date Lessee gives notice of its election or upon such later date as Lessee may specify in such notice (not to be more than ninety (90) days after such notice is given) and (2) Lessee shall assign to King County all proceeds of Lessee's property insurance payable in respect to the casualty in question and shall deliver to King County all of such proceeds received by Lessee and not applied to the preservation and protection of the building, structures and facilities on the Premises prior to the date on which the Lease terminates.

23. SURRENDER OF PREMISES. Upon expiration or termination as contemplated herein, Lessee shall surrender to Lessor the Premises and improvements, structures, fixtures and building equipment supplied by Lessee as part of the Premises and Improvements, together with all alterations and replacements thereof without compensation, allowance or credit, subject to Lessee's covenants to maintain and repair accruing to the date of expiration or termination of the Term as provided in this Lease. Except for Improvements allowed to remain under Section 14(B) above Lessee shall remove all improvements, structures, fixtures, building equipment or any other items belonging to Lessee unless allowed to remain on the Premises as agreed upon in writing from Lessor. Upon expiration or termination, all right, title and interest to the Premises and Improvements shall vest in Lessor, free and clear of any liens and encumbrances.

24. DEFAULT AND RE-ENTRY. If any rents or other obligations provided herein, or any part thereof shall be and remain unpaid when the same shall become due, or if Lessee shall violate or default on any of the covenants and agreements herein contained, then King County may terminate this Lease upon giving five (5) days' notice (in the case of monetary defaults) and thirty (30) days' notice (in the case of non-monetary defaults). Lessee may cure any such default by its payment or performance within said periods, provided that if a non-monetary default cannot be cured within said 30-day period, then Lessee shall not be in default if Lessee commences its cure within said 30-day period and takes actions and steps to cure the non-monetary default within a commercially reasonable amount of time. Upon an uncured default, King County may re-enter said Premises using such force as may be required. Notwithstanding such re-entry by King County, the liability of the Lessee for the rent provided for herein shall not be extinguished for the balance of the term of this Lease, and Lessee covenants and agrees to make good to King County any deficiency arising from a re-entry and reletting of the Premises at a lesser rental than agreed to herein. Lessee shall pay such deficiency each

month as the amount thereof is ascertained by King County. In the event it becomes reasonably necessary to make any changes, alterations, or additions to the Premises or any part thereof for the purpose of reletting said Premises or any part thereof, Lessee shall also be responsible for such cost.

25. ASSURANCE OF PERFORMANCE. In the event a default in the performance of any obligation under this Lease which remains uncured for a period longer than specified in Section 24 above, King County may request and Lessee shall provide adequate assurance of the future performance of all obligations under this Lease. The adequacy of any assurance shall be determined according to commercially reasonable standards for lessors of real property in the County of King, State of Washington. Adequate assurance shall include, but not be limited to, a deposit in escrow, a guarantee by a third party acceptable to King County, a surety bond, or a letter of credit. Lessee's failure to provide adequate assurance within twenty (20) days of receipt of a request shall constitute a material breach and King County may in its discretion terminate this Lease.

26. ADVANCES BY KING COUNTY FOR LESSEE. If Lessee fails to pay any fees or perform any of its obligations under this Lease other than payment of rent, King County will mail notice to Lessee of its failure to pay or perform. Twenty (20) days after mailing notice, if Lessee's obligation remains unpaid or unperformed, King County may, but is not obligated to, pay or perform these obligations at Lessee's expense. Upon written notification to Lessee of any costs incurred by King County under this Section, Lessee will reimburse King County within twenty (20) days. Failure to comply with this Section 26 will result in a Lease default subject to the terms and conditions set forth in Section 24.

27. NON-WAIVER. It is hereby agreed that no waiver of any condition or covenant in this Lease or any breach thereof, shall be taken to constitute waiver of any subsequent breach.

28. SIGNS. No sign, advertisement, notice, or other lettering will be exhibited, inscribed, painted, or affixed by Lessee on any part of the outside of the Premises without the prior written consent of King County, provided that such consent shall not be unreasonably withheld. If Lessee violates this provision, King County may remove the sign without any liability and may charge the expense incurred by such removal to Lessee; provided, however, King County shall give Lessee written notice of Lessee's violation of this provision and Lessee shall have forty-eight (48) hours after receiving said notice to comply with the terms of this provision. All signs erected or installed by Lessee shall be subject to any federal, state or local statutes, ordinances or regulations applicable to signs.

29. INSPECTION AND "FOR RENT" SIGNS. King County reserves the right to inspect the Premises at any and all reasonable times throughout the term of this Lease, provided that King County shall give Lessee not less than twenty four (24) hours prior notice (except in an emergency, in which case King County shall give such advance notice as is practicable under the circumstances), shall not interfere unduly with Lessee's operations and shall use reasonable efforts to cooperate with any security measures

Lessee may then have in effect. The right of inspection reserved to King County hereunder shall impose no obligation on King County to make inspections to ascertain the condition of the Premises, and shall impose no liability upon King County for failure to make such inspections. King County shall have the right to place and maintain "For Rent" signs in conspicuous places on the Premises for one hundred and eighty (180) days prior to the expiration or sooner termination of this Lease.

30. LIENS. It is understood and agreed that this Lease is executed and delivered upon the express condition that Lessee will not and cannot contract any debt or debts for labor, materials, services, or otherwise which will or may become a lien against the interest of King County in the Premises, and King County hereby denies to Lessee any right, power, or authority to do any act, or contract any obligation or liability which would in any way subject the interest of King County in the Premises to any lien, claim, or demand whatsoever.

31. ASSIGNMENTS.

A. Lessee shall not assign or transfer this Lease or any interest therein, nor grant an option for such an assignment or transfer for the whole or any part of the Premises, nor shall this Lease or any interest hereunder be assignable or transferable by operation of law, or by any process or proceeding of any court or otherwise without the prior written consent of King County, which consent shall not be unreasonably withheld, conditioned or delayed. If Lessee is a corporation, partnership, limited liability company or other entity, Lessee further agrees that if at any time during the term of this Lease one-half (1/2) or more of the outstanding shares of any class of stock, partnership interests, membership interests or other equity interests of Lessee's corporation, partnership, limited liability company or other form of entity shall belong to any stockholders, partners, members or other owners, as the case may be, other than those who own one-half (1/2) or more of the outstanding shares of that class of stock, partnership interests, membership interests or other equity interests at the time of the execution of this Lease, such change in the ownership shall be deemed an assignment of this Lease within the meaning of this Section.

1) The foregoing notwithstanding, the following (each, an "Exempt Transfer") shall not be deemed an assignment and shall not require King County's consent and without right of termination or entitlement to any consideration: (a) a transfer of stock, partnership interests, membership interests or other equity interests in Lessee (i) by reasons of the death of the person holding such interests or (ii) to any member or members of the immediate family of a person holding such interests or to trusts for their benefit or (iii) pursuant to an employee stock ownership plan, sale or exchange on a national exchange, or exchange of stock with Lessee's parent company, subsidiary or affiliate, (b) an assignment of the Lease for collateral purposes to a recognized lending

institution in connection with the financing of King County approved development of the Premises or the lending institution's subsequent realization on such collateral assignment, (c) pursuant to a sale, reorganization, merger or consolidation of Lessee, (d) any assignment of the Lease to an affiliate of Lessee which is controlled by the same persons or entities who control Lessee.

2) As used in this Section 31, "control" (and derivatives thereof) shall mean the direct or indirect ownership of more than fifty percent (50%) of the issued and outstanding voting equity interests in an entity.

3) If King County shall give its consent to any assignment or transfer or if an assignment or transfer is made pursuant to this Section 31 that does not require King County's consent, this Section 31 shall nevertheless continue in full force and effect and no further assignment or transfer shall be made except in compliance with this Section 31.

B. If Lessee desires to assign or transfer, or grant an option for assignment or transfer, for the whole or part of the Premises, or any portion of this Lease or any interest herein, and such assignment or transfer requires King County's consent under Section 31(A) above, Lessee shall notify King County in writing of said desire and the details of the proposed agreement at least sixty (60) days prior to the proposed date of assignment or transfer, or grant of an option therefor, to a third party. The notification shall include but not be limited to a financial statement of the third party, including but not limited to a full disclosure of the monetary payment or any other consideration involved, and an affidavit from the third party stating it has examined this Lease, and, understanding this Lease, agrees to assume and be bound by all of Lessee's obligations and covenants under this Lease, the same as if it were the original Lessee hereunder, and the proposed date of assignment, transfer or grant of an option therefor. Lessee shall also provide any financial or other information regarding the proposed assignment or the assignee reasonably requested by King County.

C. Except pursuant to a transfer or assignment to an Exempt Transfer, King County reserves the right of first refusal in the event Lessee attempts to assign or transfer this Lease or any interest herein, or grant an option therefor, in a transaction that, under Section 31(A) above requires King County's consent. If King County exercises the right of first refusal, Lessee shall assign or transfer to King County, and King County shall acquire, the Lease or the interest therein, or the option therefor, on and subject to all of the terms and conditions of the proposed assignment or transfer or option therefor.

D. Prior to any assignment or transfer being effective, Lessee shall pay King County seventy-five percent (75%) of the Assignment Premium derived from that assignment or transfer. "**Assignment Premium**" shall mean (1) all rent, additional rent, and/or other moneys, property, and other consideration of every kind whatsoever received by Lessee (Assignor) from the assignee/transferee for, or by reason of, the assignment or transfer (including all amounts received by Lessee (Assignor) for any Included Property), less (2) the credits detailed in Section 31(E) below. "**Included Property**" means only the leasehold improvements and fixtures and all machinery, equipment, furniture, furnishings, supplies, inventory and other personal property, tangible and intangible, owned by Lessee that are transferred to the assignee or transferee as part of the transaction. Lessee shall pay the Assignment Premium to King County as and when Lessee receives payment from such assignee or transferee.

E. Credits. The following shall be subtracted from the consideration that otherwise would be included in the calculation of the Assignment Premium:

1) Any transactional costs, fees or commissions actually paid by Lessee (Assignor) to procure the assignment or transfer, including, without limitation, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County;

2) The actual cost of alterations and leasehold improvements undertaken by Lessee, or undertaken by the transferee or assignee to the extent paid for or reimbursed by Lessee, solely to prepare the space for the assignee or transferee, including, without limitation, costs of planning, design, permitting and construction, including labor, materials and Washington state sales and use taxes, (amortized, if the consideration for the assignment or transfer is to be paid in installments, over the period of payment, commencing with the date on which the assignment or transfer commences);

3) The greater of either: a) the unamortized cost of the Included Property determined on a straight-line basis over the term of the Lease as certified to King County by Lessee's independent certified public accountant; or b) the fair market value of the

Included Property as determined by an appraisal conducted by an independent and certified appraiser. Lessee shall pay the cost of such certification or appraisal and may deduct such costs from the Assignment Premium. If King County disputes the unamortized cost or fair market value of the Included Property as determined by the certified public accountant or appraiser, the procedures set forth in Section 11(C) shall be followed to determine the appropriate cost or fair market value;

4) The unamortized transactional costs, fees or commissions, determined on a straight-line basis over the original term of the Lease, actually paid by Lessee (Assignor) to procure the Lease itself (or, if only an interest in the Lease is being assigned or transferred, a ratable portion of such costs, fees and commissions), including, without limitation and without duplicating any of the costs included in Section 31(E)(1) above, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County; and

5) The "Goodwill Value" or Going Concern Value" of any business being sold or transferred as a part of the assignment. Unless otherwise agreed to by Lessee and King County, "Goodwill Value" or "Going Concern Value" shall be determined by a qualified valuation expert employing standard and generally recognized methods of business valuation. Lessee shall pay the cost of such valuation and may deduct such costs from the Assignment Premium.

F. Once King County has received all necessary information and documentation pursuant to this Section 31 of this Lease, King County will review the request and respond with either an approval or disapproval of the request (or, if King County so elects, King County's exercise of the right of first refusal provided for in Section 31(C) above) by the earlier of: thirty (30) days from the request or not later than ten (10) days prior to the proposed date of the assignment or transfer. Approval of any such request will not be unreasonably withheld and Lessee may in good faith dispute the reasonableness of King County's disapproval of a request. King County has the option, in its sole discretion, to charge to Lessee a reasonable fee for administrative costs actually incurred reviewing and

processing any requests for assignment or transfer pursuant to this Section, not to exceed, however, $1500.00.

Tenant's sole remedy for King County's failure to timely respond to a request for assignment shall be declaratory relief or specific performance, and shall not include monetary or consequential damages.

32. SUBLEASES.

A. Unless the sublease sought to be entered into is to an entity that controls, is controlled by or is under common control with Lessee (an "Exempt Sublease"), Lessee shall not sublet the whole or any part of the Premises, nor grant an option for sublease for the whole or any part of the Premises without the prior written consent of King County, which consent shall not be unreasonably withheld, conditioned or delayed. King County shall not withhold its consent to a proposed sublease or grant of an option for sublease on the ground of the subtenant's proposed use if such use is identified as a permitted use in the Lease. If King County shall give its consent to any sublease, this Section shall nevertheless continue in full force and effect and no further sublease shall be made without the County's consent. No sublease authorized under this Section shall relieve or release Lessee from any obligation or responsibility required of Lessee under this Lease.

B. Except with respect to an Exempt Sublease, if Lessee desires to sublease, or grant an option for sublease, for the whole or part of the Premises, or any portion of this Lease or any interest therein, Lessee shall notify King County in writing of said desire and the details of the proposed agreement at least sixty (60) days prior to the proposed date of sublease, or grant of an option therefor, to a third party. The notification shall include but not be limited to a financial statement of the third party, including but not limited to a full disclosure of the monetary payment or any other considerations involved, the proposed date of the sublease, and a copy of the sublease agreement between Lessee and new tenant. Lessee shall also provide any financial or other information regarding the proposed sublease or the sublessee reasonably requested by King County.

C. Anything in Sections 32(A) or 32(B) to the contrary notwithstanding, if King County shall consent to a sublease to a subtenant that engages in the business of letting office space, hangar space and/or tiedown spaces to third parties, no further notice to or consent from King County shall be required in connection with any such lettings, but Lessee shall provide or cause such subtenant to provide King County upon request with the names and addresses of the third parties to which such subtenant is then letting office space, hangar space and/or tiedown space.

D. King County reserves the right of first refusal in the event Lessee attempts to sublease, or grant an option therefor, any unimproved portion of the Premises to any party other than in an Exempt Sublease. A sublease of an unimproved portion of the Premises that is not an Exempt Sublease is hereinafter referred to as a "Ground Sublease."

E. If Lessee subleases all or any portion of the Premises in a Ground Sublease (other than in an Exempt Sublease), Lessee shall pay King County seventy-five percent (75%) of the Sublease Premium derived from that sublease. "Sublease Premium" shall mean (1) all rent, additional rent, and/or other moneys, property, and other consideration of every kind whatsoever received by Lessee from the sublessee for, or by reason of, the sublease (excluding all amounts received by Lessee for any Included Property) less (2) the credits detailed in Section 32(F) below. Lessee shall pay the Sublease Premium to King County as and when Lessee receives payment from such sublessee.

F. Credits. The allocable portion of the credits set forth in Sections 31(E)(2), (3) and (5) above, as applicable, and without duplicating any such allocable portion, the following shall be subtracted from what otherwise would be included in the consideration used to calculate the Sublease Premium:

1) Any costs, fees or commissions actually paid by Lessee (Sublessor) to procure the sublease, including, without limitation, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to procuring the sublease in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County;

2) An allocable portion (based on the square footage subject to the proposed Ground Sublease as compared to the square footage of the entire Premises) of the unamortized transactional costs, fees or commissions, determined on a straight-line basis over the original term of the Lease, actually paid by Lessee (Sublessor) to procure the Lease itself, including, without limitation, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound

accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County; and

3) The Base Rent, other amounts payable under the Lease as rent and leasehold excise tax allocable to the space covered by such sublease (as reasonably determined by King County) and paid by Lessee to King County after the date of such sublease.

G. Once King County has received all necessary information and documentation pursuant to this Section 32 of this Lease, King County will review the request and respond with either an approval or disapproval of the request not later than ten (10) days prior to the proposed date of the sublease. Disapproval of any such request shall be final and binding on Lessee and not subject to any arbitration, provided that any approval will not be unreasonably withheld and Lessee may in good faith dispute the reasonableness of King County's disapproval of a request. King County, at its sole discretion, may charge to Lessee a reasonable fee for administrative costs in reviewing and processing any sublease, or grant of an option therefor, not to exceed $1500.00.

Lessee's sole remedy for King County's failure to timely respond to a request to sublease shall be declaratory relief or specific performance, and shall not include monetary or consequential damages.

33. CONDEMNATION.

A. King County and Lessee will immediately notify the other in writing of the receipt of notice of any proceedings with respect to a condemnation or intent of any authority to exercise the power of eminent domain.

B. If all of the Premises are taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Lease, this Lease terminates as of the date condemnor takes possession, and Lessee will have no claim or interest in or to any award of just compensation except that Lessee will be entitled to an amount equal to the fair market value, as determined by the court having jurisdiction over the condemnation, of Lessee's leasehold interest in any improvement made to the Premises by the Lessee and taken by the condemnor. The fair market value amount determined pursuant to this Subsection shall be paid to Lessee out of proceeds deposited into the court registry by condemnor.

C. If part of the Premises is taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Lease, and such taking results in a material adverse effect on Lessee's use or enjoyment of the Premises, Lessee may choose to terminate this Lease as of the date the condemnor takes

possession. If Lessee does not elect to terminate this Lease, the rent will be reduced in the same proportion that the value of the portion of the Premises to be taken bears to the value of the entire Premises as of the date condemnor takes possession. Lessee will have no claim or interest in or to any award of just compensation or damages except that Lessee will be entitled to an amount equal to the fair market value, as determined by the court having jurisdiction over the condemnation, of the part of the Lessee's leasehold interest in any improvements made to the Premises by Lessee taken by the condemnor. The fair market value amount determined pursuant to this Subsection shall be paid to Lessee out of proceeds deposited into the court registry by condemnor.

D. If temporary use of all or a portion of the Premises is taken by any lawful authority for a period which would reduce the leasehold and, consequently, would cause the Premises to be untenantable for the use by Lessee for the purposes set forth in the Section of this Lease titled "Use," then, at Lessee's determination, Lessee may choose to terminate this Lease. If Lessee elects to terminate the Lease, the Lease will terminate the date the condemnor takes possession and Lessee will have no claim or interest in or to any award of just compensation except that Lessee will be entitled to an amount equal to the fair market value, as determined by the court having jurisdiction over the condemnation, of Lessee's leasehold interest in any improvements made to the Premises by Lessee, to be paid to Lessee out of proceeds deposited into the court registry by condemnor. If Lessee does not elect to terminate this Lease, the Lease will continue in full force and Lessee will be entitled to receive any award from the condemnor for the use of all or part of the Premises, not to exceed that portion of the rent paid by Lessee attributable to the portion of the Premises subject to the temporary taking (based on the square footage subject to the temporary taking as compared to the square footage of the entire Premises); EXCEPT that Lessee may elect to have the rents reduced by the amount proportionally attributable to any partial temporary taking, in which event Lessee shall not be entitled to any portion of the award attributable to said use.

E. It is understood and agreed that Lessee shall not be party to any negotiation or proceedings at law wherein King County claims compensation other than that which is defined statutorily as constituting "just compensation."

34. TERMINATION BY KING COUNTY. King County reserves the right to terminate this Lease upon twelve (12) months' notice in writing to Lessee or the persons in possession of the Premises if the Premises are required by King County for the improvement or development of KCIA for public airport uses and purposes, and under such termination Lessee or persons in possession of Premises shall be reimbursed by King County for the fair market value, as defined in Section 11(A) of this Lease which shall include the additional value of the improvements added pursuant to Section 7. In

the event that King County and Lessee cannot agree upon the value of said Improvements, King County and Lessee shall submit to have the fair market value adjusted by arbitration in the manner described in Section 11(C).

35. NON-DISCRIMINATION.

A. Lessee shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical disability, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Ch. 12.16.125. Lessee shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964.

B. Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a U.S. Department of Transportation ("**DOT**") program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

C. Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expressions, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereof, no person on the grounds of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expressions, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally

Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

D. Lessee assures that in its use of the Premises it will substantially observe and promptly comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expressions, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

E. In addition, this Lease is subject to certain grant assurances resulting from King County's receipt of funding from the federal government. In accordance with those grant assurances, in furnishing services to the public at the Airport, Lessee shall furnish said services on a reasonable and not unjustly discriminatory basis to all users of the Airport and shall charge reasonable and not unjustly discriminatory prices for each unit or service; provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions, by way of example and not limitation, to volume purchasers, based aircraft, or charter customers.

F. Lessee will include the provisions of this Section 35 in all subleases of all or part of the Premises, and in all agreements at any tier for the use of all or part of the Premises.

G. Any violation of this Section 35 shall be considered a default of this Lease and, in addition to any other remedies available to the County, shall be grounds for termination of this Lease by the County, and may result in ineligibility for further County agreements.

36. HEIRS, AGENTS, AND ASSIGNS. Without limiting any provisions of this Lease pertaining to assignment, transfer and subletting, the provisions of this Lease bind the heirs, successors, agents and assigns of the parties to this Lease.

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

38. TIME IS OF THE ESSENCE. Time is of the essence of this Lease, and in the event of the failure of Lessee to pay any charges at the time in the manner herein specified, or to keep any of the covenants or agreements herein set forth, the Lessee shall be in default.

39. CUMULATIVE REMEDIES. No provision of this Lease precludes King County from pursuing any other remedies for Lessee's failure to perform his obligations.

40. ATTORNEY'S FEES/DEFAULT CHARGE. In the event legal action is brought by either party to enforce any of the terms, conditions, or provisions of this Lease, the prevailing party shall recover against the other party in addition to the costs allowed by law, its litigation expenses and such sum as the court may adjudge to be a reasonable attorney's fee. In addition to all other charges, Lessee shall pay a charge of $500.00 to King County for preparation of a notice of default.

41. HOLDING OVER. If the Lessee holds over after the expiration or earlier termination of this Lease, Lessee shall become a tenant from month-to-month at a rental rate equal to one hundred-fifty percent (150%) of the rent in effect upon the date of such expiration or termination, and otherwise subject to the terms, covenants, and conditions of this Lease, except those clearly inapplicable to the month-to-month tenancy. Acceptance by King County of rent after such expiration or earlier termination shall not result in a renewal of this Lease, nor affect King County's right of re-entry or any rights of King County hereunder or as otherwise provided by law. If Lessee fails to surrender the Premises upon the expiration of this Lease despite demand to do so by King County, Lessee shall indemnify and hold King County harmless from all loss or liability including, without limitation, any claim made by any succeeding Lessee founded on or resulting from such failure to surrender, together with interest, reasonable attorney's fees, costs, and expenses.

42. HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE.

A. Definitions. "**Hazardous Materials**" as used herein shall mean:

1) Any toxic substances or waste, sewage, petroleum products, radioactive substances, heavy metals, medical, corrosive, noxious, acidic, bacteriological or disease-producing substances; or

2) Any dangerous waste or hazardous waste as defined in:

a. Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105); or

b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

c. Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or

3) Any hazardous substance as defined in:

a. Comprehensive Environmental Response, Compensation and Liability Act as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); or

b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

4) Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.

For purposes of this Section 42, "Lessee" shall mean Lessee, sublessees, assignees, contractors, agents, employees, representatives, or affiliates.

B. Environmental Compliance.

1) In the conduct of its business at the Airport, and in its use and occupancy of the Premises and the areas of the Airport outside the Premises that are available for use by Lessee and others ("the Public Areas"), Lessee shall, at Lessee's own expense, comply with all federal, state and local laws, ordinances, regulations, permits, decrees or other governmental requirements now or hereafter in effect related to Hazardous Materials and other environmental laws, including, but not limited to, laws and regulations pertaining to stormwater discharges as set by the U.S. Environmental Protection Agency and the Washington Department of Ecology, as well as such rules concerning environmental matters as may be promulgated by the Airport Manager ("Environmental Laws"). Lessee warrants that its business and all its activities to be conducted or performed in, on, or about the Premises and the Public Areas shall comply with all of the Environmental Laws. Lessee agrees to change, reduce, or stop any non-complying activity, or install necessary equipment, safety devices, pollution control systems, or other installations as may be necessary at any time during the term of this Lease to comply with the Environmental Laws.

2) Lessee shall not without first obtaining the County's prior written approval use, generate, handle, store, treat, transport, or sell any Hazardous Materials in, on, or about the Premises or the Public

Areas. In the event, and only in the event, that the County approves any of the foregoing, Lessee agrees that such activity shall occur safely and in compliance with the Environmental Laws. King County hereby approves the use by Lessee at the Premises of the Hazardous Materials identified on Exhibit C hereto.

3) Lessee shall not cause or permit to occur any violation of the Environmental Laws on, under, or about the Premises and the Public Areas, or arising from Lessee's use or occupancy of the Premises and the Public Areas. Lessee shall not undertake, or allow others to undertake by Lessee's permission, acquiescence, or failure to act, or negligent activities that result in a release or threatened release of Hazardous Materials. If Lessee's act, omission or breach of obligation under this Lease results in a release of Hazardous Materials into the environment on, about, or migrating from the Premises or the Airport that exceeds regulatory cleanup levels for use of the Premises, Lessee shall, at Lessee's expense, promptly take all actions necessary to fully and completely remove (and to dispose of such in accordance with applicable law) all of such Hazardous Materials.

4) Lessee shall, in a timely manner and at Lessee's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental or regulatory authorities ("the Authorities" or "Authority") with jurisdiction under Environmental Laws. If Lessee fails to fulfill any duty imposed under this Section within the time specified by applicable law, or if no time is specified within a reasonable time, the County may take action; and in such case, the Lessee shall cooperate with the County in order to prepare all documents the County deems necessary or appropriate to determine the applicability of the Environmental Laws to the Premises and/or the Public Areas and Lessee's use thereof, and for compliance with the Environmental Laws, and Lessee shall execute all documents promptly upon the County's request. No such action by the County and no attempt made by the County to mitigate damages shall constitute a waiver of any of Lessee's obligations under this Section 42. Lessee shall immediately notify County if Lessee becomes aware of any of the following: (a) a release or threatened release of Hazardous Materials on the Premises; (b) any actual or alleged violation of any of the Environmental Laws, including any inspection reports or any other notice received from any Authority that Lessee may be in violation of any Environmental Law; and (c) any notification from any Authority that investigation, remediation or removal of Hazardous Materials is or may be required at the Premises.

5) Should any Authority demand that a remedial investigation and/or cleanup or remediation plan be prepared and that a cleanup or remediation be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials that occurs during the term of this Lease and arises from Lessee's use or occupancy of the Premises, or which arises at any time from Lessee's use or occupancy of the Premises and/or the Public Areas, then Lessee shall, in a timely manner and at Lessee's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and Lessee shall carry out all such investigation and/or cleanup or remediation plans. Any such plans are subject to the County's prior written approval. Although the County reserves the right to review and approve such plans, the County assumes no responsibility for such plans or their compliance with Environmental Laws.

6) If King County determines in its sole discretion that an emergency exists (i) because of the deposit, spill, discharge or other release of Hazardous Materials at or from the Premises or (ii) which arises from Lessee's use or occupancy of the Premises and/or the Public Areas, King County will take such action as King County, in its sole discretion, considers reasonable to contact Lessee and advise it of the emergency situation. If Lessee is unreachable, or is unwilling to take immediate action, King County may, but is not required to, take immediate action to address the emergency situation, and Lessee will reimburse the County for all of its costs and expenses related thereto, provided, with respect to clause (i) above, that the deposit, spill, discharge or other release of Hazardous Materials arises from Lessee's use or occupancy of the Premises. The fact that King County takes immediate action shall not relieve Lessee of any of its responsibilities under this Lease and the Environmental Laws including, without limitation, Lessee's responsibility for complying with reporting requirements.

7) In the event Lessee discovers Hazardous Materials on or under the Premises during Lessee's construction of Improvements (including during demolition and grading activities associated with such construction), not caused by Lessee or generated or released during Lessee's control of the Premises, then Lessee shall promptly notify King County of such discovery (the "Environmental Notice Date"). Lessee may terminate this Lease by written notice to King County given within 90 days of the Environmental Notice Date, during which 90-day period all rent under this Lease shall abate. If Lessee does not so terminate this Lease within said 90-day period, then this Lease shall remain in full force and effect and Lessee shall be responsible to pay the County all rent abated, which shall be due and owing with the next monthly rent payment but shall not

be deemed late unless Lessee fails to make that payment. In the event of termination under this Section, and in Lessor's sole discretion, any improvements or structures erected by Lessee shall be removed by Lessee. Lessee shall remove and appropriately handle and dispose of, and not stockpile or otherwise leave on site, any Hazardous Materials that have been excavated or otherwise disturbed by Lessee. Lessee shall leave the Premises in substantially the same condition as prior to Lessee's discovery of Hazardous Materials, and shall not leave any Hazardous Materials uncovered or otherwise exposed to humans or to the environment.

C. Indemnification and Release.

Lessee shall be fully and completely liable to the County for, and shall indemnify, hold harmless and release the County from and against, any and all claims, liabilities, lawsuits, damages, demands, suits, losses, judgments, and costs, including but not limited to removal, remedial action, or other costs recoverable under CERCLA or MTCA; any and all other requirements, charges, interest, fees, oversight costs, or penalties (civil or criminal or both) imposed by any Authority; and all other expenses including but not limited to claims for bodily injury or death, property damage, diminution in value or loss of use, including attorney's fees and other costs of defense ("Claims") caused by or arising from (1) the use, disposal, transportation, generation, past, present or future release or threatened release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by Lessee in, on, around, about, or emanating from the Premises, including but not limited to Lessee's remediation activities conducted under Section 7 or Section 42 of this Lease, or from Lessee's activities on adjoining property, occurring during the term of the this Lease or at any time if caused by Lessee, including exacerbation or disturbance of existing Hazardous Materials that were released in, on or about the Premises prior to the Lease; or (2) Lessee's failure to comply with any obligation in Section 42 of this Lease; or (3) any actions by County under Sections 42(B)(6) or 42(C) of this Lease; provided that the foregoing shall be subject to the provisions of Section 42(B)(7). Without limiting the generality of the foregoing, the Parties acknowledge that Claims, as defined herein, are not limited to third party Claims, but include Claims made or incurred by Lessee. Lessee's duties under this paragraph 42(C) include the duty to pay or reimburse County's direct and indirect costs to monitor or oversee Lessee's cleanup or other corrective work, including but not limited to engineering and other consulting services, sampling and studies, confirmatory testing, compliance monitoring, and administrative costs and expenses incurred in procuring and managing the same.

D. Reporting Requirements. Lessee shall comply with the Environmental Laws requiring the submission, reporting, or filing of information concerning Hazardous Materials with the Authorities, and shall provide to the County a full copy of any such submission, filing or report as submitted within 15 days of such submission.

E. Right to Check on the Lessee's Environmental Compliance. The County expressly reserves the right to conduct, and Lessee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the Premises as the County, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems.

F. Remedies. Upon any default by Lessee under this Section 42, Hazardous Materials and Environmental Compliance, and the expiration of the notice and cure period provided in Section 24 above, Default and Re-Entry, the County shall be entitled to the following rights and remedies in addition to any other rights and remedies that may be available to the County:

1) At the County's option, to terminate this Lease pursuant to Section 34 above, but effective immediately; and/or,

2) At the County's option, to perform such action as is required to bring the Premises and any other areas of the Airport affected by Lessee's default into compliance with the Environmental Laws and to recover from Lessee all of the County's costs and expenses in connection therewith; and/or

3) To recover from Lessee any and all damages associated with the default, including but not limited to, response, remediation and cleanup costs, expenses and charges, civil and criminal penalties and fees, adverse impacts on marketing the Premises or any other areas of the Airport, loss of business and sales by the County and other Lessees of property at the Airport, diminution of value of the Premises and/or other areas of the Airport, the loss of or restriction of useful space in the Premises and/or other areas of the Airport, and any and all damages and claims asserted by third parties, and the County's reasonable attorneys' fees, costs and expenses.

G. Remediation on Termination of Lease. Upon the expiration or termination of this Lease, Lessee shall remove, remediate or clean up any Hazardous Materials on, or emanating from, the Premises caused by Lessee as required by applicable laws ("Termination Cleanup"). The process for such Termination Cleanup is subject to the County's prior written approval. Although the County reserves the right to review and approve the Termination Cleanup process, the County assumes no responsibility for it or its compliance with the Environmental Laws.

If Lessee fails or refuses to commence the Termination Cleanup process, or fails to reasonably proceed toward completion of such process, within the time specified by law or within a reasonable time if no time is specified, the County may elect to perform such Termination Cleanup after providing Lessee with written notice of the County's intent to commence Termination Cleanup, and after providing Lessee a reasonable opportunity, which shall not be less than ninety (90) days after such notice (unless the County is given notice by a government or regulatory agency with jurisdiction over such matter that Termination Cleanup must commence within a shorter time), to commence or resume the Termination Cleanup process. If the County performs such Termination Cleanup after said notice and Lessee's failure to perform same, Lessee shall pay all of the County's costs and expenses.

H. Survival. Lessee's obligations and liabilities under this Section 42, Hazardous Materials and Environmental Compliance, shall survive the expiration or termination of this Lease.

43. PUBLIC USE AIRPORT. The Premises and KCIA are subject to the terms of certain sponsor's assurances made to guarantee the public use of the public airport area of KCIA as incidental to grant agreements between King County and the United States of America; provided, that in the event at any time during the term of this Lease the terms of such assurances should effectively prohibit Lessee's use of the Premises in the general manner contemplated by the parties to this Lease, then such effective prohibition shall be considered as taking by the public and Lessee or person or persons in lawful possession of the Premises may, upon thirty (30) days prior written notice given to King County, terminate this Lease.

44. RIGHT OF FLIGHT. There is hereby reserved to Lessor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

The right of free passage of aircraft shall be in the airspace over the above described Premises at the height prescribed by Part 77 of the Federal Aviation Regulations to an infinite height above said mean sea level and shall be for the exclusive benefit of Lessor, its successors and assigns (the "Aviation Right of Way"). Lessee represents that the Project, as defined in the Lease, does not and, upon completion, will not interfere with the Lessor's Aviation Right of Way. Except as provided in this Section, Lessor explicitly waives its continuing right to prevent, abate, or remove the Project and any Lessor approved alterations or improvements in connection with Lessor's Aviation Right of Way.

Lessor shall have the continuing right to prevent the erection or growth upon the Premises of any building, structure, trees or any other object extending into the airspace

above said surface at the height prescribed by Part 77 and to remove from said airspace, or at the sole option of Lessor, to mark and light as obstructions to air navigation, any such building, structure, trees or other objects now upon, or which in the future may be upon the Premises, together with the right of ingress to and egress from and passage over all the Premises (airspace and surface space) for such purposes.

In the event Lessee (or anyone holding through Lessee) interferes with Lessor's right of free passage, Lessor reserves the right to enter upon the Premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Lessee.

Lessee by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the Premises in any manner that might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, Lessor reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of Lessee.

45. EMPLOYEE CONDUCT. Lessee shall require and be responsible for the full compliance by its officers, agents, employees, customers and guests with the rules and regulations of the Federal Aviation Administration and KCIA.

46. SEVERABILITY. If any term or provision of this Lease or the application of any term or provision to any person or circumstance is invalid or unenforceable, the remainder of this Lease, or the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and will continue in full force.

47. GOVERNING LAW/VENUE. This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington. Venue for any legal proceeding shall be exclusively in King County Superior Court, Seattle, Washington.

48. QUIET ENJOYMENT. So long as Lessee is not in default under this Lease, subject to Sections 48(A) and (B) below, King County shall at all times during the term and subject to the provisions of this Lease ensure that Lessee shall peacefully and quietly have and enjoy the possession of the Premises without any encumbrance or hindrance.

A. This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of said Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

B. This Lease shall be subordinate to the provisions of and requirements of any existing or future agreement between Lessor and the United States relative to the development, operation, or maintenance of the Airport. (FAA Order 5190.6AB- AGL-600).

IN WITNESS WHEREOF, the parties hereto have subscribed their names effective as of the _____ day of _____, 2016.

LESSEE:

HANGAR TWO, LLC,
of the
a Washington limited liability company

BY: _____
Chuck Kegley, Manager

DATE: 8/16/16

LESSOR:

KING COUNTY, a political subdivision

State of Washington

BY: _____
Anthony Wright, Director
Facilities Management Division

DATE: _____

CONSENT:

KING COUNTY INTERNATIONAL AIRPORT

BY: _____
Randall D. Berg, A.A.E., Director

DATE: _____

APPROVED AS TO FORM:

BY: _____
Ian Taylor, Senior Deputy
King County Prosecuting Attorney

DATE: _____

STATE OF WASHINGTON )
) ss.
COUNTY OF KING )

On this ____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Anthony Wright, to me known to be the Director of the King County Facilities Management Division, a Political Subdivision of the State of Washington, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that said person was authorized to execute the said instrument for King County.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

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

STATE OF WASHINGTON )
) ss.
COUNTY OF KING )

On this 16 day of August, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Chuck Kegley, to me known to be the Manager of Hangar Two, LLC, a limited liability company, who executed the foregoing instrument and acknowledge the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that said person was authorized to execute said instrument on behalf of Hangar Two, LLC.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Marsha A. Turner
Printed Name: Marsha A Turner
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle
My Commission Expires: 03-31-20

MARSHA A. TURNER
COMMISSION EXPIRES
NOTARY
PUBLIC
3-31-20
STATE OF WASHINGTON

## EXHIBIT A

## LEGAL DESCRIPTION OF PREMISES UNDER LEASE

A tract of land in the East half (E1/2) of Section 33, Township 24 North, Range 4 East, Willamette Meridian, (Sec.33, T.24 N., R. 4E., W.M.) described as follows:

Commencing at a concrete monument designated as monument "E" and having U.S. Coast and Geodetic Survey coordinate values of: x equals 1,638,709.88; y equals 193,999.64; thence North 27°12'26" East 841.27 feet to a point; thence North 2°52'05" East 197.12 feet to a point; thence North 29°52'38" West 41.98 feet to a point; said point being the TRUE POINT OF BEGINNING; thence South 60°07'22" West 112.5 feet to a point on the apron limit line which is 150 feet from the centerline of the SE Taxiway; thence North 29°52'38" West along said line 449 feet; thence North 60°07'22" East along the common lease line of Flightcraft, Inc. 508.35 feet, more or less, to a point that is 15.0 feet from the centerline of Perimeter Road; thence running parallel to said road South 17°08'44" East 460.30 feet; thence South 60°07'22" West along the common lease line of Seattle Air Corporation 294.41 feet, more or less, to the TRUE POINT OF BEGINNING; said tract of land contains an area of 205,476 square feet.

# EXHIBIT A-1

## DIAGRAM OF PREMISES UNDER LEASE

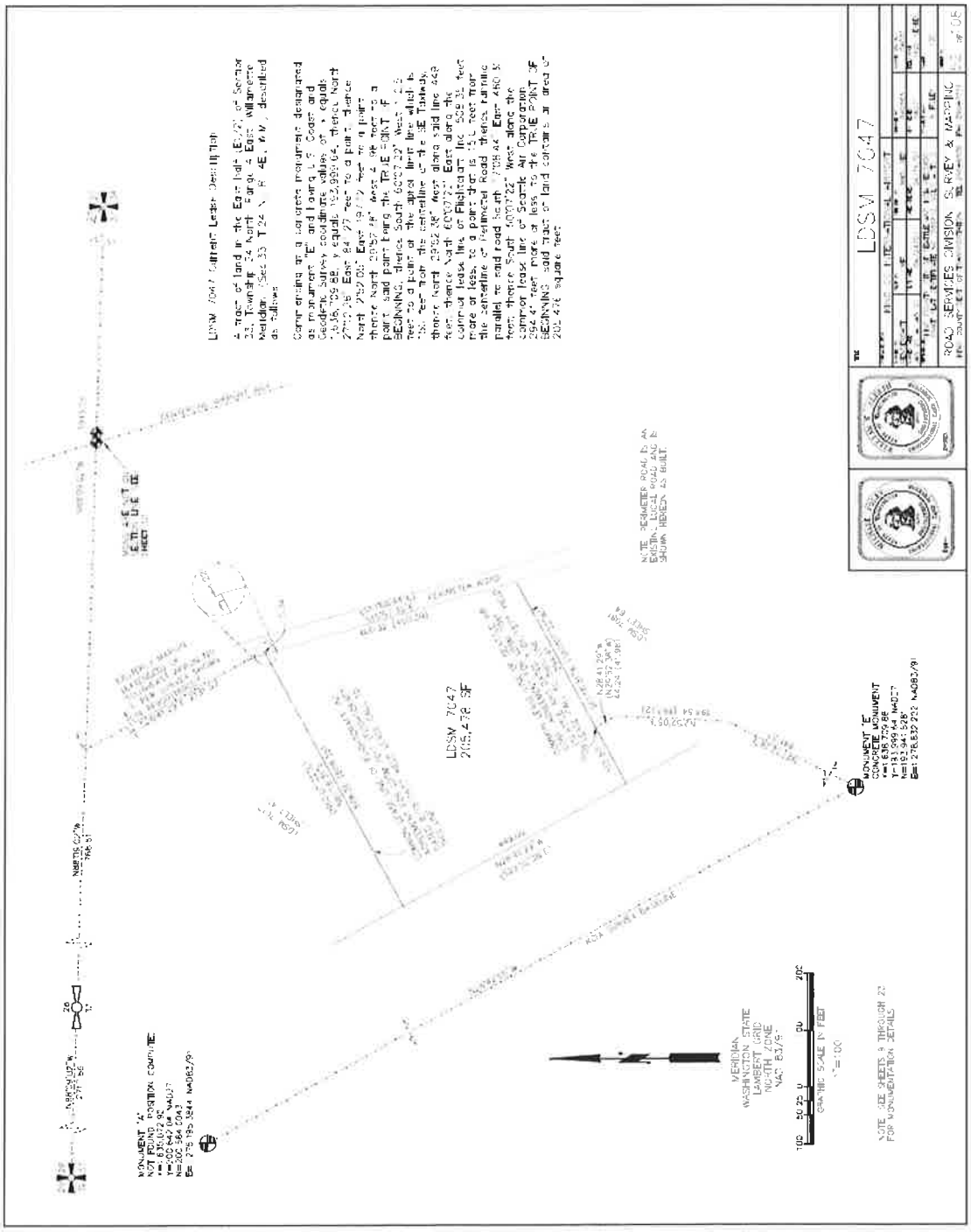

**EXHIBIT B CONCEPTUAL PLAN**

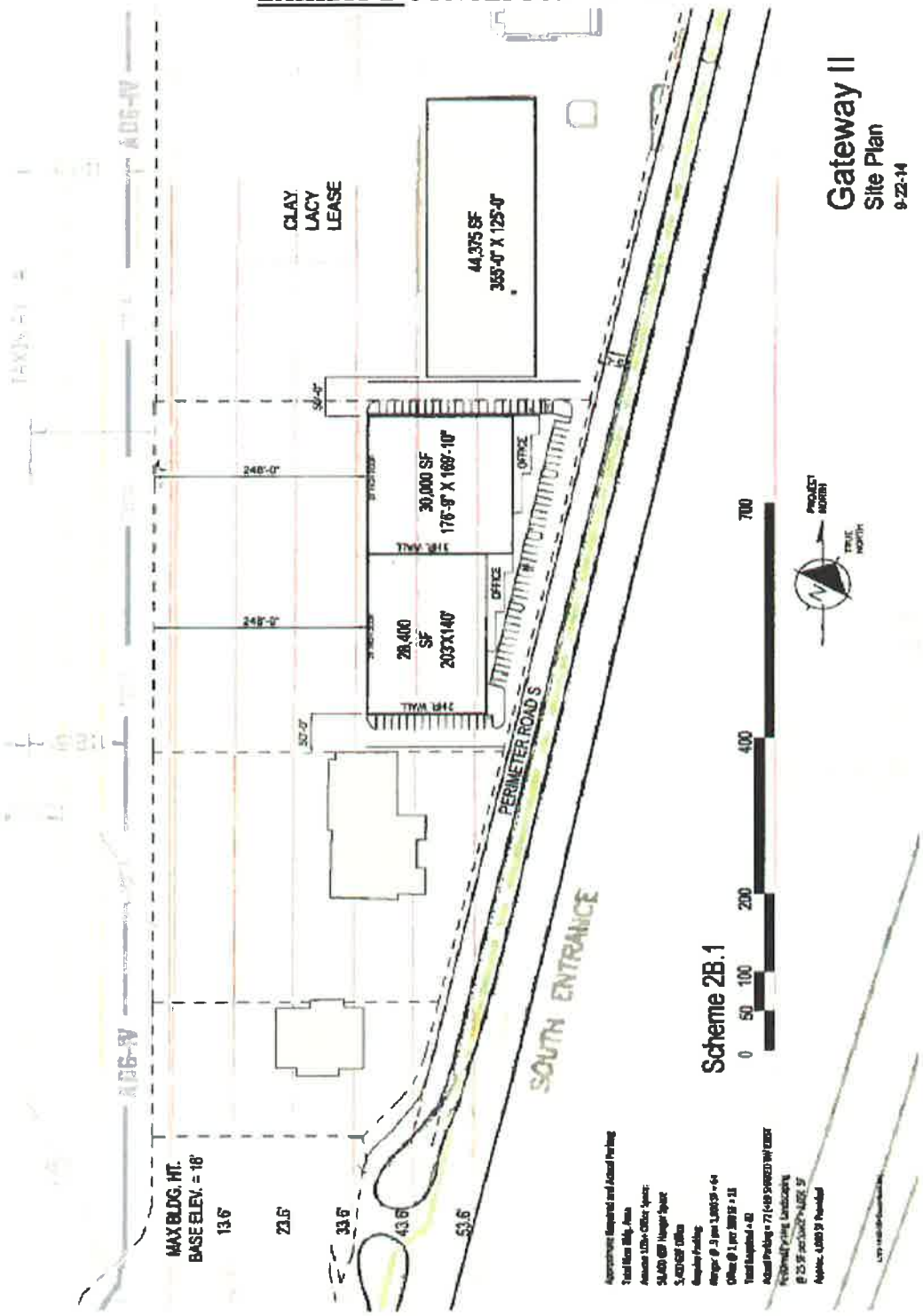

**EXHIBIT C**

**LIST OF APPROVED HAZARDOUS MATERIALS**

Hanger Two, LLC Potential Hazardous Materials

| | A | B |
|---|---|---|
| 1 | **TYPE/ITEM NAME** | **MANUFACTURE** |
| 2 | BUTANE FUEL | RONSON |
| 3 | AEROSPACE SEALANT AC-665 B-2 BASE | 3M |
| 4 | AEROSPACE SEALANT AC-665 B-2 CATALYST | 3M |
| 5 | POLYGONE 300-AG POLYSULFIDE STRIPPER | RPM TECHNOLOGY |
| 6 | AEROSPACE SEALANT AC-665 B-1/2 | 3M |
| 7 | DOT 3 BRAKE FLUID | NAPA |
| 8 | GREEN ZINC CHROMATE METAL PRIMER | SPRAY |
| 9 | METHYL ETHYL KETONE (MEK) | CSD INC |
| 10 | ACETONE | SUNNYSIDE |
| 11 | MINERAL SPIRITS TYPE 1 | HISCO CO. |
| 12 | VARSOL | RANDOLPH PRODUCTS |
| 13 | CP AGE MASTER NO.1 RUBBER PROTECTIVE AGENT | GOODRICH |
| 14 | ICEX II | GOODRICH |
| 15 | SHINE MASTER PREP | GOODRICH |
| 16 | SHINE MASTER | GOODRICH |
| 17 | MIL-H-5606A HYDRAULIC FLUID | ROYCO |
| 18 | SKYDROL LD-4 | SOLUTIA INC |
| 19 | 586 M MINERAL OIL EC135 | NOT AVAILABLE |
| 20 | TURBO OIL 2380 | BP |
| 21 | TURBINE OIL 808 | ROYCO |
| 22 | JET OIL II | MOBIL |
| 23 | | |
| 24 | | |
| 25 | | |
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| 38 | | |

**King County**
**Facilities Management Division**
**Anthony Wright, Interim Director**
Department of Executive Services
500 Fourth Avenue, Room 800
Seattle, WA 98104
Phone: (206) 296-0630
Fax: (206) 205-5070

January 29, 2015

The Honorable Dow Constantine
King County Executive
401 5th Avenue, Suite 800
Seattle, WA 98104

Dear Executive Constantine:

The purpose of this letter is to inform you that King County has entered into direct negotiations for a long term lease with Hangar II LLC, a wholly owned subsidiary of Gateway USA, L.L.C. dba Clay Lacy Aviation ("Clay Lacy") at King County International Airport ("KCIA"). If you disagree with this approach you may direct Facilities Management Division to offer the lease for competitive bidding.

Clay Lacy is a service based company for corporate jet travelers providing aircraft chartering and sales, fueling, maintenance, food, offices, ground transportation and pilot training. They are a gateway to Seattle for public officials, musicians, sport figures and corporate executives. Clay Lacy has been at KCIA since May 2003 when they purchased an existing facility and leasehold. Over the past 11 years they have expanded to 55 employees and added a Maintenance Department.

Clay Lacy currently has a long-term lease that expires in 2047 on the adjacent 9.73 acre leasehold to the north of the subject parcel. The proposed agreement contemplates the demolition and construction of new hangars on a 4.71 acre leasehold. The requested length of the term will be 35 years at a fair market value ground rent. FMD received a new appraisal of KCIA in 2014 and an adjusted rent for 2015 will be addressed in the new lease language.

King County Code section 4.56.160(B) allows King County to directly negotiate leases if the director of the facilities management division determines it is advantageous to the county to negotiate without bidding. I consider it advantageous to directly negotiate this lease for the reasons listed below.

1. Clay Lacy plans to demolish six obsolete hangar buildings on the property and build approximately 110,000 square feet of hangar space and aircraft parking ramp which will

allow them to be more flexible in the types of aircraft they park and the services they provide. This expanded presence on the airfield will not only provide land rent to the airport but also increased landing fees and fuel flowage fees over that typically produced by a private hangar tenant.

2. Given the requested length of lease, KCC 4.56.180(A.2) will require Clay Lacy to invest an amount equal to the value of the ground being leased. In this case that amount is $5.13 million. The improvements being proposed by Clay Lacy have an estimated value of $8 million, in excess of what is required to satisfy the financial investment requirements required by KCC to justify a lease length of 35 years. If after negotiation, Clay Lacy's investment does not exceed that required under KCC, FMD will offer the real estate with an RFP.

3. Additionally, Clay Lacy is assuming a greater amount of expense and demolition costs than would be expected from a tenant responding to a RFP process. Clay Lacy is assuming the cost of demolition of existing obsolete hangars and site preparation and will also be remediating, at their costs, any environmental contamination on the property. They will also be paying full rent during their permitting and construction period.

If you have any questions regarding this proposal, please call me at 206-296-0630.

Sincerely,

Anthony Wright, Interim Director
Facilities Management Division

cc: Caroline Whalen, County Administrative Officer and Director, Department of Executive Services (DES)
Elissa Benson, Interim Deputy Director, Facilities Management Division (FMD), DES
Gail Houser, Manager, Real Estate Services Section (RES), FMD, DES
Heather Marlow, Acting Leasing Supervisor, RES
Harold Taniguchi, Director, Department of Transportation (DOT)
Robert I. Burke, Director, King County International Airport (KCIA)

**DECISION**

**___DISAPPROVED – CONDUCT PROCESS FOR COMPETITIVE BIDDING**

**___SEE ME**

# KING COUNTY FISCAL NOTE - *Property Leases and Sales*

## GENERAL TRANSACTION INFORMATION

| | | | | | |
|---|---|---|---|---|---|
| Ordinance/Motion: | | | | | |
| Title: | **KCIA Hangar Two Lease** | | | Transaction Duration: | 35 Years |
| Affected Agency/Agencies: | King County International Airport | | | Fair Market Value: | NA |
| Note Prepared By: | Carolyn Mock/Tom Paine | Date Prepared: | 06/07/16 | Legal Transaction Type: | New Lease |
| Note Reviewed By: Sid Bender | | Date Reviewed: | | Fiscal Transaction Type: | Stand Alone |
| Description of Request: | KCIA Lease with Hangar Two LLC (aka Clay Lacy) for aircraft facility | | | | |

## FINANCIAL IMPACTS

### Part 1 - Net Present Value Analysis Results

| | | | |
|---|---|---|---|
| **Net Present Value to King County (all impacts): ***** | NA | **Net Present Value to Primary Impacted Agency (customer of transaction): ***** | NA |

### Part 2 - Revenue and Expenditure Impacts

As of the preparation date of this fiscal note, the impact of the above legislation on the **financial affairs** of King County is *estimated* to be as indicated below:

**Revenue to:** [2,3,5]

| Appropriation Unit | Appr. Number | Department | Fund Number | Project Number | Revenue Account Code and Source/Description | Sum of Revenues Prior to 2015 | 2015 / 2016 | 2017 / 2018 | 2019 / 2020 | Sum of Outyear Impacts [2] |
|---|---|---|---|---|---|---|---|---|---|---|
| KCIA | A71000 | 710001.00 | 4290 | 1028679 | 36250 Ext LT Space Fac Rent/Lease Revenue | $ - | $ 162,669 | $ 798,804 | $ 839,243 | $ - |
| | | | | | | $ - | $ - | $ - | $ - | $ - |
| | | | | | | $ - | $ - | $ - | $ - | $ - |
| **TOTAL** | | | | | | **$ -** | **$ 162,669** | **$ 798,804** | **$ 839,243** | **$ -** |

**Expenditures from:** [2,3,4,5]

| Appropriation Unit/Expenditure Type | Appr. Number | Department | Fund Number | Project Number | Expenditure Notes | Sum of Expenditures Prior to 2015 | 2015 / 2016 | 2017 / 2018 | 2019 / 2020 | Sum of Outyear Impacts [2] |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |
| Real Estate Services Labor Costs | | | | | | $ - | $ - | $ - | $ - | $ - |
| King County Project Management | | | | | | $ - | $ - | $ - | $ - | $ - |
| Lease Payments/Associated O&M | | | | | | $ - | $ - | $ - | $ - | $ - |
| Service Costs (Appraisal, Title, Move) | | | | | | $ - | $ - | $ - | $ - | $ - |
| Tenant and Other Improvements | | | | | | $ - | $ - | $ - | $ - | $ - |
| 10% Art for General Fund Transactions | | | | | | $ - | $ - | $ - | $ - | $ - |
| Other Transaction Costs | | | | | | $ - | $ - | $ - | $ - | $ - |
| SUBTOTAL | | | | | | **$ -** | **$ -** | **$ -** | **$ -** | **$ -** |
| | | | | | | | | | | |
| Real Estate Services Labor Costs | | | | | | $ - | $ - | $ - | $ - | $ - |
| King County Project Management | | | | | | $ - | $ - | $ - | $ - | $ - |
| Lease Payments/Associated O&M | | | | | | $ - | $ - | $ - | $ - | $ - |
| Service Costs (Appraisal, Title, Move) | | | | | | $ - | $ - | $ - | $ - | $ - |
| Tenant and Other Improvements | | | | | | $ - | $ - | $ - | $ - | $ - |
| 10% Art for General Fund Transactions | | | | | | $ - | $ - | $ - | $ - | $ - |
| Other Transaction Costs | | | | | | $ - | $ - | $ - | $ - | $ - |
| SUBTOTAL | | | | | | **$ -** | **$ -** | **$ -** | **$ -** | **$ -** |
| **TOTAL** | | | | | | **$ -** | **$ -** | **$ -** | **$ -** | **$ -** |

## APPROPRIATION IMPACTS

As of the preparation date of this fiscal note, the impact of the above legislation on the **budget appropriation** of King County is *estimated* to be as indicated below: [1]

| Appropriation Unit | Appr. Number | Department | Fund Number | Project Number | Appropriation Notes | | 2015 / 2016 Appropriation Change | Total 6-Year CIP Outyear Planning Level Costs |
|---|---|---|---|---|---|---|---|---|
| | | | | | The transaction was anticipated in the current budget; no supplemental appropriation is required. | | $ - | $ - |
| | | | | | | | $ - | $ - |
| | | | | | | | $ - | $ - |
| **TOTAL** | | | | | | | **$ -** | **$ -** |

*Assumption and Additional Notes:*

*** An NPV analysis was not performed because the tenant's use is consistent with the KCIA layout plan and it was determined that this is the highest and best use of the parcel.

1. If the expenditure impact equals or exceeds five percent of the fund expenditures, a copy of the most recent applicable appropriation unit financial plan is attached to this transmittal.
2. The sum of outyear impacts is provided for capital projects and agreements. This sum for revenue and expenditures includes all revenues/expenditures for the duration of the lease/other agreement or life of the capital investment.
3. This transaction does not require the use of fund balance or reallocated grant funding.
4. The transaction is backed by new revenue. The new revenue does not include grant revenue. The new revenue has not been received. The new revenue will be received when lease commences
5. A detailed explanation of how the revenue/expenditure impacts were developed is provided below, including major assumptions made in developing the values presented in the fiscal note and other supporting data:
   - Initial base rent is $1.90/sf/year with 2.5% annual increases on anniversary of commencement date. Rate is adjusted every 5th year based on fair market value appraisal
   - Tenant will pay for and demolish existing facilities and construct improvements valued at a minimum of $8M.
   -
   -

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# The Seattle Times

King County Real Estate Svcs
Tom Paine
500 4th Ave Rm 830

Seattle, WA 98104

Re: Advertiser Account # 144346

Ad #: 654031

Agency Account #: 0

Agency Name:

## Affidavit of Publication

STATE OF WASHINGTON
Counties of King and Snohomish

The undersigned, on oath states that he/she is an authorized representative of The Seattle Times Company, publisher of The Seattle Times of general circulation published daily in King and Snohomish Counties, State of Washington. The Seattle Times has been approved as a legal newspaper by others of the Superior Court of King and Snohomish Counties.

The notice, in the exact form annexed, was published in the regular and entire issue of said paper or papers and distributed to its subscribers during all of the said period.

| Newspaper and Publication Date(s) | |
|---|---|
| Seattle Times | 06/20/16 |
| Seattle Times | 06/27/16 |

Agent Sharon Seligman Signature Sharon Seligman

Subscribed and sworn to before me on June 27, 2016

DATE

Christina C. McKenna

(Notary Signature) Notary Public in and for the State of Washington, residing at Seattle

CHRISTINA C. MCKENNA
COMMISSION EXPIRES
NOTARY
PUBLIC
STATE OF WASHINGTON

# The Seattle Times

Re: Advertiser Account # 144346

Ad #: 654031

Agency Account #: 0

Agency Name:

AD TEXT

**King County** intends to execute a 35 year lease located at King County International Airport, and more specifically, at 8453-8500 Perimeter Road South, Seattle WA 98108. The parcel contains approximately 4.7 acres. A copy of the lease is available for public inspection at the Real Estate Services Section, King County Administration Building, 500 Fourth Avenue, Room 830, Seattle, Washington 98104.

# Lease Property Summary

**Photo of Property:**

**Property Owner:** King County
**Address:** 8453-8500 Perimeter Road South
**Cost Per Sq. Ft.:** $1.90/sf/year
**Operational Costs:** $0
**Term:** 35 years[1]
**Square Footage:** 205,476
**Council District:** Eight
**Funding Source:** Airport Operating Fund
**Previous Location:** New Lease with redevelopment

## Lease Synopsis:

Hangar Two, LLC, is a subsidiary of Gateway USA, LLC, d/b/a Clay Lacy Aviation (Clay Lacy). Clay Lacy delivers a comprehensive suite of aviation services including private jet charter, aircraft management, aircraft fueling and maintenance. Clay Lacy has been a tenant at King County International Airport (KCIA) since 2002. Clay Lacy has been a tenant on the premises of this leasehold since 2012. The existing 5 year term on their lease expires in February of 2017. The premises are located southerly and adjacent to the premises of the main Clay Lacy operation, which is occupied via a lease that expires in 2047. Clay Lacy plans to demolish six obsolete hangar buildings on the property and build approximately 110,000 square feet of hangar space and aircraft parking ramp which will allow them to be more flexible in the types of aircraft they park and the services they provide. They have also proposed to use this new facility to attract a major aviation service company.

## Context

[1] Per KCC 4.56.180(3) the lease may be extended for up to 15 additional years if the conditions set forth in this code section are satisfied, as determined by the County, in its sole discretion.

*Rationale for transaction:* Proposed tenant is a long standing tenant at KCIA who requested and was granted a direct negotiation for the lease. The tenant's use is consistent with the KCIA layout plan. The tenant is going to pay for and demolish all existing facilities on the parcel and construct and invest in improvements valued at a minimum of $8M. Pursuant to King County Code 4.56.180 (A)(3), the code requirement for the investment value of improvements to qualify for a long term lease (longer than 10 years and up to 35 years) on this parcel is $5.14M. Tenant is also going to pay fair market rent from the date of lease commencement (including during construction). This expanded presence on the airfield will not only provide land rent to the airport but also increased landing and fuel flowage fees amounts in excess of those typically produced by a private hangar tenant. Based on this rationale it was determined by KCIA, the Facilities Management Division (FMD) and the Executive that, pursuant to King County Code 4.56.160 (B), it was advantageous to the County to directly negotiate without a competitive bidding process. The County gave notice of intent to execute a lease by publishing a notice once a week for a term of two weeks, as required by King County Code 4.56.160 (B).

*Policy considerations*: This lease will allow for an expanded presence on the airfield by the tenant. The additional improvements will enhance economic development by attracting aviation related businesses that in turn will employ family wage positions. The expanded space will also allow for additional jet aircraft to access the field which increases fuel flowage and landing fees, both of which are advantageous to KCIA's annual budget. Lease conditions discussed in the Lease Framework Working Group pertaining to lease term (reappraisal frequencies and annual interim rent adjustments) are included in the lease. The proposed use complies with the KCIA Airport Master Plan Airport Layout Plan by being an aviation use with direct airfield access.

*Political considerations:* Economic development is a key driver for this transaction. It allows an existing tenant to expand its operation which will create more business opportunities and employment at KCIA, together with additional fuel flowage and landing fees.

*Community considerations or partnerships:* At this point there has been no community opposition or support for this proposal.

*Fiscal considerations:* Tenant will pay the independently appraised fair market value of $1.90/sf/year for the 205,476 square foot leasehold. The initial annual base rent is $390,404.40. As contemplated by the Lease Framework Working Group, during non-appraisal years the rent will adjust up 2.5% annually on the anniversary of the commencement date and the lease rent will adjust every 5$^{th}$ year based on a fair market value appraisal.

*Other considerations*: N/A

*CIP/operational impacts:* N/A

*King County Strategic Plan impact:* This transaction supports the King County Strategic Plan guiding principle of Financial Sustainability and goal of delivering a seamless network of transportation options to get people where they need to go when they need to get there.

*Equity and Social Justice impact:* In accordance with Real Property Asset Management Plan (RAMP) Strategy 2.0 and 24.0, FMD and KCIA reviewed this legislation for Equity and Social Justice (ESJ) impacts. The King County International Airport is located in the Georgetown neighborhood of Seattle and provides private and public airport services. There are similar tenants and services located in the vicinity of this parcel and no new ESJ impacts are anticipated from this lease.

*Energy Efficiency impact:* N/A

## Lease Alternatives Analysis

The intended project is the highest and best use for the parcel as determined by an independent appraisal.

## Vicinity View Map

## Parcel Map

King County

# Metropolitan King County Council
# Budget and Fiscal Management Committee

## STAFF REPORT

| | | | |
|---|---|---|---|
| **Agenda Item:** | 7 | **Name:** | Lise Kaye |
| **Proposed No.:** | 2016-0347 | **Date:** | August 24, 2016 |

## SUBJECT

An ordinance authorizing the King County executive to enter into a long-term lease agreement with Mente, LLC for county-owned land located at the King County International Airport, located in council district 8.

## SUMMARY

The ordinance would approve a 35-year lease with Mente, LLC. The lease consolidates three previous parcels and approves demolition of an existing obsolete cargo package processing and sort facility and construction of a new aircraft hangar facility on a 212,872 square foot leasehold at King County International Airport (KCIA).

## BACKGROUND

Mente, LLC, has been a sublease tenant at King County International Airport (KCIA) on the King County Jet Center leasehold since 1997. Mente, LLC is a private entity that will use the hangar facilities for its own corporate aviation operations. The tenant expressed interest to KCIA in 2015 in developing and constructing their own aircraft facility. According to Executive staff, combining three parcels on the east side of KCIA into 4.8-acre parcel best met Mente's needs. The proposed lease would combine two parcels previously occupied by DHL via monthly rental agreements and a third that was assigned to Mente from Pajaro, LLC.[1] The tenant plans to build approximately 40,000 square feet of hangar space and an aircraft parking ramp. Their goal is to exceed State of Washington Energy Code requirements by at least 20% and they are currently studying the feasibility of a solar photovoltaic roof array to offset electrical energy use.

King County Code (KCC) identifies the conditions under which the County can lease its land and buildings. The code provisions for leasing are identified below.

[1] Due to a changing business model, DHL had been planning to relocate to SeaTac Airport for over a year and vacated the property on June 1, 2016. Pajaro, LLC was a sub-landlord to DHL.

KCC 4.56.010 and KCC 4.56.160 require that leases to commercial entities be at "fair market value" as determined by an appraisal. An independent appraisal identified the fair market value for this leasehold at $1.90 per square foot per year.[2]

KCC 4.56.160 also requires that in general, properties available for lease be awarded pursuant to a competitive bid process. However, that same section of code does allow for a negotiated lease when it is in the best interests of the County. The relevant section of code is quoted below with the reference to the negotiated lease provision underlined (emphasis added).

> …the manager of the facilities management division shall determine whether the new lease, or renewal of an existing lease, is to be awarded by competitive bidding or by negotiation with interested parties without bidding. New leases shall be awarded by competitive bidding <u>unless the manager of the facilities management division determines it is advantageous to the county to negotiate without bidding. In the event the county negotiates the award of lease contracts, the facilities management division shall submit to the executive the reasons for recommending award through negotiation rather than competitive bidding.</u> At the option of the executive, competitive bidding may be required. The county shall give notice of its intention to execute a lease by publishing a notice in a legal newspaper at least once a week for the term of two weeks.

The Executive agreed with the recommendation of the Manager of the Facilities Management Division that a negotiated lease would be in the best interest of the County. The rationale for the decision will be discussed in the Analysis section of this report. As required by the code sections above, a public notice of intent to negotiate a lease was published in the Seattle Times on June 20 and June 27, 2016. (Attachment 6 is the affidavit of publication.)

KCC 4.56.170 requires the lessee to make a deposit. In this case, the proposed lease requires a deposit equal to two months of regular lease payments and excise tax.

KCC 4.56.180 allows the County to lease property for a term of 35 years if the property to be leased is improved or is to be improved and the value of the improvement is or will be at least equal to the value of the property to be leased. The most recent appraisal values the property at $5.32 million. This would represent the minimum investment the lessee would need to make in order to qualify for a 35-year lease.

## ANALYSIS

This analysis evaluates the proposed lease against two primary considerations: the first is whether or not it is in the County's interest to negotiate the lease rather than having a public bidding process; the second is whether or not all the provisions of code have been met.

---

[2] As shown in the Facility Maintenance Division's direct negotiation letter to the Executive (Attachment 3) FMD originally anticipated leasing the existing airport ramp at the rate of $2.40 per square feet, but Mente since elected to demolish the existing ramp and reconstruct a new one; the negotiated rate was revised to $1.90 per square foot (the fair market value rent for undeveloped land) for the entire parcel.

Bid versus Negotiation of Lease. The following paragraphs describe and analyze the factors that lead the Director of the Facilities Management Division and the Executive to recommend a negotiated lease.

The proposed tenant provides corporate aviation services and has been located on Boeing Field since 1997. The lease anticipates that Mente will:

1. Demolish all existing facilities on the parcel at their expense.
2. Construct 40,000 square feet of hangar space and an aircraft parking ramp. (At the end of the lease term, the hangar and all facilities become the property of King County.)
3. Construct improvements valued at a minimum of $30 million. This represents approximately $24.7 million in excess investment in the property, exceeding the requirement of KCC 4.56.180.
4. Pay full rent during the entire term of the lease, including during demolition and construction of the new improvements.

The facility will permanently employ 27 full time employees at occupancy, with capacity for 40 full time employees. Executive staff estimate that direct construction-related employment will be 97 employees including architects, contractors and subcontractors. They estimate an additional 186 to 296 indirect construction jobs related to suppliers, offsite fabrication and manufacturing related to the project. Table 1 below summarizes the benefits of this lease to King County.

**Table 1 - Total County Benefits**

| Action | Benefit |
|---|---|
| 27 Employees | Payroll |
| KCIA tenant since 1997 | Corporate aviation services |
| Total Facility Investment | $30 million |
| Excess site improvement value | $24.7 million |
| Annual Lease Payment & Leasehold Tax | $404,457 |

Executive staff believes it is unlikely a public bid for the lease would have provided this level of benefit for King County.

Code Provisions. The lease appears to meet all relevant code provisions as identified in the Background section of this report including fair market value, level of investment, term of lease, rental deposit and public notice published in a newspaper for two consecutive weeks.

## FISCAL NOTE

The lease rent will adjust every fifth year based on a fair market value appraisal. During non-appraisal years the base rent of $1.90 per square foot per year will increase 2.5% annually on the anniversary of the previous Rent Adjustment Date.

## AMENDMENT

Amendment 1 would replace the Executive's recommended lease with a revised version incorporating a number of technical and clarifying changes recommended by Council's legal counsel and the Prosecuting Attorney's Office (PAO). The Lessee has approved these changes and signed the revised lease (see Attachment 3). Changes as shown on Attachment 3 include

- Approval of the lease does not warrant that the Department of Permitting and Environmental Review (DPER) will issue any required permit.
- If Lessee fails to achieve Substantial Completion of its building within a time frame set forth in the Lease, Lessee may terminate the Lease but will be responsible for all costs associated with the uncompleted construction including environmental remediation.
- Lessee may propose renegotiating the Fair Market rental value if Lessee is offered and accepts an extension of the Lease term equal to the estimated useful life of any required improvements.
- Lessee is responsible for all environmental remediation on the Premises during construction of Improvements (not just during initial construction of improvements).
- Provisions by which parties may disqualify arbitrators.
- Specific actions related to any property condemnation will be overseen by the court having jurisdiction over the condemnation.
- Lessee is allowed to self-insure for one required coverage by submitting a letter of credit in the amount of $1 million.
- Lessor does not represent that the Project, as defined in the Lease Agreement, does not and, upon completion, will not interfere with the Lessor's Aviation Right of Way.
- Lessor does not waive its continuing right to prevent, abate, or remove the Project and any Lessor approved alterations or improvements in connection with Lessor's Aviation Right of Way.

## ATTACHMENTS

1. Proposed Ordinance 2016-0347 and attachment
2. Transmittal Letter
3. Amendment 1 and attachment
4. Direct Negotiation Letter
5. Fiscal Note
6. Affidavit of Publication
7. Property Summary

## INVITED

1. Randall Berg, Director, King County International Airport
2. Tony Wright, Facilities Management Director

# KING COUNTY

## Signature Report

**August 18, 2016**

**Ordinance**

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

**Proposed No.** 2016-0347.1 **Sponsors** Upthegrove

AN ORDINANCE authorizing the King County executive to enter into a lease agreement with Mente, LLC, as tenant, for county-owned land located at the King County international airport in council district eight.

STATEMENT OF FACTS:

1. The facilities management division determined that the county should award a lease of the county-owned land located at 8075 Perimeter Road South, Seattle, Washington, through a negotiation with interested parties without bidding under K.C.C. 4.56.160.

2. The facilities management division successfully negotiated a lease for the county-owned land with Mente, LLC.

3. The facilities management division gave notice of its intent to execute the lease by publishing a notice in the Seattle Times once a week for two weeks on June 20, 2016.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. In accordance with K.C.C. chapters 4.56 and 15.72, the executive is authorized to execute a lease for the county-owned land with Mente, LLC, substantially

in the form of Attachment A to this ordinance, and to take all actions necessary to implement the terms of the lease.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

_____

J. Joseph McDermott, Chair

ATTEST:

_____

Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, _____.

_____

Dow Constantine, County Executive

**Attachments:** A. Lease Agreement

# ATTACHMENT A:

# LEASE AGREEMENT

**KING COUNTY INTERNATIONAL AIRPORT**
7277 Perimeter Road South
Seattle, Washington 98108
(206) 296-7380

# LEASE AGREEMENT

1. PARTIES. This Lease ("Lease") effective the _____ day of _____ 2016, is entered into between King County (sometimes referred to the "County" or "Lessor"), a municipal corporation and a political subdivision of the State of Washington, and Mente, L.L.C., a Washington limited liability company ("Lessee").

2. PREMISES. King County hereby rents to Lessee, upon the following terms and conditions, premises located in King County, Washington, legally described as follows (see "Exhibit A Legal Description of Premises Leased" attached, including rights of access across adjoining land owned by Lessor (including taxiways and apron areas) and "Exhibit A-1 Diagram of Premises Under Lease"), and commonly known as:

**8013-8075** Perimeter Road South, Seattle WA 98108
Approximately **212,872** square feet

3. TERM. The term of this Lease is for thirty-five (35) years (the "Lease Term"). The Lease shall commence on the effective date of an ordinance adopted by the King County Council approving this lease, (the "Commencement Date"), and end on the thirty-fifth (35th) anniversary of the Commencement Date, unless terminated earlier in accordance with this Lease or extended pursuant to Section 7.

4. RENT. Lessee shall pay to King County a rent of **$33,704.73 DOLLARS** payable in advance on or before the first day of each and every calendar month of the Lease Term. The rent is calculated on 212,871 square feet of raw land at $1.90/sf/year. Lessee shall also pay on the base rent a Leasehold Excise Tax levied pursuant to RCW Chapter 82.89A of **$4,327.69 DOLLARS** per month, which is based on the current Leasehold Excise Tax rate of 12.84%.

All rents and taxes shall be made payable to the KING COUNTY INTERNATIONAL AIRPORT and are to be received in the office of:

King County International Airport
7277 Perimeter Road South, Suite 200
Seattle, Washington 98108

Said rental is exclusive of any other sale, franchise, business or occupation, or other tax based on rents. Should any such taxes apply during the life of this Lease, the rent shall be increased by such amount.

5. SECURITY AND DAMAGE DEPOSITS. At the time of signing of this Lease, the Lessee shall pay the first (1st) month's rent and leasehold tax. In addition, the Lessee shall deposit with King County the sum of **$76,064.84 DOLLARS** as a deposit for performance of all obligations required by this Lease. The return of this deposit, or any portion of it, shall be conditioned on the performance of all the Lessee's duties. Within (60) days after termination of the tenancy and vacation of the premises King County will return any sum due the Lessee from this deposit retained by King County. Furthermore, the Lessee understands and agrees that all rents, late charges, utility bills owing, or any other obligation required under this Lease, including damage and cleaning may be deducted from the deposit at the time of Lessee's vacation of the Premises if any amount remains in that fund after subtraction of damage and cleaning costs with the balance paid to Lessee. The deposits need not be held in any special account and no interest will be paid thereon.

6. USE. Lessee shall use said Premises for the following permitted purposes and no others without prior written consent of King County, which shall not be unreasonably withheld, conditioned or delayed:

A. Aviation Hangar
B. Maintenance of Tenant owned or leased aircraft
C. Fuel Storage for self-fueling of Tenant owned or leased aircraft
D. Related office and administrative uses

Lessee shall obtain, at Lessee's sole cost and expense, any and all licenses and permits necessary for Lessee's contemplated use of the Premises. Lessee shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations to emanate from the Premises, nor take any other action which would constitute a nuisance or which would disturb or endanger any other tenants of the Airport, or unreasonably interfere with such other tenants' use of their respective space. Lessee agrees not to do or permit anything to be done in or about the Premises which will in any manner obstruct or interfere with the rights of other tenants or occupants of the Airport, or injure or unreasonably annoy them, or use or allow the Premises to be used for any unlawful or unreasonably objectionable purpose. Lessee shall neither commit nor suffer any waste to the Premises and shall, at its sole cost and expense, keep and maintain the Premises and all improvements thereon and all facilities appurtenant thereto in good order and repair and safe condition, and the whole of the Premises, including all improvements and landscaping, in a clean, sanitary and attractive condition.

No other uses, activities or operations, shall be conducted by the Lessee from the Premises without first obtaining the written consent of King County. To the best of King County's knowledge, there are no conditions, restrictions or encumbrances to which the Premises and Project are subject that would preclude the redevelopment and use of the Premises by Lessee as provided for in this Lease. Upon the Commencement Date, King County shall deliver the Premises to Lessee free and clear of all tenancies or occupancies of any kind.

7. CONSTRUCTION OF INITIAL IMPROVEMENTS. King County hereby approves the construction by Lessee of a hangar, offices and aircraft ramp on the Premises (the "Project"), as

more specifically described in ("Exhibit C Site Plan") attached hereto. Lessee shall submit to King County's Department of Permitting and Environmental Review, a building permit application (including detailed plans and specifications) for the lease improvements described in Exhibit "C" within 60 days after execution of this Lease. Lessee shall also use commercially reasonable efforts to obtain all permits for the Project (in final, unappealable form) from agencies with jurisdiction in a form satisfactory to Lessee (the "Project Approvals") no later than one (1) year from the date of King County Council approval of the Lease (the "Outside Permit Date"), and shall commence demolition, at Lessee's sole expense, of existing improvements on the Premises within 30 days of the date all Project Approvals are obtained, or earlier at Lessee's option, provided Lessee has obtained the necessary permits (the "Demolition Commencement Date"). Lessee shall thereafter undertake and complete the permitted improvements within a commercially reasonable amount of time following the later of: the date all Project Approvals are obtained or Demolition Commencement Date. If Lessee determines, in its sole discretion, that it cannot obtain the Project Approvals to enable it to achieve Substantial Completion for the Project, as defined below, then Lessee may terminate this Lease by written notice to King County given within thirty (30) days following the Outside Permit Date, with all rents paid and costs incurred by Lessee, including but not limited to permit costs, design and development expenses, and costs associated with the demolition of the existing hangar, to be forfeited by Lessee. If Lessee has timely filed applications for the Project Approvals but the Project Approvals have not been issued thirty (30) days prior to the Outside Permit Date, then Lessee may extend the Outside Permit Date one time by an additional six (6) months upon payment to King County of an extension payment in the amount of $10,000.00.

If within the required time periods identified in this Section 7, Lessee fails to achieve Substantial Completion of the improvements within a commercially reasonable amount of time as required by this Lease (as determined reasonably by King County), and fails to cure such lack of Substantial Completion within ninety (90) days after written notice from King County (or if such cure cannot reasonably be effected within said 90-day period, then Lessee shall commence such cure within said 90-day period and prosecute such cure to completion with diligence), then at the election of King County, this Lease may be terminated and all rentals paid shall be forfeited to King County, including funds expended by Lessee for the demolition of the existing hangar, and any improvements made to the Property, including environmental remediation. In the event King County or Lessee exercises termination rights under this Section 7, Lessee shall have no obligation or liability with respect to reconstructing improvements or continuing to pursue the construction of new improvements on the Property in the event Lessee has commenced or completed the demolition on the existing improvements in accordance with this Lease at the time of such termination. For the purposes of this Lease, "Substantial Completion" will be achieved upon acquiring a Certificate of Occupancy from the applicable permitting jurisdiction for the improvements made on the Premises. All dates and timelines contemplated herein are subject to Acts of God and/or Force Majeure, including but not limited to labor issues, severe weather and any other significant and impactful issue or event not within the reasonable control or mitigation of Lessee.

The total value of the improvements described in this section shall be at least $30,000,000.00, as evidenced by written documentation to be approved of by King County prior to the commencement of construction. If permitted by King County Code 4.56.180, Lessor, in its

reasonable, but sole discretion, may offer Lessee an extension of the 35-year Lease Term equal to the estimated useful life of any required improvements described in this section, but not to exceed a total of fifty (50) years and the parties shall enter into a lease amendment to document the extension. Lessor shall give notice of such offer or the basis for not making such offer within one (1) year following Substantial Completion. The "value of the improvements" as used in this section, includes actual demolition costs, remediation costs, as defined below, professional fees, as defined below, as well as permitting and actual costs associated with the improvements made to or permanently erected on the Premises. The "professional fees," as used in this section, include fees spent for the contemplated improvements on the following professional services up to a maximum of $1,000,000.00, architectural and engineering, environmental and soil engineering, geotechnical engineering, surveying, testing and special inspections, security system engineering, AV systems engineering, and IT systems engineering. Lessee shall be required to provide King County with a Contractor's Performance and Payment surety bond or letter of credit for the cost of these initial improvements pursuant to the terms of Section 21 below.

Notwithstanding the provisions of Section 42(B) (7), Lessee is solely responsible for all environmental remediation on the Premises during the initial construction of improvements, regardless of the source of the Hazardous Material being remediated or the party responsible for its generation, provided however, that Lessee may seek contribution against any prior potentially responsible party other than as set forth in this Section 7 below. The "remediation costs," as used in this section, includes reasonable and necessary remedial action costs, up to a maximum of $500,000.00, to develop the contemplated improvements. Remedial action costs that may be included in the value of improvements shall be limited to costs to investigate, sample or test, segregate, export, dispose of or otherwise manage any soil, groundwater, surface water or sediment containing Hazardous Materials that exceed the costs of handling or managing the soil, groundwater, surface water or sediment had it not contained Hazardous Materials. For purposes of including remediation costs toward the "value of improvements", environmental remediation does not include remediation of Hazardous Materials caused or generated by Lessee during its control of the Premises. Lessee shall remediate Hazardous Materials under this Section to the applicable cleanup standards under Environmental Laws that will allow for unrestricted use of the Premises with no environmental covenant or other deed restriction required to be recorded, unless County, in its sole discretion, agrees otherwise in writing. In no event shall Lessee pursue costs recovery or contribution action against King County for environmental remediation performed pursuant to this Section 7.

8. ENTIRE AGREEMENT AMENDMENTS. This Lease and any and all exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole agreement between the parties. There are no terms, current or past representations, obligations, covenants or conditions other than those contained herein. No modification or amendment of this Lease shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

9. NOTICES. Required notices except legal notices shall be given in writing to the following respective addresses:

| | |
|---|---|
| TO COUNTY: | King County, Real Estate Services<br>500 Fourth Avenue, Suite 830<br>Seattle, WA 98104-2337<br>Attention: Lease Administration |
| With a copy to: | Airport Director<br>King County International Airport<br>7277 Perimeter Road South<br>Seattle, WA 98108-3844 |
| TO LESSEE: | Prior to construction of the improvements:<br>MENTE, LLC<br>6771B Perimeter Road South<br>Seattle, WA 98108<br><br>Following construction of the improvements:<br>MENTE, LLC<br>8075 Perimeter Road South<br>Seattle, WA 98108 |
| With a copy to: | Jack McCullough<br>McCullough Hill Leary, PS<br>701 Fifth Avenue, Suite 6600<br>Seattle, WA 98122 |

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices sent by mail shall be deemed to have been given when properly mailed.

10. LATE PAYMENT, TAXES, LICENSES, FEES AND ASSESSMENTS.

A. LATE PAYMENTS. Lessee acknowledges that the late payment by Lessee to King County of any rent or other sums due under this Lease will cause King County to incur administrative, collection, processing and accounting costs and expenses not contemplated under this Lease, the exact amounts of which are extremely difficult and impractical to fix. Therefore, if any rent or other sum due under this Lease is not received by King County from Lessee by the tenth calendar day of the month in which said rent or other sum is due ("**the Delinquency Date**"), Lessee shall immediately on the Delinquency Date pay to King County a late charge equal to the greater of (i) five percent (5%) of the amount of such rent or other sum, or (ii) Five Hundred Dollars ($500.00). King County and Lessee agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to King County for its loss caused by Lessee's nonpayment. Should Lessee pay said late charge but fail to

pay contemporaneously therewith all unpaid amounts of rent or other sums due under this Lease, King County's acceptance of this late charge shall not constitute a waiver of Lessee's default with respect to Lessee's nonpayment or prevent King County from exercising all other rights and remedies available to King County under this Lease or under law. Additionally, all such delinquent rent or other sums, and all late charges not paid when due, shall bear interest for each day following their Delinquency Date until paid at a percentage rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted under applicable laws. Waiver of the late charge or interest with respect to any delinquent payment will not be deemed to constitute a waiver of the late charge or interest with respect to any subsequent delinquent payment. Any payments of any kind returned for insufficient funds will be subject to an additional charge of $50.00 payable by Lessee to King County. In addition, if payments are received by check or draft from Lessee, and two (2) or more of such checks or drafts are dishonored by the bank or other financial institution they were drawn upon in any twelve (12) month period, King County may thereafter require all rent and other payments due hereunder from Lessee to King County to be made by bank cashier's or bank certified check or other similar means of payment and King County shall not be required to accept any checks or drafts of Lessee which do not comply with such requirements.

B. LEASEHOLD TAX. A Leasehold Excise Tax, if applicable, is levied pursuant to the Revised Code of Washington (R.C.W.) Chapter 82.29A. The Lessee agrees to pay this tax to King County. If the State of Washington changes the Leasehold Excise Tax or if King County receives authorization to levy this tax, the tax payable shall be correspondingly changed.

C. LICENSE, TAXES AND FEES. Throughout the term of this Lease, Lessee shall pay all applicable taxes and all license and excise and other applicable fees including, but not limited to, fuel flowage fees and landing fees, covering the business conducted on the Premises as provided for in King County Code Title 15 as now existing and as it may be amended.

D. MITIGATION ASSESSMENTS. Lessee shall, subject to sixty (60) days prior notice and reasonable opportunity to object, pay any mitigation assessment now in effect or hereafter established, by any municipality, agency or organization, including King County, which includes the King County Council, having jurisdiction over King County International Airport. Lessee's portion of the assessment will be based on their contribution, or pro rata share, of the condition and/or circumstance which is being mitigated and/or their proportionate use of the improvement requiring mitigation investment.

11. RENT ADJUSTMENT. To ensure a fair rent based upon the fair market value of the Premises, King County shall adjust the rent to the then current Fair Market Rental Value (as defined below) in the fifth calendar year following the Lease Commencement Date and each

subsequent Rent Adjustment Date, as defined below (the "**FMV Adjustment**"). Subsequent adjustments will take effect every fifth anniversary of the previous FMV Adjustment. The date on which a FMV Adjustment becomes effective is referred to hereafter as "**Rent Adjustment Date**". The five year period commencing on the Rent Adjustment Date is referred to hereafter as "**the Succeeding Period**".

A. FAIR MARKET RENTAL VALUE DEFINED. For all purposes required under this Lease, "**Fair Market Rental Value**" is defined as: An amount in the competitive market that a well-informed and willing lessor, who desires but is not required to lease, would accept, and which a well-informed and willing lessee, who desires but is not required to lease, would pay for the temporary use of the Premises (excluding improvements to the Premises constructed at Lessee's expense made during the term of the lease), after due consideration of all the elements reasonably affecting value

B. NOTICE OF RENTAL ADJUSTMENT. When engaging in an FMV Adjustment, King County will give Lessee at least thirty days written notice of the adjusted rent for the Succeeding Period. The rent as adjusted shall take effect on the Rent Adjustment Date specified in the notice. Unless Lessee, within thirty days following receipt of notice from King County, gives King County written notice of its rejection of the adjusted rent together with Lessee's statement of the amount Lessee considers to be the Fair Market Rental Value, the rent as adjusted by King County will become the rent for the Succeeding Period. If Lessee so notifies King County of its rejection of the adjusted rent, the parties may negotiate in good faith in an attempt to agree upon the rent adjustment.

C. ARBITRATION.

1) If, thirty days after King County receives Lessee's notice of its rejection of the rent as adjusted by King County, Lessee and King County cannot agree upon the rent adjustment, the rent for the Succeeding Period will be adjusted by arbitration. Lessee and King County will each select one disinterested arbitrator, and the two selected arbitrators will select a third.

2) King County will give Lessee written notice of the name and address of its selected arbitrator and his or her qualifications. Unless otherwise agreed in writing by King County, Lessee shall give King County written notice of the name and address of Lessee's selected arbitrator and his or her qualifications within thirty days after Lessee's receipt of King County's notice. If Lessee fails to so provide its written notice to King County, Lessee shall be deemed to waive its right to arbitration, the arbitration shall not proceed, and the rent as adjusted by King County shall become the rent for the Succeeding Period.

3) If the two arbitrators have not selected a third arbitrator within thirty days after the selection of the last selected of the two, either Lessee or King

County will apply to the Presiding Judge of the Superior Court in King County for the appointment of a third arbitrator.

4) Each arbitrator will be a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, or other appraisal society or association having equivalent ethical and professional standards. If, in the future, a licensing requirement for real estate appraisers is imposed by any legislative body with jurisdiction, each arbitrator shall also be licensed. The arbitrators shall not only be impartial, but also shall not have been an employee of, or retained under contract by, either party (King County International Airport or Lessee) for a period of one year before the arbitration, and shall have no financial interest in the subject of the arbitration. Each party shall have the right to disqualify any arbitrator who does not meet the requirements of this section by sending a written notice to the other party and to all the arbitrators stating the grounds for disqualification. If the disqualified arbitrator is a party-appointed arbitrator, then that party shall, within fourteen days after its receipt of the other party's notice of disqualification, appoint another arbitrator who meets the requirements of this section to serve in place of the party's disqualified arbitrator. If the disqualified arbitrator is the third arbitrator, then the two party-appointed arbitrators shall, within fourteen days after their receipt of a party's notice of disqualification, select a third arbitrator who meets the requirements of this section to serve in place of the disqualified arbitrator.

5) The arbitrators shall give the parties sixty days' notice in writing of the date on which the arbitration is to commence. Unless otherwise agreed in writing by King County and Lessee, each party shall, no later than thirty days before the arbitration is scheduled to commence, provide the other party with a copy of an appraisal report prepared by a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, or other appraisal society or association having equivalent ethical and professional standards, that supports that party's claim of Fair Market Rental Value. If Lessee fails to so provide a copy of its appraisal report to the County, Lessee shall be deemed to waive its right to arbitration, the arbitration shall not proceed, and the rent as adjusted by King County shall become the rent for the Succeeding Period.

6) The three arbitrators will determine a fair rent for the Premises for the Succeeding Period based upon the Fair Market Rental Value as defined in as defined in Section 11(A) hereof, which is in accordance with King County Code 4.56.010. The decision of a majority of the arbitrators will bind both Lessee and King County. Both King County and the Lessee agree that all non-mandatory provisions of RCW 7.04A are waived and that, unless requested by a majority of the arbitration panel, no formal

hearing will be held, no witnesses will testify, no attorneys will participate in the arbitration, and the arbitrators will be the final determiners of both fact and law. At the conclusion of the arbitration, the arbitrators will submit a written report in counterpart copies to Lessee and King County, which shall state their determination of the rent to be paid by Lessee for the Succeeding Period. The report shall contain all pertinent evidence that led to their conclusion together with an explanation of their reasoning for such conclusion.

D. COST OF ARBITRATION. Each party shall pay for its appraisal and shall bear the expense of its own counsel, and any other of its representatives and/or experts that may be required to prepare for or, in the event it is requested by the arbitration panel, participate in the arbitration. Each party shall also pay the fees and expenses of its selected arbitrator. The fees and expenses of the third arbitrator and all other costs of the arbitration will be divided equally between Lessee and King County.

E. RENT PENDING ADJUSTMENT AND RETROACTIVITY. In the event resolution of the rental adjustment is not completed either by negotiation or arbitration prior to the Rent Adjustment Date:

1) Lessee shall, pending resolution of such rent adjustment, continue to pay King County the rent then in effect;

2) The adjusted rent, as determined either by negotiation or arbitration, shall be retroactive to the Rent Adjustment Date; and

3) King County, at its option, may elect to require Lessee to pay interest in the amount of twelve percent per annum commencing on the Rent Adjustment Date on any sum due as a result of a retroactive increase.

F. ANNUAL RENT ADJUSTMENTS DURING NON-APPRAISAL YEARS. The annual rent adjustments for intervening years between FMV Adjustments shall be two and a half percent (2.5%). For the avoidance of doubt, if the FMV Adjustment results in a Fair Market Rental Value that is greater than or less than the prior year's rent, then the Fair Market Rental Value becomes the new rent. Rents shall be adjusted on January 1 of each year and shall take effect on the anniversary of the Rent Adjustment Date. Annual rental adjustments made under this Section (11)(F) are not subject to arbitration.

12. COMPLIANCE WITH ALL LAWS AND REGULATIONS. In using the Premises, Lessee will comply with all applicable laws, ordinances, and regulations from any and all authorities having jurisdiction. The Lessee specifically agrees to comply and pay all costs associated with achieving such compliance without any notice from King County, and further agrees that King County does not waive this section by giving notice of demand for compliance in any instance.

13. UTILITIES. Lessee shall pay for all costs, expenses, fees, services, and charges of all kinds for heat, light, water, gas, and telephone, and for all other public utilities used on said Premises so that the same shall not become a lien against the leased Premises.

14. IMPROVEMENTS AND ALTERATIONS.

A. Except as approved by King County under Section 7 of the Lease Agreement or otherwise contemplated in the Lease Agreement, and other than alterations, improvements and fixtures located entirely inside improvements constructed by Lessee in accordance with the provisions of the Lease Agreement, Lessee shall make no significant alterations or improvements to or upon the Premises, or install any fixtures (other than trade fixtures which can be removed without injury to the Premises) without first obtaining prior written approval from King County, approval which will not be unreasonably denied or delayed.

B. All improvements and alterations erected or made on the Premises by Lessee shall be and remain the property of Lessee during the term of this Lease. Unless otherwise stipulated, all improvements or alterations erected or made on the Premises (not including personal property, equipment and removable fixtures, which shall remain the property of Lessee) shall, upon expiration or earlier termination of this Lease, belong to King County without compensation to the Lessee; however, King County shall have the option, to be exercised on expiration or earlier termination of the Lease, to require the Lessee, at Lessee's expense, to remove any or all such improvements or alterations.

C. Lessee agrees to comply with the notification and review requirements contained in Part 77 of the Federal Aviation Regulations in the event that any future structure or building is planned for the Premises, or in the event of any modification or alteration of any future building or structure situated on the Premises.

D. Lessee covenants and agrees that no equipment or fixtures shall be installed or operated on the Leased Premises which would produce electromagnetic radiation or radio signals, telecommunication signals, or the like, that would violate any FAA rules and regulations.

E. Lessee agrees to furnish King County with as-built drawings for all improvements within 60 days of completion of construction. As-built drawings will be provided in electronic and paper format as requested by King County.

15. CONDITION OF PREMISES.

A. Lessee has inspected and knows the condition of the Premises, and accepts the Premises "AS IS".

B. Lessee acknowledges that the Premises may contain Hazardous Materials, as defined in Section 42 of this Lease, and Lessee accepts the Premises "AS IS",

including, without limitation, the presence of any Hazardous Materials or underground storage tanks, or the actual or threatened release, deposit, seepage, migration or escape of Hazardous Materials at, from or into the Premises, and the compliance or noncompliance of the Premises with applicable federal, state, county and local laws and regulations including, without limitation, the Environmental Laws as defined in Section 42 of this Lease.

C. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE, KING COUNTY DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PREMISES, AND NO OFFICIAL, EMPLOYEE, REPRESENTATIVE OR AGENT OF KING COUNTY IS AUTHORIZED OTHERWISE. WITHOUT LIMITATION, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE, THE FOREGOING SPECIFICALLY DISCLAIMS WARRANTIES WITH RESPECT TO THE CONDITION OF THE PREMISES FOR DEVELOPMENT AND/OR USE BY LESSEE, THE PRESENCE OF ANY HAZARDOUS MATERIALS OR UNDERGROUND STORAGE TANKS, OR THE ACTUAL OR THREATENED RELEASE, DEPOSIT, SEEPAGE, MIGRATION OR ESCAPE OF HAZARDOUS MATERIALS AT, FROM OR INTO THE PREMISES, AND THE COMPLIANCE OR NONCOMPLIANCE OF THE PREMISES WITH APPLICABLE FEDERAL, STATE, COUNTY AND LOCAL LAWS AND REGULATIONS, INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL LAWS.

D. King County shall not have any obligation to Lessee to make any changes or improvements, or to incur any expenses whatsoever for the maintenance, monitoring, repair or remediation of the Premises.

E. Lessee acknowledges and agrees that King County shall have no liability to Lessee for, and that Lessee shall have no recourse against King County for, any defect or deficiency of any kind whatsoever in the Premises without regard to whether such defect or deficiency was discoverable by Lessee or King County.

F. King County reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or opinions of Lessee, and without interference or hindrance by Lessee. (FAA Order 5190.6B - AGL-600).

G. King County reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard. (FAA Order 5190.6B - AGL-600).

16. CONSTRUCTION DEFECTS. King County shall not be liable to the Lessee for claims or damages arising from any defect in the construction of or the present condition of the

Premises, whether known or unknown, or for damage by storm, rain, or leakage or any other occurrence.

17. MAINTENANCE.

A. Throughout the term of this Lease, Lessee shall, without cost or expense to King County, keep and maintain the leased Premises and all improvements, landscaping, fixtures and equipment which may now or hereafter exist thereon, in a neat, clean, and sanitary condition and shall, except for reasonable wear and tear, at all times preserve the Premises in good and safe repair except for any demolition of improvements contemplated by Section 7 of the Lease. Upon the expiration or sooner termination of the Lease, Lessee shall forthwith return the same in as good condition as existed at the commencement of occupancy, ordinary wear and tear excepted, except for any demolition of improvements contemplated by Section 7 of the Lease.

B. If, after thirty (30) days' notice from King County, or immediately in case of potential harm to life safety or property, Lessee fails to maintain or repair any part of the leased Premises or any improvement, landscaping, fixtures or equipment thereon, King County may, but shall not be obligated to, enter upon the leased Premises and perform such maintenance or repair, and Lessee agrees to pay the costs thereof to King County upon receipt of a written demand. Any unpaid sums under this section shall be payable as additional rent on the next rent payment date due following the written demand and will bear interest at a percentage rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted under applicable laws.

18. GENERAL INDEMNITY AND HOLD HARMLESS. The Lessee agrees to indemnify and hold King County harmless as provided herein to the maximum extent possible under law. Accordingly, the Lessee agrees for itself, its agents, successors, and assigns, to defend, indemnify, and hold harmless King County, its appointed and elected officials, and its employees and agents, from and against liability for all claims, demands, suits, and judgments, including costs of defense and attorney fees thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to Lessee's exercise of rights and privileges granted by this Lease, except to the extent of King County's sole negligence or environmental conditions pre-dating Lessee's possession of the Premises. The Lessee's obligations under this section shall include:

A. The duty to promptly accept tender of defense and provide defense to the County at the Lessee's own expense, including attorney fees;

B. Indemnification of claims made by the Lessee's own employees or agents; and,

C. Waiver of the Lessee's immunity under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify King County, which waiver has been mutually negotiated by the parties.

Lessee agrees to hold harmless and indemnify King County for any and all costs associated with damage to owned, non-owned or hired aircraft in the Lessee's care, custody and control.

In the event it is necessary for the County to incur attorney's fees, legal expenses or other costs to enforce the provisions of this section, all such fees, expenses and costs shall be recoverable from the Lessee.

In the event it is determined that R.C.W. 4.24.115 applies to this Lease, the Lessee agrees to defend, hold harmless, and indemnify King County to the maximum extent permitted thereunder. Further, Lessee agrees to defend, indemnify, and hold the County harmless for claims by Lessee's employees and agrees to waive, as respects the County only, its immunity under Title 51 R.C.W., which waiver has been mutually negotiated by the parties.

Lessee shall include the same indemnification language in this Section 18 in its sub-leases protecting, indemnifying and defending King County, its appointed and elected officials, and its employees and agents.

The provisions of this Section 18, "Indemnity and Hold Harmless", shall survive the expiration or termination of this Lease with respect to any event that occurs prior to, or on the date of, such expiration or termination.

Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

19. INSURANCE REQUIREMENTS – LESSEE/LEASEHOLD. By the date of execution of this Lease, the Lessee shall procure and maintain for the duration of this Lease, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with exercise of the rights and privileges granted by this Lease, by the Lessee, its agents, representatives, employees/subcontractors. The insurance required to be provided by Lessee under this Lease may be provided under blanket policies that cover Lessee and the Premises as well as other entities and properties. The cost of such insurance shall be paid by or on behalf of the Lessee. If there is any inconsistency between the minimum insurance requirements set forth below in this Lease and the insurance required by King County in any other Airport agreement to which the Lessee is a party, the Lessee shall maintain the most stringent insurance required.

In consideration of the duration of this Lease, the parties agree that the Insurance Requirements Section herein, at the discretion of the King County Risk Manager, may be reviewed and adjusted with each amendment and within 90 days of the end of the first Five (5) year period of the Lease Term and the end of each successive Five (5) year period thereafter.

Any adjustments made as determined by the King County Risk Manager, with regard to limits, scope and types of insurance, shall be in accordance with reasonably prudent risk management

practices and aviation insurance industry standards and shall be effective on the first day of each successive Five (5) year period.

Adjustment, if any, in insurance premium(s) shall be the responsibility of the Lessee. Any failure by the County to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE. The Lessee shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to the Lessee under this Contract. The Lessee shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions and environmental impairment , may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the Lessee warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of termination of this lease. Insurance coverage shall be at least as broad as stated below and with limits no less than:

**1) Commercial General Liability (Aviation General Liability).** Coverage in the amount of $5,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a $5,000,000 aggregate limit shall be maintained.

**2) Aircraft Liability.** (Owned, Leased and Non-owned Aircraft) Aircraft liability for bodily injury, death, property damage, contractual and passenger liability.

Aircraft Liability (combined single-limit per occurrence other than passenger liability in accordance with the following table)

| Maximum Gross Take-off Weight | Minimum Requirement: (each Occurrence) |
|---|---|
| Over 25,000 lbs. | $25,000,000 |
| 15,001 -25,000 | $15,000,000 |
| 10,001 – 15,000 lbs. | $10,000,000 |
| 5,000 - 10,001 lbs. | $5,000,000 |
| Under 5,000 lbs. | $1,000,000 |

**3) Aircraft Hull and Machinery**. Lessee agrees to insure owned and/or leased aircraft commensurate with the value of the aircraft and machinery and waive all rights of subrogation against the Lessor.

**4) Liquor Liability.** Required if alcoholic beverages are sold or distributed, a limit of $1,000,000 per occurrence and for those policies with aggregate limits, a $1,000,000 limit.

**5) Automobile Liability.** Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. $5,000,000 combined single limit per accident. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90.

**6) Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

**7) Employer's Liability or "Stop Gap".** Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

**8) Hangar Keepers Liability.** Bailee's coverage for non-owned aircraft held in the Lessee's care, custody and control at a limit equal to maximum value of aircraft hangared at any one time per occurrence, and in the aggregate.

**9) Environmental Impairment.** Pollution coverage for all clean-up and remediation costs and expense arising out of Lessee's use of leased Premises for both sudden and accidental discharges or gradual or repeated contamination. $1,000,000 per claim and in the aggregate.

**10) Property Insurance.** The Lessee will carry "All Risk" property insurance in an amount equal to the full replacement value of all improvements, structures, and buildings located on the Premises and business interruption coverage to provide for the continued payment of rent to the owner, in an amount equal to twelve month's rental payment obligation. . Coverage shall include the perils of earthquake and flood provided the limits of flood coverage may be a reasonable amount that is less than full replacement value. King County will not carry insurance on Lessee's property or business personal property. Waiver of subrogation must be shown on evidence of insurance. King County shall be named as loss payee on Lessee's property insurance as its interests may appear.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to King County. The deductible and or self-insured retention of the policies shall not limit or apply to the Lessee's liability to the County and shall be the sole responsibility of the Lessee.

C. OTHER INSURANCE PROVISIONS. The insurance policies required in this Lease are to contain or be endorsed to contain the following provisions:

1) All liability policies except workers compensation:

a. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Lessee in connection with this Lease.

b. The Lessee's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the Lessee's insurance or benefit the Lessee in any way.

c. The Lessee's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2) All Policies:

a. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits below those required by this Lease, without replacement of the coverage in question with insurance that satisfies the requirements of the Lease until after thirty (30) days prior written notice has been given to the County.

D. ACCEPTABILITY OF INSURERS. Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or if not rated with Bests' with minimum surpluses, the equivalent of Bests' surplus size VIII. If at any time, any of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Lessee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements for approval.

E. VERIFICATION OF COVERAGE. Lessee shall furnish the County with certificate(s) of insurance and endorsement(s) required by this Lease. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates

and endorsements for each insurance policy are to be on forms approved by the County and are to be received and approved by the County prior to the commencement of activities associated with the Lease.

F. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, King County and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective property insurance policies, including any extended coverage endorsements hereto; provided that this agreement shall be inapplicable if it would have the effect of invalidating any insurance coverage of King County or the Lessee.

20. INSURANCE REQUIREMENTS - BUILDINGS/STRUCTURES/FACILITIES UNDER CONSTRUCTION.

Prior to commencement of any construction and until construction is complete and accepted by the Lessee, the Lessee shall cause its construction contractor(s) to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to said construction. The cost of such insurance shall be paid by the Lessee and/or any of the Lessee's contractors.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE. The Lessee and/or its contractors shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to the Lessee under this Contract. The Lessee shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the Lessee warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the work which is the subject of this Lease. Insurance coverage shall be at least as broad as stated below and with limits no less than:

**1) General Liability**. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 covering **COMMERCIAL GENERAL LIABILITY.** $1,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a $2,000,000 aggregate limit and a $3,000,000

limit umbrella/excess liability policy. Coverage shall not exclude explosion collapse and underground damage (XCU).

**2) Automobile Liability.** Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. $1,000,000 combined single limit per accident and a $4,000,000 limit umbrella/excess liability policy. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90.

**3) Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

**4) Employer's Liability or "Stop Gap".** Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

b. The contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the Lessee's insurance or benefit the Lessee in any way.

c. The contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2) All Policies:

a. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits below those required by this Lease, without replacement of the coverage in question with insurance that satisfies the requirements of the Lease until after thirty (30) days prior written notice has been given to the County.

D. ACCEPTABILITY OF INSURERS. Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or if not rated with Bests' with minimum surpluses, the equivalent of Bests' surplus size VIII. If at any time, any of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Lessee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements for approval.

E. VERIFICATION OF COVERAGE. Prior to commencement of construction Lessee shall furnish the County with certificate(s) of insurance and endorsement(s) required by this Lease. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County and are to be received and approved by the County prior to the commencement of activities associated with the Lease.

F. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, King County and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective property insurance policies, including any extended coverage endorsements hereto; provided that this agreement shall be inapplicable if it would have the effect of invalidating any insurance coverage of King County or the Lessee.

21. CONTRACTOR'S SURETY BOND. Prior to commencing construction of any of Lessee's Improvements, Lessee shall furnish to King County a Contractor's Performance and

Payment surety bond in the amount of the total estimated construction costs of the subject Improvements. The surety bond shall be acceptable to the King County in its commercially reasonable discretion and shall state the following:

(i) Lessee and King County shall be named as dual obligee on described surety bond.

(ii) That it is conditioned to secure the completion of the proposed construction, free from all liens and claims of contractors, subcontractors, mechanics, laborers, and material suppliers.

(iii) That the construction work shall be fully and faithfully performed by Lessee, the general contractor, or, on their default, the surety.

(iv) That in default of such completion and payment, such part of the amount of the bond as shall be required to complete the work shall be paid to King County as liquidated and agreed damages for the nonperformance of this Agreement; it being agreed that the amount of King County's damages is extremely difficult to ascertain and determine.

That the surety will defend and indemnify King County against all loss, costs, damage, expense, claims, and liabilities arising out of or connected with the construction by Lessee.

In lieu of a surety bond, Lessee may provide construction surety bonds supplied by Lessee's general contractor or contractors, provided such bonds contain the same conditions, are issued jointly to Lessee and King County, and are in an amount equal to the total estimated construction cost of the Improvements.

Should Lessee act as owner/builder then all subcontractors shall provide construction surety bonds on the same condition as above stated for construction surety bonds to be provided by Lessee's general contractor.

All Surety Bonds must be issued by a surety company licensed to do business in the State of Washington, acceptable to King County in its commercially reasonable discretion, and shall remain in effect until the entire cost of the subject Improvements shall have been paid in full and the new Improvements shall have been insured as provided in this Lease.

In lieu of the above surety bond, Lessee may provide some other instrument satisfactory to King County, including a letter of credit, or cash deposit which shall guarantee to King County completion of the subject Improvements.

22. PROPERTY RECONSTRUCTION FOLLOWING CASUALTY. In the event of the total or partial destruction by casualty or otherwise of the building, structures, or facilities currently on the Premises or subsequently constructed by the Lessee, the Lessee shall have the obligation to reconstruct such facilities to their former condition and usability and proceed with reasonable diligence to prepare plans and specifications for and carry out, all work necessary

(a) to repair and restore the building and/or improvements on the Premises damaged by the casualty to their former condition, or (b) to replace said building and/or improvements with a new building and/or improvements on the Premises of a like quality and usefulness of the building and/or improvements which were damaged. The foregoing notwithstanding, if, upon completion of the repair and reconstruction required by this Section, there would be five (5) or fewer years remaining in the term of the Lease, Lessee shall have the right to elect, by written notice given to King County within ninety (90) days after the casualty, not to repair or reconstruct the building, structures and facilities on the Premises, provided, however, that Lessee has maintained the property insurance required by Section 19(A) above. If, under the preceding sentence, Lessee timely and validly elects not to repair or reconstruct the building, structures and facilities on the Premises after a casualty, (1) the Lease shall terminate on the date Lessee gives notice of its election or upon such later date as Lessee may specify in such notice (not to be more than ninety (90) days after such notice is given) and (2) Lessee shall assign to King County all proceeds of Lessee's property insurance payable in respect of the casualty in question and deliver to King County all of such proceeds received by Lessee and not applied to the preservation and protection of the building, structures and facilities on the Premises prior to the date on which the Lease terminates.

23. SURRENDER OF PREMISES. Upon expiration or termination as contemplated herein, Lessee shall surrender to Lessor the Premises and Improvements, structures, fixtures and building equipment supplied by Lessee as part of the Premises and Improvements, together with all alterations and replacements thereof without compensation, allowance or credit, subject to Lessee's covenants to maintain and repair accruing to the date of expiration or termination of the Term as provided in this Lease. Except for Improvements allowed to remain under Section 14(B) above Lessee shall remove all improvements, structures, fixtures, building equipment or any other items belonging to Lessee unless allowed to remain on the Premises as agreed upon in writing from Lessor. Upon expiration or termination, all right, title and interest to the Premises and Improvements shall vest in Lessor, free and clear of any liens and encumbrances.

24. DEFAULT AND RE-ENTRY. If any rents above reserved or other obligations provided herein, or any part thereof shall be and remain unpaid when the same shall become due, or if Lessee shall violate or default on any of the covenants and agreements herein contained, then King County may terminate this Lease upon giving five (5) days' notice (in the case of monetary defaults) and thirty (30) days' notice (in the case of non-monetary defaults). Lessee may cure any such default by its payment or performance within said periods, provided that if a non-monetary default cannot be cured within said 30-day period, then Lessee shall not be in default if Lessee commences its cure within said 30-day period and takes actions and steps to cure the non-monetary default within a commercially reasonable amount of time. Upon an uncured default, King County may re-enter said Premises using such force as may be required. Notwithstanding such re-entry by King County, the liability of the Lessee for the rent provided for herein shall not be extinguished for the balance of the term of this Lease, and Lessee covenants and agrees to make good to King County any deficiency arising from a re-entry and reletting of the Premises at a lesser rental than agreed to herein. The Lessee shall pay such deficiency each month as the amount thereof is ascertained by King County. In the event it becomes reasonably necessary to

make any changes, alterations, or additions to the Premises or any part thereof for the purpose of reletting said Premises or any part thereof, Lessee shall also be responsible for such cost.

25. ASSURANCE OF PERFORMANCE. In the event a default in the performance of any obligation under this Lease which remains uncured for a period longer than specified in Section 24 above, King County may request and the Lessee shall provide adequate assurance of the future performance of all obligations under this Lease. The adequacy of any assurance shall be determined according to commercially reasonable standards for lessors of real property in the County of King, State of Washington. Adequate assurance shall include, but not be limited to, a deposit in escrow, a guarantee by a third party acceptable to King County, a surety bond, or a letter of credit. Lessee's failure to provide adequate assurance within twenty (20) days of receipt of a request shall constitute a material breach and King County may in its discretion terminate this Lease.

26. ADVANCES BY KING COUNTY FOR LESSEE. If Lessee fails to pay any fees or perform any of its obligations under this Lease other than payment of rent, King County will mail notice to Lessee of its failure to pay or perform. Twenty (20) days after mailing notice, if Lessee's obligation remains unpaid or unperformed, King County may, but is not obligated to, pay or perform these obligations at Lessee's expense. Upon written notification to Lessee of any costs incurred by King County under this section, Lessee will reimburse King County within twenty (20) days. Failure to comply with this Section 26 will result in a Lease default subject to the terms and conditions set forth in Section 24 Default and Re-entry.

27. NON-WAIVER. It is hereby agreed that no waiver of any condition or covenant in this Lease or any breach thereof, shall be taken to constitute waiver of any subsequent breach.

28. SIGNS. No sign, advertisement, notice, or other lettering will be exhibited, inscribed, painted, or affixed by Lessee on any part of the outside of the Premises without the prior written consent of King County, provided that such consent shall not be unreasonably withheld. If Lessee violates this provision, King County may remove the sign without any liability and may charge the expense incurred by such removal to the Lessee; provided, however, King County shall give Lessee written notice of Lessee's violation of this provision and Lessee shall have forty-eight (48) hours after receiving said notice to comply with the terms of this provision. All signs erected or installed by Lessee shall be subject to any federal, state or local statutes, ordinances or regulations applicable to signs.

29. INSPECTION AND "FOR RENT" SIGNS. King County reserves the right to inspect the Premises at any and all reasonable times throughout the term of this Lease, provided that King County shall give Lessee not less than twenty four (24) hours prior notice (except in an emergency, in which case King County shall give such advance notice as is practicable under the circumstances), shall not interfere unduly with Lessee's operations and shall use reasonable efforts to cooperate with any security measures Lessee may then have in effect. The right of inspection reserved to King County hereunder shall impose no obligation on King County to make inspections to ascertain the condition of the Premises, and shall impose no liability upon King County for failure to make such inspections. King County shall have the right to place and

maintain "For Rent" signs in conspicuous places on the Premises for one hundred and eighty (180) days prior to the expiration or sooner termination of this Lease.

30. LIENS. It is understood and agreed that this Lease is executed and delivered upon the express condition that the Lessee will not and cannot contract any debt or debts for labor, materials, services, or otherwise which will or may become a lien against the interest of King County in the Premises, and King County hereby denies to Lessee any right, power, or authority to do any act, or contract any obligation or liability which would in any way subject the interest of King County in the Premises to any lien, claim, or demand whatsoever.

31. ASSIGNMENTS.

A. Lessee shall not assign or transfer this Lease or any interest therein, nor grant an option for such an assignment or transfer for the whole or any part of the Premises, nor shall this Lease or any interest hereunder be assignable or transferable by operation of law, or by any process or proceeding of any court or otherwise without the prior written consent of King County, which consent shall not be unreasonably withheld, conditioned or delayed. If Lessee is a corporation, partnership, limited liability company or other entity, Lessee further agrees that if at any time during the term of this Lease one-half (1/2) or more of the outstanding shares of any class of stock, partnership interests, membership interests or other equity interests of Lessee's corporation, partnership, limited liability company or other form of entity shall belong to any stockholders, partners, members or other owners, as the case may be, other than those who own one-half (1/2) or more of the outstanding shares of that class of stock, partnership interests, membership interests or other equity interests at the time of the execution of this Lease, such change in the ownership shall be deemed an assignment of this Lease within the meaning of this section.

1) The foregoing notwithstanding, the following (each, an "Exempt Transfer") shall not be deemed an assignment for purposes of Paragraph 31(A) and shall not require King County's consent: (a) a transfer of stock, partnership interests, membership interests or other equity interests in Lessee (i) by reasons of the death of the person holding such interests or (ii) to any member or members of the immediate family of a person holding such interests or to trusts for their benefit; (b) an assignment of the Lease or transfers of stock, partnership interests, membership interest or other equity interests in Lessee to any entity that controls, is controlled by or is under common control with Lessee (as "control" is defined in subparagraph 22(A)(2) below); (c) an assignment of the Lease or transfer of stock or other equity interests in Lessee, provided that such assignment or transfer is in connection with a bona fide acquisition or restructuring, by purchase of equity interests or assets, merger or otherwise, of the principal business engaged in by Lessee and other entities that control, are controlled by or are under common control with Lessee; or (d) an

assignment of the Lease for collateral purposes to a recognized lending institution in connection with the financing of King County approved redevelopment of the Premises or the lending institution's subsequent realization on such collateral assignment.

2) As used in this Section 31, "control" (and derivatives thereof) shall mean the direct or indirect ownership of more than fifty percent (50%) of the issued and outstanding voting equity interests in an entity.

3) If King County shall give its consent to any assignment or transfer or if an assignment or transfer is made pursuant to this Section 31 that does not require King County's consent, this Section 31 shall nevertheless continue in full force and effect and no further assignment or transfer shall be made except in compliance with this Section 31.

B. If Lessee desires to assign or transfer, or grant an option for assignment or transfer, for the whole or part of the Premises, or any portion of this Lease or any interest herein, and such assignment or transfer requires King County's consent under Section 31(A) above, Lessee shall notify King County in writing of said desire and the details of the proposed agreement at least sixty (60) days prior to the proposed date of assignment or transfer, or grant of an option therefor, to a third party. The notification shall include but not be limited to a financial statement of the third party, including but not limited to a full disclosure of the monetary payment or any other consideration involved, and an affidavit from the third party stating it has examined this Lease, and, understanding this Lease, agrees to assume and be bound by all of the Lessee's obligations and covenants under this Lease, the same as if it were the original Lessee hereunder, and the proposed date of assignment, transfer or grant of an option therefor. Lessee shall also provide any financial or other information regarding the proposed assignment or the assignee reasonably requested by King County.

C. Except pursuant to a transfer or assignment to an Exempt Transfer, King County reserves the right of first refusal in the event Lessee attempts to assign or transfer this Lease or any interest herein, or grant an option therefor, in a transaction that, under Section 31(A) above requires King County's consent. If King County exercises the right of first refusal, Lessee shall assign or transfer to King County, and King County shall acquire, the Lease or the interest therein, or the option therefor, on and subject to all of the terms and conditions of the proposed assignment or transfer or option therefor.

D. If Lessee assigns or transfers its interest, Lessee (Assignor) shall pay King County seventy-five percent (75%) of the Assignment Premium derived from that assignment or transfer. "**Assignment Premium**" shall mean (1) all rent, additional rent, and/or other moneys, property, and other consideration of every kind whatsoever received by Lessee (Assignor) from the assignee/transferee for, or by reason of, the assignment or transfer (including all amounts received by

Lessee (Assignor) for any Included Property), less (2) the credits detailed in Section 31(E) below. "**Included Property**" means only the leasehold improvements and fixtures and all machinery, equipment, furniture, furnishings, supplies, inventory and other personal property, tangible and intangible, owned by the Lessee that are transferred to the assignee or transferee as part of the transaction. Lessee shall pay the Assignment Premium to King County as and when Lessee receives payment from such assignee or transferee.

E. Credits. The following shall be subtracted from the consideration that otherwise would be included in the calculation of the Assignment Premium:

1) Any transactional costs, fees or commissions actually paid by Lessee (Assignor) to procure the assignment or transfer, including, without limitation, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County;

2) The actual cost of alterations and leasehold improvements undertaken by Lessee, or undertaken by the transferee or assignee to the extent paid for or reimbursed by Lessee, solely to prepare the space for the assignee or transferee, including, without limitation, costs of planning, design, permitting and construction, including labor, materials and Washington state sales and use taxes, (amortized, if the consideration for the assignment or transfer is to be paid in installments, over the period of payment, commencing with the date on which the assignment or transfer commences);

3) The greater of either: a) the unamortized cost of the Included Property determined on a straight-line basis over the term of the Lease as certified to King County by Lessee's independent certified public accountant; or b) the fair market value of the Included Property as determined by an appraisal conducted by an independent and certified appraiser. Lessee shall pay the cost of such certification or appraisal and may deduct such costs from the Assignment Premium. If King County disputes the unamortized cost or fair market value of the Included Property as determined by the certified public accountant or appraiser, the procedures set forth in Section 11(C), Arbitration, of these General Terms and Conditions, shall be followed to determine the appropriate cost or fair market value;

4) The unamortized transactional costs, fees or commissions, determined on a straight-line basis over the original term of the Lease, actually paid by Lessee (Assignor) to procure the Lease itself (or, if only an interest in the Lease is being assigned or transferred, a ratable portion of such costs, fees and commissions), including, without limitation and without duplicating any of the costs included in Section 31(E)(1) above, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County; and

5) The "Goodwill Value" or Going Concern Value" of any business being sold or transferred as a part of the assignment. Unless otherwise agreed to by Lessee and King County, "Goodwill Value" or "Going Concern Value" shall be determined by a qualified valuation expert employing standard and generally recognized methods of business valuation. Lessee shall pay the cost of such valuation and may deduct such costs from the Assignment Premium.

F. Once King County has received all necessary information and documentation pursuant to this Section 31 of this Lease, King County will review the request and respond with either an approval or disapproval of the request (or, if King County so elects, King County's exercise of the right of first refusal provided for in Section 31(C) above) by the earlier of: thirty (30) days from the request or not later than ten (10) days prior to the proposed date of the assignment or transfer. Approval of any such request will not be unreasonably withheld and Lessee may in good faith dispute the reasonableness of King County's disapproval of a request. King County has the option, in its sole discretion, to charge to the Lessee a reasonable fee for administrative costs actually incurred reviewing and processing any requests for assignment or transfer pursuant to this section, not to exceed, however, $1500.00.

Tenant's sole remedy for King County's failure to timely respond to a request for assignment shall be declaratory relief or specific performance, and shall not include monetary or consequential damages.

32. SUBLEASES.

A. Unless the sublease sought to be entered into is to an entity that controls, is controlled by or is under common control with Lessee (an "Exempt Sublease"); Lessee shall not sublet the whole or any part of the Premises, nor grant an option for sublease for the whole or any part of the Premises without the prior written

consent of King County, which consent shall not be unreasonably withheld, conditioned or delayed. King County shall not withhold its consent to a proposed sublease or grant of an option for sublease on the ground of the subtenant's proposed use if such use is identified as a permitted use in the Master Lease. If King County shall give its consent to any sublease, this section shall nevertheless continue in full force and effect and no further sublease shall be made without the County's consent. No sublease authorized under this section shall relieve or release the Lessee from any obligation or responsibility required of the Lessee under this Lease.

B. Except with respect to an Exempt Sublease, if Lessee desires to sublease, or grant an option for sublease, for the whole or part of the Premises, or any portion of this Lease or any interest therein, Lessee shall notify King County in writing of said desire and the details of the proposed agreement at least sixty (60) days prior to the proposed date of sublease, or grant of an option therefor, to a third party. The notification shall include but not be limited to a financial statement of the third party, including but not limited to a full disclosure of the monetary payment or any other considerations involved, the proposed date of the sublease, and a copy of the sublease agreement between the Lessee and new tenant. Lessee shall also provide any financial or other information regarding the proposed sublease or the sublessee reasonably requested by King County.

C. Anything in Sections 32(A) or 32(B) to the contrary notwithstanding, if King County shall consent to a sublease to a subtenant that engages in the business of letting office space, hangar space and/or tiedown spaces to third parties, no further notice to or consent from King County shall be required in connection with any such lettings, but Lessee shall provide or cause such subtenant to provide King County upon request with the names and addresses of the third parties to which such subtenant is then letting office space, hangar space and/or tiedown space.

D. King County reserves the right of first refusal in the event Lessee attempts to sublease, or grant an option therefor, any unimproved portion of the Premises to any party other than in an Exempt Sublease. A sublease of an unimproved portion of the Premises that is not an Exempt Sublease is hereinafter referred to as a "Ground Sublease."

E. If Lessee subleases all or any portion of the Premises in a Ground Sublease (other than in an Exempt Sublease), Lessee shall pay King County seventy-five percent (75%) of the Sublease Premium derived from that sublease. "Sublease Premium" shall mean (1) all rent, additional rent, and/or other moneys, property, and other consideration of every kind whatsoever received by Lessee from the sublessee for, or by reason of, the sublease (excluding all amounts received by Lessee for any Included Property) less (2) the credits detailed in Section 32(F) below. Lessee shall pay the Sublease Premium to King County as and when Lessee receives payment from such sublessee.

F. Credits. The allocable portion of the credits set forth in Sections 31(E)(2), (3) and (5) above, as applicable, and without duplicating any such allocable portion, the following shall be subtracted from what otherwise would be included in the consideration used to calculate the Sublease Premium:

1) Any costs, fees or commissions actually paid by Lessee (Sublessor) to procure the sublease, including, without limitation, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to procuring the sublease in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County;

2) An allocable portion (based on the square footage subject to the proposed Ground Sublease as compared to the square footage of the entire Premises) of the unamortized transactional costs, fees or commissions, determined on a straight-line basis over the original term of the Lease, actually paid by Lessee (Assignor) to procure the Lease itself, including, without limitation, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County; and

3) The Base Rent, other amounts payable under the Lease as rent and leasehold excise tax allocable to the space covered by such Ground Sublease (as reasonably determined by King County) and paid by Lessee to King County after the date of such Ground Sublease.

G. Once King County has received all necessary information and documentation pursuant to this Section 32 of this Lease, King County will review the request and respond with either an approval or disapproval of the request not later than ten (10) days prior to the proposed date of the sublease. Disapproval of any such request shall be final and binding on the Lessee and not subject to any arbitration, provided that any approval will not be unreasonably withheld and Lessee may in good faith dispute the reasonableness of King County's disapproval of a request. King County, at its sole discretion, may charge to the Lessee a reasonable fee for

administrative costs in reviewing and processing any sublease, or grant of an option therefor, not to exceed $1500.00.

Lessee's sole remedy for King County's failure to timely respond to a request to sublease shall be declaratory relief or specific performance, and shall not include monetary or consequential damages.

33. CONDEMNATION.

A. King County and Lessee will immediately notify the other in writing of the receipt of notice of any proceedings with respect to a condemnation or intent of any authority to exercise the power of eminent domain.

B. If all of the Premises are taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Lease, this Lease terminates as of the date condemnor takes possession, and Lessee will have no claim or interest in or to any award of just compensation except that the Lessee will be entitled to an amount equal to the fair market value of the Lessee's leasehold interest in any improvement taken by the condemnor made to the Premises by the Lessee, but not to exceed the amount of that part, if any, of the award attributable to the value of the improvements.

C. If part of the Premises is taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Lease, and such taking results in a material adverse effect on Lessee's use or enjoyment of the Premises, Lessee may choose to terminate this Lease as of the date the condemnor takes possession. If Lessee does not elect to terminate this Lease, the rent will be reduced in the same proportion that the value of the portion of the Premises to be taken bears to the value of the entire Premises as of the date condemnor takes possession. Lessee will have no claim or interest in or to any award of just compensation or damages except that the Lessee will be entitled to an amount equal to the fair market value of the Lessee's leasehold interest in the part taken by the condemnor of any improvements made to the Premises by the Lessee, but not to exceed the amount of that part, if any, of the award attributable to the value of the improvements.

D. If temporary use of all or a portion of the Premises is taken by any lawful authority for a period which would reduce the leasehold and, consequently, would cause the Premises to be untenantable for the use by Lessee for the purposes set forth in the section of this Lease titled "Use," then, at Lessee's determination, Lessee may choose to terminate this Lease. If Lessee elects to terminate the Lease, the Lease will terminate the date the condemnor takes possession and Lessee will have no claim or interest in or to any award of just compensation except that the Lessee will be entitled to an amount equal to the fair market value of the Lessee's leasehold interest in any improvements made to the Premises by the Lessee. If Lessee does not elect to terminate this Lease, the Lease will

continue in full force and Lessee will be entitled to receive any award from the condemnor for the use of all or part of the Premises, EXCEPT that Lessee may elect to have the rents reduced by the amount proportionally attributable to any partial temporary taking, in which event Lessee shall not be entitled to any portion of the award attributable to said use.

E. It is understood and agreed that Lessee shall not be party to any negotiation or proceedings at law wherein King County claims compensation other than that which is defined statutorily as constituting "just compensation."

34. TERMINATION BY KING COUNTY. King County reserves the right to terminate this Lease upon twelve (12) months' notice in writing to the Lessee or the persons in possession of the Premises if the Premises are required by King County for the improvement or development of KCIA for public airport uses and purposes, and under such termination the Lessee or persons in possession of Premises shall be reimbursed by King County for the fair market value, as defined in Section 11(A) of this document, of any improvements placed on the Premises by the Lessee in accordance with the terms of this Lease. In the event that King County and Lessee cannot agree upon the value of said improvements, King County and Lessee shall submit to have the fair market value adjusted by arbitration in the manner described in Section 11(C).

35. NON-DISCRIMINATION.

A. Lessee shall not discriminate against any person on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expressions, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits. The Lessee shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations which prohibit such discrimination. These laws include, but are not limited to, Chapter 49.60 of the Revised Code of Washington, and Titles VI and VII of the Civil Rights Act of 1964.

B. The Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a U.S. Department of Transportation ("**DOT**") program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

C. The Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a

covenant running with the land that: (1) no person on the grounds of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expressions, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereof, no person on the grounds of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expressions, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

D. The Lessee assures that in its use of the Premises it will substantially observe and promptly comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expressions, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the Lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

E. In addition, this Lease is subject to certain grant assurances resulting from King County's receipt of funding from the federal government. In accordance with those grant assurances, in furnishing services to the public at the Airport, the Lessee shall furnish said services on a reasonable and not unjustly discriminatory basis to all users of the Airport and shall charge reasonable and not unjustly discriminatory prices for each unit or service; provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions, by way of example and not limitation, to volume purchasers, based aircraft, or charter customers.

F. Lessee will include the provisions of this Section 35, "Non-Discrimination", in all subleases of all or part of the Premises, and in all agreements at any tier for the use of all or part of the Premises.

G. Any violation of this Section 35, "Non-Discrimination", shall be considered a default of this Lease and, in addition to any other remedies available to the County, shall be grounds for termination of this Lease by the County, and may result in ineligibility for further County agreements.

36. HEIRS, AGENTS, AND ASSIGNS. Without limiting any provisions of this Lease pertaining to assignment, transfer and subletting, the provisions of this Lease bind the heirs, successors, agents and assigns of the parties to this Lease.

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

38. TIME IS OF THE ESSENCE. Time is of the essence of this Lease, and in the event of the failure of Lessee to pay any charges at the time in the manner herein specified, or to keep any of the covenants or agreements herein set forth, the Lessee shall be in default.

39. CUMULATIVE REMEDIES. No provision of this Lease precludes King County from pursuing any other remedies for Lessee's failure to perform his obligations.

40. ATTORNEY'S FEES/DEFAULT CHARGE. In the event legal action is brought by either party to enforce any of the terms, conditions, or provisions of this Lease, the prevailing party shall recover against the other party in addition to the costs allowed by law, its litigation expenses and such sum as the court may adjudge to be a reasonable attorney's fee. In addition to all other charges, Lessee shall pay a charge of $500.00 to King County for preparation of a notice of default.

41. HOLDING OVER. If the Lessee holds over after the expiration or earlier termination of this Lease, Lessee shall become a tenant from month-to-month at a rental rate equal to one hundred-fifty percent (150%) of the rent in effect upon the date of such expiration or termination, and otherwise subject to the terms, covenants, and conditions of this Lease, except those clearly inapplicable to the month-to-month tenancy. Acceptance by King County of rent after such expiration or earlier termination shall not result in a renewal of this Lease, nor affect King County's right of re-entry or any rights of King County hereunder or as otherwise provided by law. If Lessee fails to surrender the Premises upon the expiration of this Lease despite demand to do so by King County, Lessee shall indemnify and hold King County harmless from all loss or liability including, without limitation, any claim made by any succeeding Lessee founded on or resulting from such failure to surrender, together with interest, reasonable attorney's fees, costs, and expenses.

42. HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE.

A. Definitions. "**Hazardous Materials**" as used herein shall mean:

1) Any toxic substances or waste, sewage, petroleum products, radioactive substances, heavy metals, medical, corrosive, noxious, acidic, bacteriological or disease-producing substances; or

2) Any dangerous waste or hazardous waste as defined in:

   a. Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105); or

   b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

   c. Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or

3) Any hazardous substance as defined in:

   a. Comprehensive Environmental Response, Compensation and Liability Act as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); or

   b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

4) Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.

B. Environmental Compliance.

1) In the conduct of its business at the Airport, and in its use and occupancy of the Premises and the areas of the Airport outside the Premises that are available for use by the Lessee and others ("the Public Areas"), the Lessee and Lessee's sublessees, contractors, agents, employees, or representatives (the "Lessee Parties") shall, at the Lessee's own expense, comply with all federal, state and local laws, ordinances, regulations, permits, decrees or other governmental requirements now or hereafter in effect related to Hazardous Materials and other environmental laws, including, but not limited to, laws and regulations pertaining to stormwater discharges as set by the U.S. Environmental Protection Agency and the Washington Department of Ecology, as well as such rules concerning environmental matters as may be promulgated by the Airport Manager ("the Environmental Laws"). The Lessee warrants that its and the Lessee Parties' business and all activities to be conducted or performed in, on, or about the Premises and the Public Areas shall comply with all of the

Environmental Laws. The Lessee agrees to change, reduce, or stop any non-complying activity, or install necessary equipment, safety devices, pollution control systems, or other installations as may be necessary at any time during the term of this Lease to comply with the Environmental Laws.

2) The Lessee shall not without first obtaining the County's prior written approval use, generate, handle, store, treat, transport, or sell of any Hazardous Materials in, on, or about the Premises or the Public Areas. In the event, and only in the event, that the County approves any of the foregoing, the Lessee agrees that such activity shall occur safely and in compliance with the Environmental Laws. King County hereby approves the use by Lessee at the Premises of the Hazardous Materials identified on Exhibit C hereto.

3) The Lessee shall not cause or permit to occur any violation of the Environmental Laws on, under, or about the Premises and the Public Areas, or arising from the Lessee's use or occupancy of the Premises and the Public Areas. Lessee shall not undertake, or allow others, including the Lessee Parties, to undertake by Lessee's permission, acquiescence, failure to act, or negligence, activities that result in a release or threatened release of Hazardous Materials. If Lessee's or a Lessee Parties' act, omission or breach of obligation under this Lease results in a release of Hazardous Materials into the environment on, about, or migrating from the Premises or the Airport that exceeds regulatory cleanup levels for unrestricted use of the Premises, Lessee shall, at Lessee's sole expense, promptly take all actions necessary to fully and completely remove (and to dispose of such in accordance with applicable law) all of such Hazardous Materials

4) The Lessee shall, in a timely manner and at the Lessee's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental or regulatory authorities ("the Authorities" or "Authority") with jurisdiction under the Environmental Laws. If the Lessee fails to fulfill any duty imposed under this section within the time specified by applicable law, or if no time is specified within a reasonable time, the County may take action; and in such case, the Lessee shall cooperate with the County in order to prepare all documents the County deems necessary or appropriate to determine the applicability of the Environmental Laws to the Premises and/or the Public Areas and the Lessee's use thereof, and for compliance with the Environmental Laws, and the Lessee shall execute all documents promptly upon the County's request. No such action by the County and no attempt made by the County to mitigate damages shall constitute a waiver of any of the Lessee's obligations under this Section 42, Hazardous Materials and Environmental Compliance. Lessee shall immediately notify County if

Lessee becomes aware of any of the following: (a) a release or threatened release of Hazardous Materials on the Premises; (b) any actual or alleged violation of any of the Environmental Laws, including any inspection reports or any other notice received from any Authority that Lessee or the Lessee Parties may be in violation of any Environmental Law with respect to the Premises; and (c) any notification from any Authority that investigation, remediation or removal of Hazardous Materials is or may be required at the Premises.

5) Should any Authority demand that a remedial investigation and/or cleanup or remediation plan be prepared and that a cleanup or remediation be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials that occurs during the term of this Lease and arises from the Lessee's or the Lessee Parties' use or occupancy of the Premises, or which arises at any time from the Lessee's or the Lessee Parties' use or occupancy of the Premises and/or the Public Areas, then the Lessee shall, in a timely manner and at the Lessee's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and the Lessee shall carry out all such investigation and/or cleanup or remediation plans. Any such plans are subject to the County's prior written approval. Although the County reserves the right to review and approve such plans, the County assumes no responsibility for such plans or their compliance with the Environmental Laws.

6) If King County determines in its sole discretion that an emergency exists (i) because of the deposit, spill, discharge or other release of Hazardous Materials at or from the Premises or (ii) which arises from the Lessee's or the Lessee Parties' use or occupancy of the Premises and/or the Public Areas, King County will take such action as King County, in its sole discretion, considers reasonable to contact the Lessee and advise it of the emergency situation. If the Lessee is unreachable, or is unwilling to take immediate action, King County may, but is not required to, take immediate action to address the emergency situation, and Lessee will reimburse the County for all of its costs and expenses related thereto, provided, with respect to clause (i) above, that the deposit, spill, discharge or other release of Hazardous Materials arises from the Lessee's use or occupancy of the Premises. The fact that King County takes immediate action shall not relieve Lessee of any of its responsibilities under this Lease and the Environmental Laws including, without limitation, Lessee's responsibility for complying with reporting requirements.

7) In the event Lessee discovers Hazardous Materials on or under the Premises during Lessee's construction of improvements on the Premises (including during demolition and grading activities associated with such construction), and such Hazardous Materials were not caused by Lessee or

generated or released during Lessee's control of the Premises, then Lessee shall promptly notify King County of such discovery (the "Environmental Notice Date"). Lessee may terminate this Lease by written notice to King County given within 90 days of the Environmental Notice Date, during which 90-day period all rent under this Lease shall abate. If Lessee does not so terminate this Lease within said 90-day period, then this Lease shall remain in full force and effect. In the event of termination under this section, and in Lessor's sole discretion, any above ground improvements or above ground structures erected by Lessee shall be removed at Lessee's sole expense. Lessee shall remove and appropriately handle and dispose of, and not stockpile or otherwise leave on site, any Hazardous Materials that have been excavated or otherwise disturbed by Lessee. Lessee shall leave the Premises in substantially the same condition as prior to Lessee's discovery of Hazardous Materials, subject to the provisions of this paragraph, and shall not leave any Hazardous Materials uncovered or otherwise exposed to humans or to the environment.

C. Indemnification and Release.

Lessee shall be fully and completely liable to the County for, and shall indemnify hold the County harmless and release from and against, any and all claims, liabilities, lawsuits, damages, demands, suits, losses, judgments, and costs, including but not limited to removal, remedial action, or other costs recoverable under CERCLA or MTCA; any and all other requirements, charges, interest, fees, oversight costs, or penalties (civil or criminal or both) imposed by any Authority; and all other expenses including but not limited to claims for bodily injury or death, property damage, diminution in value or loss of use, including attorney's fees and other costs of defense ("Claims") caused by or arising from (1) Lessee's or Lessee Parties' use, disposal, transportation, generation, past, present or future release or threatened release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials in, on, around, about, or emanating from the Premises, including but not limited to Lessee's remediation activities conducted under Section 7 or Section 42 of this Lease, or from Lessee's activities on adjoining property, occurring during the term of the this Lease or at any time if caused by Lessee, including exacerbation or disturbance of existing Hazardous Materials that were released in, on or about the Premises prior to the Lease; or (2) Lessee's failure to comply with any obligation in Section 42 of this Lease; or (3) any actions by County under Sections 42(B)(6) or 42(C) of this Lease; provided that the foregoing is subject to the provisions of Section 42(B)(7). Without limiting the generality of the foregoing, the Parties acknowledge that Claims, as defined herein, are not limited to third party Claims, but include Claims made or incurred by Lessee. Lessee's duties under this paragraph 42(C) include the duty to pay or reimburse County's

direct and indirect costs to monitor or oversee Lessee's cleanup or other corrective work, including but not limited to engineering and other consulting services, sampling and studies, confirmatory testing, compliance monitoring, and administrative costs and expenses incurred in procuring and managing the same.

D. Reporting Requirements. The Lessee shall comply with the Environmental Laws requiring the submission, reporting, or filing of information concerning Hazardous Materials with the Authorities, and shall provide to the County a full copy of any such submission, filing or report as submitted within 15 days of such submission.

E. Right to Check on the Lessee's Environmental Compliance. The County expressly reserves the right to conduct, and the Lessee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the Premises as the County, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems.

F. Remedies. Upon any default by the Lessee under this Section 42, Hazardous Materials and Environmental Compliance, and the expiration of the notice and cure period provided in Section 24 above, Default and Re-Entry, the County shall be entitled to the following rights and remedies in addition to any other rights and remedies that may be available to the County:

1) At the County's option, to terminate this Lease pursuant to Section 34 above, but effective immediately; and/or,

2) At the County's option, to perform such action as is required to bring the Premises and any other areas of the Airport affected by the Lessee's default into compliance with the Environmental Laws and to recover from the Lessee all of the County's costs and expenses in connection therewith; and/or

3) To recover from the Lessee any and all damages associated with the default, including but not limited to, response, remediation and cleanup costs, expenses and charges, civil and criminal penalties and fees, adverse impacts on marketing the Premises or any other areas of the Airport, loss of business and sales by the County and other Lessees of property at the Airport, diminution of value of the Premises and/or other areas of the Airport, the loss of or restriction of useful space in the Premises and/or other areas of the Airport, and any and all damages and claims asserted by third parties, and the County's reasonable attorneys' fees, costs and expenses.

G. Remediation on Termination of Lease. Upon the expiration or termination of this Lease, the Lessee shall remove, remediate or clean up any Hazardous Materials on, or emanating from, the Premises caused by Lessee as required by applicable laws ("Termination Cleanup"). The process for such Termination

Cleanup is subject to the County's prior written approval. Although the County reserves the right to review and approve the Termination Cleanup process, the County assumes no responsibility for it or its compliance with the Environmental Laws.

If the Lessee fails or refuses to commence the Termination Cleanup process, or fails to reasonably proceed toward completion of such process, within the time specified by law or within a reasonable time if no time is specified, the County may elect to perform such Termination Cleanup after providing the Lessee with written notice of the County's intent to commence Termination Cleanup, and after providing the Lessee a reasonable opportunity, which shall not be less than ninety (90) days after such notice (unless the County is given notice by a government or regulatory agency with jurisdiction over such matter that Termination Cleanup must commence within a shorter time), to commence or resume the Termination Cleanup process. If the County performs such Termination Cleanup after said notice and the Lessee's failure to perform same, the Lessee shall pay all of the County's costs and expenses.

H. Survival. The Lessee's obligations and liabilities under this Section 42, Hazardous Materials and Environmental Compliance, shall survive the expiration or termination of this Lease.

43. PUBLIC USE AIRPORT. The Premises and KCIA are subject to the terms of certain sponsor's assurances made to guarantee the public use of the public airport area of KCIA as incidental to grant agreements between King County and the United States of America; provided, that in the event at any time during the term of this Lease the terms of such assurances should effectively prohibit Lessee's use of the Premises in the general manner contemplated by the parties to this Lease, then such effective prohibition shall be considered as taking by the public and the Lessee or person or persons in lawful possession of the Premises may, upon thirty (30) days prior written notice given to King County, terminate this Lease.

44. RIGHT OF FLIGHT. There is hereby reserved to Lessor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Leased Premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

The right of free passage of aircraft shall be in the airspace over the above described property at the height prescribed by Part 77 of the Federal Aviation Regulations to an infinite height above said mean sea level and shall be for the exclusive benefit of Lessor, its successors and assigns (the "Aviation Right of Way"). Lessor represents that the Project, as defined in the Lease Agreement, does not and, upon completion, will not interfere with the Lessor's Aviation Right of Way. Lessor explicitly waives its continuing right to prevent, abate, or remove the Project and any Lessor approved alterations or improvements in connection with Lessor's Aviation Right of Way.

Lessor shall have the continuing right to prevent the erection or growth upon the Leased Premises of any building, structure, trees or any other object extending into the airspace above said surface at the height prescribed by Part 77 and to remove from said airspace, or at the sole option of Lessor, to mark and light as obstructions to air navigation, any such building, structure, trees or other objects now upon, or which in the future may be upon the Leased Premises, together with the right of ingress to and egress from and passage over all the Leased Premises (airspace and surface space) for such purposes.

In the event Lessee (or anyone holding through Lessee) interferes with Lessor's right of free passage, Lessor reserves the right to enter upon the Leased Premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Lessee.

Lessee by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner that might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, Lessor reserves the right to enter upon the Leased Premises and cause the abatement of such interference at the expense of Lessee.

45. EMPLOYEE CONDUCT. Lessee shall require and be responsible for the full compliance by its officers, agents, employees, customers and guests with the rules and regulations of the Federal Aviation Administration and KCIA.

46. SEVERABILITY. If any term or provision of this Lease or the application of any term or provision to any person or circumstance is invalid or unenforceable, the remainder of this Lease, or the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and will continue in full force.

47. GOVERNING LAW/VENUE. This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington. Venue for any legal proceeding shall be exclusively in King County Superior Court, Seattle, Washington.

48. QUIET ENJOYMENT. So long as Lessee is not in default under this Lease, subject to Sections 48(A) and (B) below, King County shall at all times during the term and subject to the provisions of this Lease ensure that Lessee shall peacefully and quietly have and enjoy the possession of the Premises without any encumbrance or hindrance.

A. This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of said Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

B. This Lease shall be subordinate to the provisions of and requirements of any existing or future agreement between Lessor and the United States relative to the development, operation, or maintenance of the Airport. (FAA Order 5190.6AB-AGL-600).

IN WITNESS WHEREOF, the parties hereto have subscribed their names as of the 14th day of June, 2016.

LESSEE:

MENTE, LLC,
a Washington limited liability company

BY: Wendy Langen
Wendy Langen, Director

DATE: June 14, 2016

LESSOR:

KING COUNTY, a political subdivision of the State of Washington

BY: _____
Anthony Wright, Director
Facilities Management Division

DATE: _____

CONSENT:

KING COUNTY INTERNATIONAL AIRPORT

BY: _____
Randall Berg, Director

DATE: _____

APPROVED AS TO FORM:

BY: _____
Ian Taylor, Senior Deputy Prosecuting Attorney

DATE: _____

STATE OF WASHINGTON )
) ss.
COUNTY OF KING )

On this ____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Anthony Wright, to me known to be the Director of the King County Facilities Management Division, a Political Subdivision of the State of Washington, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that said person was authorized to execute the said instrument for King County.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

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

STATE OF _____)
) ss.
COUNTY OF _____)

On this 14 day of June, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, Wendy Langen, to me known to be the Director of MENTE, LLC, a Washington limited liability company, who executed the foregoing instrument and acknowledge the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that said person was authorized to execute said instrument on behalf of MENTE, LLC.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Julie R. Aadland-Lewis
Printed Name: Julie R. Aadland-Lewis
NOTARY PUBLIC in and for the State of
WA, residing at 15219 110th PL NE, Bothell, WA 98011
My Commission Expires: 4/4/2019

Notary Public
State of Washington
JULIE R AADLAND-LEWIS
My Appointment Expires Apr 4, 2019

Notary Public
State of Washington
JULIE R. AGUILAND-LEWIS
My Appointment Expires Apr 6, 2019

## EXHIBIT A

## LEGAL DESCRIPTION OF PREMISES UNDER LEASE

LEASE LINE DESCRIPTION:

(REF: RECORD OF SURVEY VOLUME 223 OF SURVEYS PAGES 148-255)

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 24 NORTH RANGE 4 EAST W.M. DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 33;
THENCE NORTH 88°09'02" WEST ALONG THE NORTHERLY LIMIT OF SAID NORTHEAST QUARTER, A DISTANCE OF 1949.05 FEET TO A POINT ON THE EASTERLY MARGIN OF SOUTHEAST APRON NO. 1;
THENCE SOUTH 28°41'29" EAST, A DISTANCE OF 639.83 FEET TO THE NORTH LINE OF KING COUNTY LEASE PARCEL 7092 AND THE TRUE PONT OF BEGINNING;
THENCE NORTH 61°18'31" EAST, ALONG THE NORTH LINE THEREOF, A DISTANCE OF 323.70 FEET TO THE WESTERLY MARGIN OF PERIMETER ROAD, SAID MARGIN LYING 15.00 FEET WESTERLY AS MEASURED PERPENDICULAR TO THE CENTER OF SAID ROAD;
THENCE SOUTH 16°29'17" EAST, ALONG SAID WESTERLY MARGIN, A DISTANCE OF 204.62 FEET;
THENCE NORTH 61°18'31"EAST, A DISTANCE OF 0.63 FEET;
THENCE SOUTH 16°21'46" EAST, A DISTANCE OF 240.55 FEET TO THE SOUTH LINE OF KING COUNTY LEASE PARCEL 7072;
THENCE SOUTH 61°18'31" WEST, ALONG THE SOUTH LINE THEREOF, A DISTANCE OF 442.22 FEET;
THENCE NORTH 28°41'29" WEST, A DISTANCE OF 435.00 FEET;
THENCE NORTH 61°18'31" EAST, A DISTANCE OF 212.50 FEET TO THE POINT OF BEGINNING.

CONTAINING 212,872.26 Sq. Ft. OR 4.9 ACRES MORE OR LESS.

NOTES:

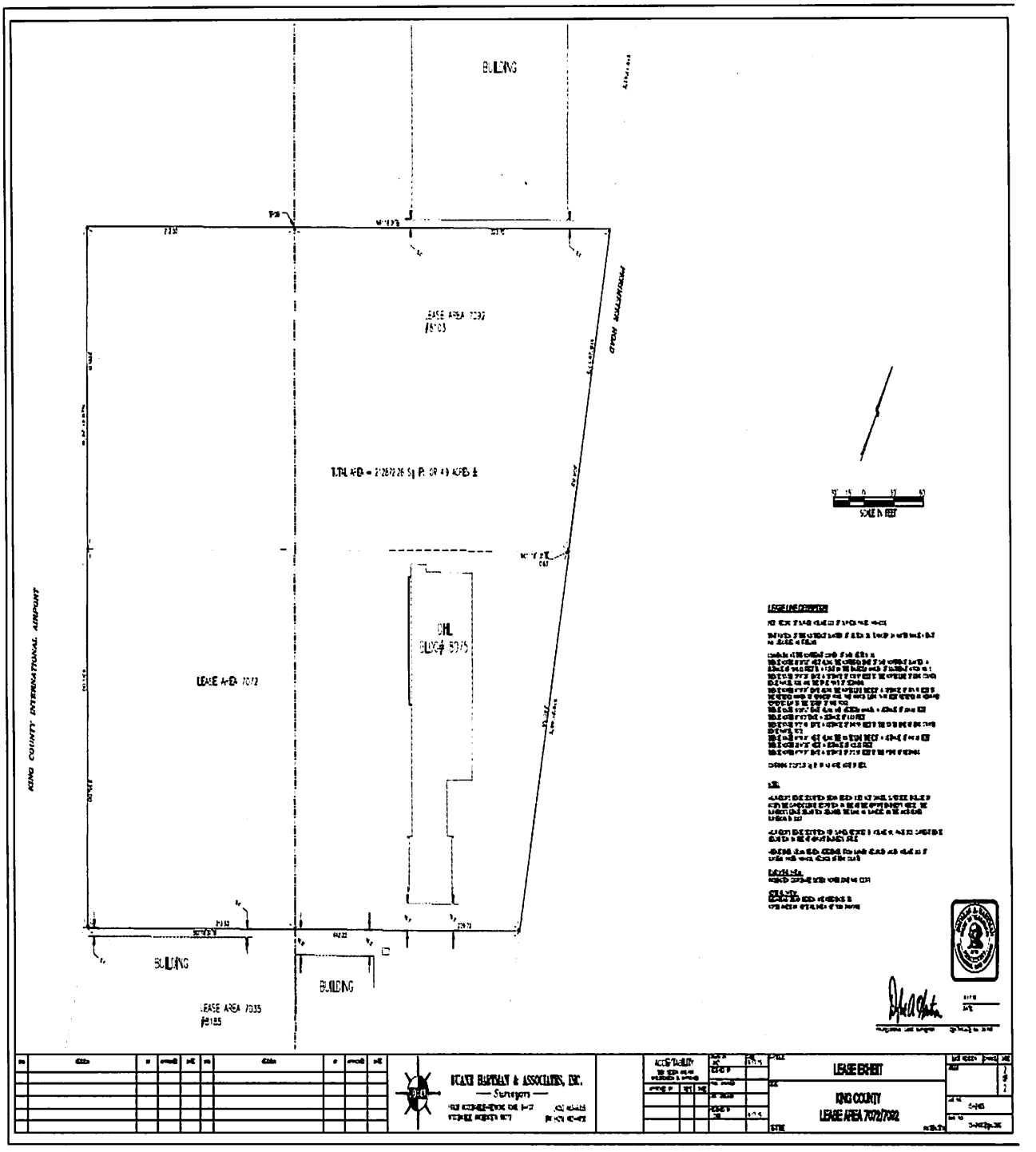
-SURVEYOR'S LEASE DESCRIPTION SHOWN HEREON DOES NOT CANCEL, SUPERSEDE, EXCLUDE OR MODIFY THE CURRENT LEASE DESCRIPTION ON FILE AT THE AIRPORT ENGINEER'S OFFICE. THE SURVEYOR'S LEASE DESCRIPTION DESCRIBES THE LAND AS SURVEYED BY THE UNDERSIGNED SURVEYORS IN 2007.

-SURVEYOR'S LEASE DESCRIPTION PER SURVEY RECORDED IN VOLUME 101, PAGE 263. CURRENT LEASE DESCRIPTION ON FILE AT AIRPORT ENGINEERS OFFICE.

-LEASE LINES SHOWN HEREON REFERENCED FROM SURVEY RECORDED UNDER VOLUME 223 OF SURVEYS, PAGES 148-255, RECORDS OF KING COUNTY

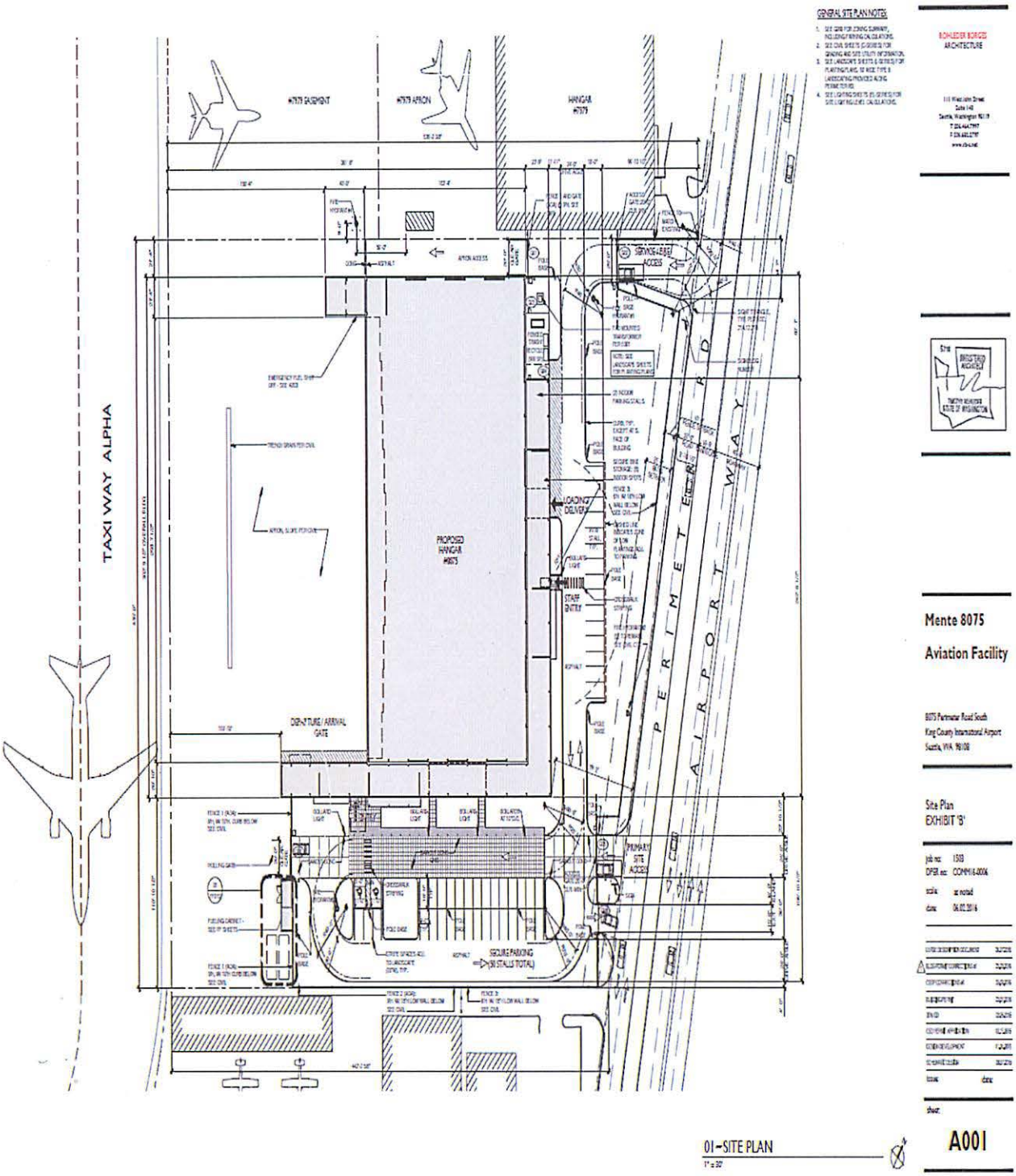
# EXHIBIT A-1

## DIAGRAM OF PREMISES UNDER LEASE



# EXHIBIT B

## SITE PLAN



# EXHIBIT C

## LIST OF APPROVED HAZARDOUS MATERIALS

Mente LLC Potential Hazardous Materials

| | A | B | C |
|---|---|---|---|
| 1 | TYPE/ITEM NAME | MANUFACTURE | QUANITY |
| 2 | BUTANE FUEL | RONSON | 5 OZ |
| 3 | AEROSPACE SEALANT AC-665 B-2 BASE | 3M | 15 OZ |
| 4 | AEROSPACE SEALANT AC-665 B-2 CATALYST | 3M | 3 OZ |
| 5 | POLYGONE 300-AG POLYSULFIDE STRIPPER | RPM TECHNOLOGY | 3 OZ |
| 6 | AEROSPACE SEALANT AC-665 B-1/2 | 3M | 10 OZ |
| 7 | SEMKIT PACKAGE PR-1826 B-1/4 MODEL 655 SEMKIT | PPG INDUSTRIES | 10 OZ |
| 8 | ISOPROPYL ALCOHOL | TARR | 5 GAL |
| 9 | CA 8000D DESOTHANE HS | PPG AEROSPACE | 2 GAL |
| 10 | 910-012 ACTIVATOR COMPONENT | PPG AEROSPACE | 1 QT |
| 11 | 515K011 EXPOXY PRIMER | PPG AEROSPACE | 1 QT |
| 12 | 13100S URETHANE ACTIVATOR | DUPONT | 2 QT |
| 13 | HARDNER TAN INTER SN 575 | NOT AVAILABLE | 1 QT |
| 14 | JET GLO CM0578520 POLYURETHANE HARDENER | SHERWIN WILLIAMS | 2 QT |
| 15 | GENERAL PURPOSE ADHESIVE CLEANER | 3M | .5 QT |
| 16 | DOT 3 BRAKE FLUID | NAPA | .5 QT |
| 17 | GREEN ZINC CHROMATE METAL PRIMER | SPRAY | .25 QT |
| 18 | 134A REFRIDERANT | WEITRON | 25 LBS |
| 19 | MASTINOX 6856K | PPG AEROSPACE | 1 OZ |
| 20 | 1P9189A HARDNER PAINT | NOT AVAILABLE | 1 QT |
| 21 | SEEVENAX HARDNER 115-22 PAINT | NOT AVAILABLE | 1 QT |
| 22 | ALODINE 1201 | HENKEL CORPORATION | .75 QT |
| 23 | ALUMIPREP 33 | HENKEL CORPORATION | .75 QT |
| 24 | METHYL ETHYL KETONE (MEK) | CSD INC | 2 GAL |
| 25 | ACETONE | SUNNYSIDE | 2 GAL |
| 26 | MINERAL SPIRITS TYPE 1 | HISCO CO. | 1 GAL |
| 27 | VARSOL | RANDOLPH PRODUCTS | 2 GAL |
| 28 | CP AGE MASTER NO.1 RUBBER PROTECTIVE AGENT | GOODRICH | 1 QT |
| 29 | ICEX II | GOODRICH | 1 QT |
| 30 | SHINE MASTER PREP | GOODRICH | 1 QT |
| 31 | SHINE MASTER | GOODRICH | 1 QT |
| 32 | MIL-H-5606A HYDRAULIC FLUID | ROYCO | 2 GAL |
| 33 | SKYDROL LD-4 | SOLUTIA INC | 4 GAL |
| 34 | 586 M MINERAL OIL EC135 | NOT AVAILABLE | .75 QT |
| 35 | TURBO OIL 2380 | BP | 8 QT |
| 36 | TURBINE OIL 808 | ROYCO | 12 QT |
| 37 | JET OIL II | MOBIL | 8 QT |
| 38 | 756 | ROYCO | 13 QT |

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ATTACHMENT 2

June 30, 2016

The Honorable Joe McDermott
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember McDermott,

This letter transmits an ordinance that will enable King County to lease a portion of King County International Airport property to Mente, LLC, in support of the provision of King County operations and services.

This transaction is recommended per the rationale and considerations provided in the attached property summary.

Leasing of this property furthers the King County Strategic Plan guiding principle of Financial Sustainability.

A direct negotiation justification letter regarding this transaction with Mente, LLC, is attached. The intent to execute this lease was advertised for two weeks in a public newspaper as required in KC.C. 4.56.160.B.

Thank you for your consideration of this ordinance. If you have any questions, please feel free to contact Anthony Wright, Director, Facilities Management Division at 206-477-9352.

Sincerely,

Dow Constantine
King County Executive

Enclosures

cc: King County Councilmembers
ATTN: Carolyn Busch, Chief of Staff
Anne Noris, Clerk of the Council
Carrie S. Cihak, Chief of Policy Development, King County Executive Office
Dwight Dively, Director, Office of Performance, Strategy and Budget
Caroline Whalen, County Administrative Officer, Department of Executive Services (DES)
Anthony Wright, Director, Facilities Management Division (FMD), DES
Hien Dung, Interim Manager, Real Estate Services, FMD, DES
Harold Tanaguchi, Director, Department of Transportation (DOT)
Randall Berg, Airport Division Director, DOT

8/18/16 Mente new Att A

**1**

Sponsor: McDermott

LK

Proposed No.: 2016-0347

**AMENDMENT TO PROPOSED ORDINANCE 2016-0347, VERSION 1**

Delete Attachment A, Lease Agreement, and insert Attachment A, Lease Agreement, dated August 17, 2016.

**Effect: Replaces the original lease with a revised lease.**

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ATTACHMENT A
Dated August 17, 2016

**KING COUNTY INTERNATIONAL AIRPORT**
7277 Perimeter Road South
Seattle, Washington 98108
(206) 296-7380

# LEASE AGREEMENT

1. PARTIES. This Lease ("Lease") effective the _____ day of _____ 2016, is entered into between King County (sometimes referred to as the "County" or "Lessor"), a municipal corporation and a political subdivision of the State of Washington, and Mente, L.L.C., a Washington limited liability company ("Lessee").

2. PREMISES. King County hereby rents to Lessee, upon the following terms and conditions, premises located in King County, Washington (hereinafter referred to as "the Premises"), legally described as follows (see "Exhibit A Legal Description of Premises Leased" attached, including rights of access across adjoining land owned by Lessor (including taxiways and apron areas) and "Exhibit A-1 Diagram of Premises Under Lease"), and commonly known as:

**8013-8075** Perimeter Road South, Seattle WA 98108
Approximately **212,872** square feet

3. TERM. The term of this Lease is for thirty-five (35) years (the "Lease Term"). The Lease shall commence on the effective date of an ordinance adopted by the King County Council approving this lease, (the "Commencement Date"), and end on the thirty-fifth (35th) anniversary of the Commencement Date, unless terminated earlier in accordance with this Lease or extended pursuant to Section 7.

4. RENT. Lessee shall pay to King County a rent of **$33,704.73 DOLLARS** payable in advance on or before the first day of each and every calendar month of the Lease Term. The rent is calculated on 212,871 square feet of raw land at $1.90/sf/year. Lessee shall also pay on the base rent a Leasehold Excise Tax levied pursuant to RCW Chapter 82.89A of **$4,327.69 DOLLARS** per month, which is based on the current Leasehold Excise Tax rate of 12.84%.

All rents and taxes shall be made payable to the KING COUNTY INTERNATIONAL AIRPORT and are to be received in the office of:

King County International Airport
7277 Perimeter Road South, Suite 200
Seattle, Washington 98108

Said rental is exclusive of any other sale, franchise, business or occupation, or other tax based on rents. Should any such taxes apply during the life of this Lease, the rent shall be increased by such amount.

5. SECURITY AND DAMAGE DEPOSITS. At the time of signing of this Lease, the Lessee shall pay the first (1st) month's rent and leasehold tax. In addition, the Lessee shall deposit with

King County the sum of **$76,064.84 DOLLARS** as a deposit for performance of all obligations required by this Lease. The return of this deposit, or any portion of it, shall be conditioned on the performance of all the Lessee's duties. Within (60) days after termination of the tenancy and vacation of the premises King County will return any sum due the Lessee from this deposit retained by King County. Furthermore, the Lessee understands and agrees that all rents, late charges, utility bills owing, or any other obligation required under this Lease, including damage and cleaning may be deducted from the deposit at the time of Lessee's vacation of the Premises if any amount remains in that fund after subtraction of damage and cleaning costs with the balance paid to Lessee. The deposits need not be held in any special account and no interest will be paid thereon.

6. USE. Lessee shall use said Premises for the following permitted purposes and no others without prior written consent of King County, which shall not be unreasonably withheld, conditioned or delayed:

A. Aviation Hangar
B. Maintenance of Tenant owned or leased aircraft
C. Fuel Storage for self-fueling of Tenant owned or leased aircraft
D. Related office and administrative uses

Lessee shall obtain, at Lessee's sole cost and expense, any and all licenses and permits necessary for Lessee's contemplated use of the Premises. Lessee shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations to emanate from the Premises, nor take any other action which would constitute a nuisance or which would disturb or endanger any other tenants of the Airport, or unreasonably interfere with such other tenants' use of their respective space. Lessee agrees not to do or permit anything to be done in or about the Premises which will in any manner obstruct or interfere with the rights of other tenants or occupants of the Airport, or injure or unreasonably annoy them, or use or allow the Premises to be used for any unlawful or unreasonably objectionable purpose. Lessee shall neither commit nor suffer any waste to the Premises and shall, at its sole cost and expense, keep and maintain the Premises and all improvements thereon and all facilities appurtenant thereto in good order and repair and safe condition, and the whole of the Premises, including all improvements and landscaping, in a clean, sanitary and attractive condition.

No other uses, activities or operations, shall be conducted by the Lessee from the Premises without first obtaining the written consent of King County. To the best of King County's knowledge, there are no conditions, restrictions or encumbrances to which the Premises and Project are subject that would preclude the redevelopment and use of the Premises by Lessee as provided for in this Lease. Upon the Commencement Date, King County shall deliver the Premises to Lessee free and clear of all tenancies or occupancies of any kind.

7. CONSTRUCTION OF IMPROVEMENTS. King County hereby approves the conceptual plans for the proposed improvements ("Improvements") by Lessee of a hangar, offices and aircraft ramp on the Premises ("Project"), as more specifically described in ("Exhibit B Site Plan") attached hereto. Lessee acknowledges that King County's Department of Permitting and Environmental Review ("DPER") is the building permitting agency for the Project. Lessee shall submit to DPER, a building permit application (including detailed plans and specifications) for the Improvements

described in Exhibit "B" within 60 days after execution of this Lease; however, by entering into this Lease, the County does not warrant that DPER will issue any required permit. Lessee shall also use commercially reasonable efforts to obtain all permits for the Project (in final, unappealable form) from agencies with jurisdiction, including the requirements set forth in Section 14(C) of this Lease, in a form satisfactory to both parties ("Project Approvals") no later than one (1) year from the date of King County Council approval of the Lease (the "Outside Permit Date"), and shall commence demolition, at Lessee's sole expense, of existing improvements on the Premises within 30 days of the date all Project Approvals are obtained, or earlier at Lessee's option, provided Lessee has obtained the necessary permits (the "Demolition Commencement Date"). Lessee shall thereafter undertake and complete the permitted Improvements within a reasonable amount of time following the later of: the date all Project Approvals are obtained or the Demolition Commencement Date. If Lessee determines, in its sole discretion, that it cannot obtain the Project Approvals to enable it to achieve Substantial Completion for the Project, which for the purposes of this Lease means the date on which Lessee first obtains a Certificate of Occupancy from the applicable permitting jurisdiction(s) for the Improvements, then Lessee may terminate this Lease by written notice to King County given within thirty (30) days following the Outside Permit Date, with all rents paid forfeited by Lessee to King County and Lessee responsible for all costs it incurred arising out of or related to the Lease, including but not limited to permit costs, design and development expenses, construction costs, environmental remediation, and costs associated with the demolition of the existing hangar. If Lessee has timely filed applications for the Project Approvals but the Project Approvals have not been issued thirty (30) days prior to the Outside Permit Date, then Lessee may extend the Outside Permit Date one time by an additional six (6) months upon payment to King County of an extension payment in the amount of $10,000.00.

Following the Outside Permit Date, if Lessee fails to achieve Substantial Completion of the Improvements within a reasonable amount of time, as reasonably determined by King County, and fails to cure such lack of Substantial Completion within ninety (90) days after written notice from King County (or if such cure cannot reasonably be effected within said 90-day period, then Lessee shall commence such cure within said 90-day period and prosecute such cure to completion with diligence), then at the election of King County, this Lease may be terminated and all rentals paid shall be forfeited by Lessee to King County and Lessee shall be responsible for all costs it incurred arising out of or related to the Lease, including but not limited to permit costs, design and development expenses, construction costs, environmental remediation and costs associated with the demolition of the existing hangar.

In the event King County or Lessee exercises termination rights under this Section 7, Lessee shall have no obligation or liability with respect to reconstructing improvements or continuing to pursue the construction of new improvements on the Premises in the event Lessee has commenced or completed the demolition on the existing improvements in accordance with this Lease at the time of such termination. All dates and timelines contemplated herein are subject to Acts of God and/or Force Majeure, including but not limited to labor issues, severe weather and any other significant and impactful issue or event not within the reasonable control or mitigation of Lessee.

The total value of the Improvements described in this Section shall be at least $30,000,000.00, as evidenced by written documentation to be approved of by King County prior to the

commencement of construction. In accordance with King County Code 4.56.180(3), Lessee may request, and Lessor, in its sole discretion not to be unreasonably denied, may offer Lessee an extension of the 35-year Lease Term equal to the estimated useful life of any required Improvements described in this Section, but not to exceed a total of fifty (50) years. If Lessee accepts the extension of the Lease Term, the parties shall document such an extension through a written amendment to this Lease. Lessee may propose renegotiating the Fair Market Rental Value after due consideration of all elements reasonably affecting value as set forth in King County Code 4.56.010. The "value of the Improvements" as used in this Section, includes actual demolition costs, as well as permitting and actual costs associated with the permanent improvements erected on the Premises. In accordance with Section 21, Lessee shall be required to provide King County with a Contractor's Performance and Payment surety bond or letter of credit for the cost of the Improvements.

Notwithstanding the provisions of Section 42(B)(7), Lessee is solely responsible for all environmental remediation on the Premises during the construction of the Improvements, regardless of the source of the Hazardous Material being remediated or the party responsible for its generation, provided however, that nothing in this Lease (including the hold harmless provisions set for in Section 15, 18 and 42 of this Lease) shall preclude Lessee from seeking contribution and/or reimbursement from any other party, except King County, potentially responsible for the costs of Hazardous Materials remediation under any Environmental Law. The "value of the Improvements," as used in this Section, includes reasonable and necessary Remedial Action Costs and Professional Fees, up to a maximum of $1,500,000.00, to develop the Improvements. "Remedial Action Costs and Professional Fees" that may be included in the value of Improvements shall be limited to architectural and engineering costs, environmental and soil engineering, geotechnical engineering, surveying, testing and special inspections, security system engineering, AV systems engineering, and IT systems engineering, costs to investigate, sample or test, segregate, export, dispose of or otherwise manage any soil, groundwater, surface water or sediment containing Hazardous Materials that exceed the costs of handling or managing the soil, groundwater, surface water or sediment had it not contained Hazardous Materials. For purposes of including remediation costs toward the "value of Improvements", environmental remediation does not include remediation of Hazardous Materials caused or generated by Lessee during its control of the Premises. Lessee shall remediate Hazardous Materials under this Section to the applicable cleanup standards under Environmental Laws that will allow for unrestricted use of the Premises with no environmental covenant or other deed restriction required to be recorded, unless Lessor, in its sole discretion, agrees otherwise in writing. In no event shall Lessee pursue costs recovery or contribution action against King County for environmental remediation performed pursuant to this Section 7.

8. ENTIRE AGREEMENT AMENDMENTS. This Lease and any and all exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole agreement between the parties. There are no terms, current or past representations, obligations, covenants or conditions other than those contained herein. No modification or amendment of this Lease shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

9. NOTICES. Required notices except legal notices shall be given in writing to the following respective addresses:

TO COUNTY: King County, Real Estate Services
500 Fourth Avenue, Suite 830
Seattle, WA 98104-2337
Attention: Lease Administration

With a copy to: Airport Director
King County International Airport
7277 Perimeter Road South
Seattle, WA 98108-3844

TO LESSEE: Prior to construction of the improvements:
MENTE, LLC
6771B Perimeter Road South
Seattle, WA 98108

Following construction of the improvements:
MENTE, LLC
8075 Perimeter Road South
Seattle, WA 98108

With a copy to: Jack McCullough
McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, WA 98122

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices sent by mail shall be deemed to have been given when properly mailed.

10. LATE PAYMENT, TAXES, LICENSES, FEES AND ASSESSMENTS.

A. LATE PAYMENTS. Lessee acknowledges that the late payment by Lessee to King County of any rent or other sums due under this Lease will cause King County to incur administrative, collection, processing and accounting costs and expenses not contemplated under this Lease, the exact amounts of which are extremely difficult and impractical to fix. Therefore, if any rent or other sum due under this Lease is not received by King County from Lessee by the tenth calendar day of the month in which said rent or other sum is due ("**the Delinquency Date**"), Lessee shall immediately on the Delinquency Date pay to King County a late charge equal to the greater of (i) five percent (5%) of the amount of such rent or other sum, or (ii) Five Hundred Dollars ($500.00). King County and Lessee agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to King County for its loss

caused by Lessee's nonpayment. Should Lessee pay said late charge but fail to pay contemporaneously therewith all unpaid amounts of rent or other sums due under this Lease, King County's acceptance of this late charge shall not constitute a waiver of Lessee's default with respect to Lessee's nonpayment or prevent King County from exercising all other rights and remedies available to King County under this Lease or under law. Additionally, all such delinquent rent or other sums, and all late charges not paid when due, shall bear interest for each day following their Delinquency Date until paid at a percentage rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted under applicable laws. Waiver of the late charge or interest with respect to any delinquent payment will not be deemed to constitute a waiver of the late charge or interest with respect to any subsequent delinquent payment. Any payments of any kind returned for insufficient funds will be subject to an additional charge of $50.00 payable by Lessee to King County. In addition, if payments are received by check or draft from Lessee, and two (2) or more of such checks or drafts are dishonored by the bank or other financial institution they were drawn upon in any twelve (12) month period, King County may thereafter require all rent and other payments due hereunder from Lessee to King County to be made by bank cashier's or bank certified check or other similar means of payment and King County shall not be required to accept any checks or drafts of Lessee which do not comply with such requirements.

B. LEASEHOLD TAX. A Leasehold Excise Tax, if applicable, is levied pursuant to the Revised Code of Washington (R.C.W.) Chapter 82.29A. The Lessee agrees to pay this tax to King County. If the State of Washington changes the Leasehold Excise Tax or if King County receives authorization to levy this tax, the tax payable shall be correspondingly changed.

C. LICENSE, TAXES AND FEES. Throughout the term of this Lease, Lessee shall pay all applicable taxes and all license and excise and other applicable fees including, but not limited to, fuel flowage fees, parking fees and landing fees, covering the business conducted on the Premises as provided for in King County Code Title 15 as now existing and as it may be amended.

D. MITIGATION ASSESSMENTS. Lessee shall, subject to sixty (60) days prior notice and reasonable opportunity to object, pay any mitigation assessment now in effect or hereafter established, by any municipality, agency or organization, including King County, having jurisdiction over King County International Airport. Lessee's portion of the assessment will be based on their contribution, or pro rata share, of the condition and/or circumstance which is being mitigated and/or their proportionate use of the improvement requiring mitigation investment.

11. RENT ADJUSTMENT. To ensure a fair rent based upon the fair market value of the Premises, King County shall adjust the rent to the then current Fair Market Rental Value (as defined below) in the fifth calendar year following the Lease Commencement Date and each

subsequent Rent Adjustment Date, as defined below (the "**FMV Adjustment**"). Subsequent adjustments will take effect every fifth anniversary of the previous FMV Adjustment. The date on which a FMV Adjustment becomes effective is referred to hereafter as "**Rent Adjustment Date**". The five year period commencing on the Rent Adjustment Date is referred to hereafter as "**the Succeeding Period**".

A. FAIR MARKET RENTAL VALUE DEFINED. For all purposes required under this Lease, "**Fair Market Rental Value**" is defined as: An amount in the competitive market that a well-informed and willing lessor, who desires but is not required to lease, would accept, and which a well-informed and willing lessee, who desires but is not required to lease, would pay for the temporary use of the Premises (excluding improvements to the Premises constructed at Lessee's expense made during the term of the lease), after due consideration of all the elements reasonably affecting value

B. NOTICE OF RENTAL ADJUSTMENT. When engaging in an FMV Adjustment, King County will give Lessee at least thirty days written notice of the adjusted rent for the Succeeding Period. The rent as adjusted shall take effect on the Rent Adjustment Date specified in the notice. Unless Lessee, within thirty days following receipt of notice from King County, gives King County written notice of its rejection of the adjusted rent together with Lessee's statement of the amount Lessee considers to be the Fair Market Rental Value, the rent as adjusted by King County will become the rent for the Succeeding Period. If Lessee so notifies King County of its rejection of the adjusted rent, the parties may negotiate in good faith in an attempt to agree upon the rent adjustment.

C. ARBITRATION.

1) If, thirty days after King County receives Lessee's notice of its rejection of the rent as adjusted by King County, Lessee and King County cannot agree upon the rent adjustment, the rent for the Succeeding Period will be adjusted by arbitration. Lessee and King County will each select one disinterested arbitrator, and the two selected arbitrators will select a third.

2) King County will give Lessee written notice of the name and address of its selected arbitrator and his or her qualifications. Unless otherwise agreed in writing by King County, Lessee shall give King County written notice of the name and address of Lessee's selected arbitrator and his or her qualifications within thirty days after Lessee's receipt of King County's notice. If Lessee fails to so provide its written notice to King County, Lessee shall be deemed to waive its right to arbitration, the arbitration shall not proceed, and the rent as adjusted by King County shall become the rent for the Succeeding Period.

3) If the two arbitrators have not selected a third arbitrator within thirty days after the selection of the last selected of the two, either Lessee or King

County will apply to the Presiding Judge of the Superior Court in King County for the appointment of a third arbitrator.

4) Each arbitrator will be a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, or other appraisal society or association having equivalent ethical and professional standards. If, in the future, a licensing requirement for real estate appraisers is imposed by any legislative body with jurisdiction, each arbitrator shall also be licensed. The arbitrators shall not only be impartial, but also shall not have been an employee of, or retained under contract by, either party (King County International Airport or Lessee) for a period of one year before the arbitration, and shall have no financial interest in the subject of the arbitration. Within fourteen days of a party receiving the written notice of the other party's selected arbitrator or within 14 days of the appointment of the third arbitrator, either party shall have the right to disqualify the other party's selected arbitrator or the appointed third arbitrator who does not meet the requirements of this Section by sending a written notice to the other party and to all the arbitrators stating the grounds for disqualification. If the disqualified arbitrator is a party-appointed arbitrator, then that party shall, within fourteen days after its receipt of the other party's notice of disqualification, appoint another arbitrator who meets the requirements of this Section to serve in place of the party's disqualified arbitrator. If the disqualified arbitrator is the third arbitrator, then the two party-appointed arbitrators shall, within fourteen days after their receipt of a party's notice of disqualification, select a third arbitrator who meets the requirements of this Section to serve in place of the disqualified arbitrator.

5) The arbitrators shall give the parties sixty days' notice in writing of the date on which the arbitration is to commence. Unless otherwise agreed in writing by King County and Lessee, each party shall, no later than thirty days before the arbitration is scheduled to commence, provide the other party with a copy of an appraisal report prepared by a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, or other appraisal society or association having equivalent ethical and professional standards, that supports that party's claim of Fair Market Rental Value. If Lessee fails to so provide a copy of its appraisal report to the County, Lessee shall be deemed to waive its right to arbitration, the arbitration shall not proceed, and the rent as adjusted by King County shall become the rent for the Succeeding Period.

6) The three arbitrators will determine a fair rent for the Premises for the Succeeding Period based upon the Fair Market Rental Value as defined in as defined in Section 11(A) hereof, which is in accordance with King County Code 4.56.010. The decision of a majority of the arbitrators will bind both Lessee and King County. Both King County and the Lessee

agree that all non-mandatory provisions of RCW 7.04A are waived and that, unless requested by a majority of the arbitration panel, no formal hearing will be held, no witnesses will testify, no attorneys will participate in the arbitration, and the arbitrators will be the final determiners of both fact and law. At the conclusion of the arbitration, the arbitrators will submit a written report in counterpart copies to Lessee and King County, which shall state their determination of the rent to be paid by Lessee for the Succeeding Period. The report shall contain all pertinent evidence that led to their conclusion together with an explanation of their reasoning for such conclusion.

D. COST OF ARBITRATION. Each party shall pay for its appraisal and shall bear the expense of its own counsel, and any other of its representatives and/or experts that may be required to prepare for or, in the event it is requested by the arbitration panel, participate in the arbitration. Each party shall also pay the fees and expenses of its selected arbitrator. The fees and expenses of the third arbitrator and all other costs of the arbitration will be divided equally between Lessee and King County.

E. RENT PENDING ADJUSTMENT AND RETROACTIVITY. In the event resolution of the rental adjustment is not completed either by negotiation or arbitration prior to the Rent Adjustment Date:

1) Lessee shall, pending resolution of such rent adjustment, continue to pay King County the rent then in effect;

2) The adjusted rent, as determined either by negotiation or arbitration, shall be retroactive to the Rent Adjustment Date; and

3) King County, at its option, may elect to require Lessee to pay interest in the amount of twelve percent per annum commencing on the Rent Adjustment Date on any sum due as a result of a retroactive increase.

F. ANNUAL RENT ADJUSTMENTS DURING NON-APPRAISAL YEARS. The annual rent adjustments for intervening years between FMV Adjustments shall be two and a half percent (2.5%). For the avoidance of doubt, if the FMV Adjustment results in a Fair Market Rental Value that is greater than or less than the prior year's rent, then the Fair Market Rental Value becomes the new rent. Rents shall be adjusted on January 1 of each year and shall take effect on the anniversary of the Rent Adjustment Date. Annual rental adjustments made under this Section (11)(F) are not subject to arbitration.

12. COMPLIANCE WITH ALL LAWS AND REGULATIONS. In using the Premises, Lessee will comply with all applicable laws, ordinances, and regulations from any and all authorities having jurisdiction. The Lessee specifically agrees to comply and pay all costs associated with achieving such compliance without any notice from King County, and further

agrees that King County does not waive this Section by giving notice of demand for compliance in any instance.

13. UTILITIES. Lessee shall pay for all costs, expenses, fees, services, and charges of all kinds for heat, light, water, gas, and telephone, and for all other public utilities used on said Premises so that the same shall not become a lien against the Premises.

14. IMPROVEMENTS AND ALTERATIONS.

A. Other than alterations, improvements and fixtures located entirely inside the Improvements, Lessee shall make no significant alterations or improvements to or upon the Premises, or install any fixtures (other than trade fixtures which can be removed without injury to the Premises) without first obtaining prior written approval from King County, approval which will not be unreasonably denied or delayed.

B. All improvements and alterations erected or made on the Premises by Lessee shall be and remain the property of Lessee during the term of this Lease. Unless otherwise stipulated, all improvements or alterations erected or made on the Premises (not including personal property, equipment and removable fixtures, which shall remain the property of Lessee) shall, upon expiration or earlier termination of this Lease, belong to King County without compensation to the Lessee; however, King County shall have the option, to be exercised on expiration or earlier termination of the Lease, to require the Lessee, at Lessee's expense, to remove any or all such improvements or alterations.

C. Lessee agrees to comply with the notification, review and approval requirements contained in Title 14 CFR, Part 77 of the Federal Aviation Regulations (Safe, Efficient Use, and Preservation of the Navigable Airspace) and Form Federal Aviation Administration ("FAA") 7460-1 (Notice of Proposed Construction or Alteration) in the event that any future structure or building is planned for the Premises, or in the event of any modification or alteration of any future building or structure situated on the Premises.

D. Lessee covenants and agrees that no equipment or fixtures shall be installed or operated on the Premises which would produce electromagnetic radiation or radio signals, telecommunication signals, or the like, that would violate any FAA rules and regulations.

E. Lessee agrees to furnish King County with as-built drawings for all Improvements within 60 days of completion of construction. As-built drawings will be provided in electronic and paper format as requested by King County.

15. CONDITION OF PREMISES.

A. Lessee has inspected and knows the condition of the Premises, and accepts the Premises "AS IS".

B. Lessee acknowledges that the Premises may contain Hazardous Materials, as defined in Section 42 of this Lease, and Lessee accepts the Premises "AS IS", including, without limitation, the presence of any Hazardous Materials or underground storage tanks, or the actual or threatened release, deposit, seepage, migration or escape of Hazardous Materials at, from or into the Premises, and the compliance or noncompliance of the Premises with applicable federal, state, county and local laws and regulations including, without limitation, the Environmental Laws as defined in Section 42 of this Lease.

C. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE, KING COUNTY DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PREMISES, AND NO OFFICIAL, EMPLOYEE, REPRESENTATIVE OR AGENT OF KING COUNTY IS AUTHORIZED OTHERWISE. WITHOUT LIMITATION, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE, THE FOREGOING SPECIFICALLY DISCLAIMS WARRANTIES WITH RESPECT TO THE CONDITION OF THE PREMISES FOR DEVELOPMENT AND/OR USE BY LESSEE, THE PRESENCE OF ANY HAZARDOUS MATERIALS OR UNDERGROUND STORAGE TANKS, OR THE ACTUAL OR THREATENED RELEASE, DEPOSIT, SEEPAGE, MIGRATION OR ESCAPE OF HAZARDOUS MATERIALS AT, FROM OR INTO THE PREMISES, AND THE COMPLIANCE OR NONCOMPLIANCE OF THE PREMISES WITH APPLICABLE FEDERAL, STATE, COUNTY AND LOCAL LAWS AND REGULATIONS, INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL LAWS.

D. King County shall not have any obligation to Lessee to make any changes or improvements, or to incur any expenses whatsoever for the maintenance, monitoring, repair or remediation of the Premises.

E. Lessee acknowledges and agrees that King County shall have no liability to Lessee for, and that Lessee shall have no recourse against King County for, any defect or deficiency of any kind whatsoever in the Premises without regard to whether such defect or deficiency was discoverable by Lessee or King County.

F. King County reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or opinions of Lessee, and without interference or hindrance by Lessee. (FAA Order 5190.6B - AGL-600).

G. King County reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard. (FAA Order 5190.6B - AGL-600).

16. CONSTRUCTION DEFECTS. King County shall not be liable to the Lessee for claims or damages arising from any defect in the construction of or the present condition of the Premises, whether known or unknown, or for damage by storm, rain, or leakage or any other occurrence.

17. MAINTENANCE.

A. Throughout the term of this Lease, Lessee shall, without cost or expense to King County, keep and maintain the Premises and all improvements, landscaping, fixtures and equipment which may now or hereafter exist thereon, in a neat, clean, and sanitary condition and shall, except for reasonable wear and tear, at all times preserve the Premises in good and safe repair except for any demolition of improvements contemplated by Section 7 of the Lease. Upon the expiration or sooner termination of the Lease, Lessee shall forthwith return the same in as good condition as existed at the commencement of occupancy, ordinary wear and tear excepted, except for any demolition of improvements contemplated by Section 7 of the Lease.

B. If, after thirty (30) days' notice from King County, or immediately in case of potential harm to life safety or property, Lessee fails to maintain or repair any part of the Premises or any improvement, landscaping, fixtures or equipment thereon, King County may, but shall not be obligated to, enter upon the Premises and perform such maintenance or repair, and Lessee agrees to pay the costs thereof to King County upon receipt of a written demand. Any unpaid sums under this Section shall be payable as additional rent on the next rent payment date due following the written demand and will bear interest at a percentage rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted under applicable laws.

18. GENERAL INDEMNITY AND HOLD HARMLESS. The Lessee agrees to indemnify and hold King County harmless as provided herein to the maximum extent possible under law. Accordingly, the Lessee agrees for itself, its agents, successors, and assigns, to defend, indemnify, and hold harmless King County, its appointed and elected officials, and its employees and agents, from and against liability for all claims, demands, suits, and judgments, including costs of defense and attorney fees thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to Lessee's rights and obligations under this Lease, except to the extent of either (i) King County's sole negligence or (ii) environmental conditions pre-dating Lessee's possession of the Premises, except as otherwise provided in Sections 7 and 42. The Lessee's obligations under this Section shall include:

A. The duty to promptly accept tender of defense and provide defense to the County at the Lessee's own expense, including attorney fees;

B. Indemnification of claims made by the Lessee's own employees or agents; and,

C. Waiver of the Lessee's immunity under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify King County, which waiver has been mutually negotiated by the parties.

Lessee agrees to hold harmless and indemnify King County for any and all costs associated with damage to owned, non-owned or hired aircraft in the Lessee's care, custody and control.

In the event it is necessary for the County to incur attorney's fees, legal expenses or other costs to enforce the provisions of this Section, all such fees, expenses and costs shall be recoverable from the Lessee.

In the event it is determined that R.C.W. 4.24.115 applies to this Lease, the Lessee agrees to defend, hold harmless, and indemnify King County to the maximum extent permitted thereunder. Further, Lessee agrees to defend, indemnify, and hold the County harmless for claims by Lessee's employees and agrees to waive, as respects the County only, its immunity under Title 51 R.C.W., which waiver has been mutually negotiated by the parties.

Lessee shall include the same indemnification language in this Section 18 in its sub-leases protecting, indemnifying and defending King County, its appointed and elected officials, and its employees and agents.

The provisions of this Section 18, "Indemnity and Hold Harmless", shall survive the expiration or termination of this Lease with respect to any event that occurs prior to, or on the date of, such expiration or termination.

Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

19. INSURANCE REQUIREMENTS – LESSEE/LEASEHOLD. By the date of execution of this Lease, the Lessee shall procure and maintain for the duration of this Lease, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with Lessee's rights and obligations under this Lease, by the Lessee, its agents, representatives, employees and/or subcontractors. The insurance required to be provided by Lessee under this Lease may be provided under blanket policies that cover Lessee and the Premises as well as other entities and properties. The cost of such insurance shall be paid by or on behalf of the Lessee. If there is any inconsistency between the minimum insurance requirements set forth below in this Lease and the insurance required by King County in any other Airport agreement to which the Lessee is a party, the Lessee shall maintain the most stringent insurance required.

In consideration of the duration of this Lease, the parties agree that the Insurance Requirements Section herein, at the discretion of the King County Risk Manager, may be reviewed and adjusted with each amendment and within 90 days of the end of the first Five (5) year period of the Lease Term and the end of each successive Five (5) year period thereafter.

Any adjustments made as determined by the King County Risk Manager, with regard to limits, scope and types of insurance, shall be in accordance with reasonably prudent risk management practices and aviation insurance industry standards and shall be effective on the first day of each successive Five (5) year period.

Adjustment, if any, in insurance premium(s) shall be the responsibility of the Lessee. Any failure by the County to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE. The Lessee shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to the Lessee under this Contract. The Lessee shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions and environmental impairment , may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the Lessee warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of termination of this lease. Insurance coverage shall be at least as broad as stated below and with limits no less than:

**1) Commercial General Liability (Aviation General Liability).** Coverage in the amount of $5,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a $5,000,000 aggregate limit shall be maintained.

**2) Aircraft Liability.** (Owned, Leased and Non-owned Aircraft) Aircraft liability for bodily injury, death, property damage, contractual and passenger liability.

Aircraft Liability (combined single-limit per occurrence other than passenger liability in accordance with the following table)

| Maximum Gross Take-off Weight | Minimum Requirement: (each Occurrence) |
|---|---|
| Over 25,000 lbs. | $25,000,000 |
| 15,001 -25,000 | $15,000,000 |
| 10,001 – 15,000 lbs. | $10,000,000 |
| 5,000 - 10,001 lbs. | $5,000,000 |
| Under 5,000 lbs. | $1,000,000 |

**3) Aircraft Hull and Machinery**. Lessee agrees to insure owned and/or leased aircraft commensurate with the value of the aircraft and machinery and waive all rights of subrogation against the Lessor.

**4) Liquor Liability.** Required if alcoholic beverages are sold or distributed, a limit of $1,000,000 per occurrence and for those policies with aggregate limits, a $1,000,000 limit.

**5) Automobile Liability.** Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. $5,000,000 combined single limit per accident. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90.

**6) Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

**7) Employer's Liability or "Stop Gap".** Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

**8) Hangar Keepers Liability.** Bailee's coverage for non-owned aircraft held in the Lessee's care, custody and control at a limit equal to maximum value of aircraft hangared at any one time per occurrence, and in the aggregate.

**9) Environmental Impairment.** Pollution coverage for all clean-up and remediation costs and expense arising out of Lessee's use of the Premises for both sudden and accidental discharges or gradual or repeated contamination. $1,000,000 per claim and in the aggregate. Coverage required by this Section 19(A)(9) may be evidence by a letter of self-insurance from Lessee, provided, however, that the Lessor may revoke Lessee's right to self-insure under this Section 19(A)(9) if Lessor determines, in its reasonable discretion, that such self-insurance does not provide adequate protection to Lessor for the risks covered by this Section 19(A)(9).

**10) Property Insurance.** The Lessee will carry "All Risk" property insurance in an amount equal to the full replacement value of all improvements, structures, and buildings located on the Premises and business interruption coverage to provide for the continued payment of rent to the owner, in an amount equal to twelve month's rental payment obligation. . Coverage shall include the perils of earthquake and flood provided the limits of flood coverage may be a reasonable amount that is less than full replacement value. King County will not carry

insurance on Lessee's property or business personal property. Waiver of subrogation must be shown on evidence of insurance. King County shall be named as loss payee on Lessee's property insurance as its interests may appear.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to King County. The deductible and or self-insured retention of the policies shall not limit or apply to the Lessee's liability to the County and shall be the sole responsibility of the Lessee.

C. OTHER INSURANCE PROVISIONS. The insurance policies required in this Lease are to contain or be endorsed to contain the following provisions:

1) All liability policies except workers compensation:

a. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Lessee in connection with this Lease.

b. The Lessee's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the Lessee's insurance or benefit the Lessee in any way.

c. The Lessee's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2) All Policies:

a. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits below those required by this Lease, without replacement of the coverage in question with insurance that satisfies the requirements of the Lease until after thirty (30) days prior written notice has been given to the County.

D. ACCEPTABILITY OF INSURERS. Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or if not rated with Bests' with minimum surpluses, the equivalent of Bests' surplus size VIII. If at any time, any of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Lessee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements for approval.

E. VERIFICATION OF COVERAGE. Lessee shall furnish the County with certificate(s) of insurance and endorsement(s) required by this Lease. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County and are to be received and approved by the County prior to the commencement of activities associated with the Lease.

F. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, King County and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective property insurance policies, including any extended coverage endorsements hereto; provided that this agreement shall be inapplicable if it would have the effect of invalidating any insurance coverage of King County or the Lessee.

20. INSURANCE REQUIREMENTS - BUILDINGS/STRUCTURES/FACILITIES UNDER CONSTRUCTION.

Prior to commencement of any construction and until construction is complete and accepted by the Lessee, the Lessee shall cause its construction contractor(s) to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to said construction. The cost of such insurance shall be paid by the Lessee and/or any of the Lessee's contractors.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE. The Lessee and/or its contractors shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to Lessee under the construction contract between Lessee and its General Contractor. The Lessee shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the Lessee warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the work which is the subject of this Lease. Insurance coverage shall be at least as broad as stated below and with limits no less than:

**1) General Liability**. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 covering **COMMERCIAL GENERAL LIABILITY.** $1,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a $2,000,000 aggregate limit and a $3,000,000 limit umbrella/excess liability policy. Coverage shall not exclude explosion collapse and underground damage (XCU).

**2) Automobile Liability.** Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. $1,000,000 combined single limit per accident and a $4,000,000 limit umbrella/excess liability policy. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90.

**3) Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

**4) Employer's Liability or "Stop Gap".** Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

**5) Professional Liability Errors and Omissions.** In the event that services delivered pursuant to this Contract either directly or indirectly involve or require Professional services, Professional Liability Errors and Omissions coverage shall be provide at a limit of $1,000,000 per claim and in the aggregate..

**6) Builder's Risk/Installation Floater.** Lessee shall procure and maintain, or cause it's General Contractor to procure of maintain, during the life of the contract to construct the Improvements ("construction contract"), or until acceptance of the Project by the Lessee, whichever is longer, "All Risk" Builders Risk or Installation Floater Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft, off-site storage and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for 100% of the replacement value thereof and include earthquake and flood. The policy shall be endorsed to cover the interests, as they may appear, of Lessee, King County and the General Contractor as a named insured. In the event of a loss to any or all of the work and/or materials therein and/or to be provided at any time prior to the final close-out of the contract and acceptance of the project by Lessee, the Lessee shall

require the contractor to promptly reconstruct, repair, replace or restore all work and/or materials so destroyed. Nothing herein provided for shall in any way excuse the Lessee or its surety from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the construction contract.

**7) Contractor's Pollution Liability.** $1,000,000 per claim/aggregate. Lessee and/or its contractor shall provide contractor's pollution liability coverage to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, clean up costs and the loss of use of tangible property that has not been physically injured or destroyed. If asbestos, lead or PCB's are a potential exposure, such insurance shall not exclude pollution arising out of such substances.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to King County. The deductible and or self-insured retention of the policies shall not limit or apply to the Lessee's liability to the County and shall be the sole responsibility of the Lessee.

C. OTHER INSURANCE PROVISIONS. The insurance policies required in this Lease are to contain or be endorsed to contain the following provisions:

1) All liability policies except workers compensation and professional liability:

a. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Lessee in connection with this Lease.

b. The contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the Lessee's insurance or benefit the Lessee in any way.

c. The contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

2) All Policies:

a. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits below those required by this Lease, without replacement of the coverage in question with insurance that satisfies the requirements of the Lease until after thirty (30) days prior written notice has been given to the County.

D. ACCEPTABILITY OF INSURERS. Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or if not rated with Bests' with minimum surpluses, the equivalent of Bests' surplus size VIII. If at any time, any of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Lessee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements for approval.

E. VERIFICATION OF COVERAGE. Prior to commencement of construction Lessee shall furnish the County with certificate(s) of insurance and endorsement(s) required by this Lease. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County and are to be received and approved by the County prior to the commencement of activities associated with the Lease.

F. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, King County and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective property insurance policies, including any extended coverage endorsements hereto; provided that this agreement shall be inapplicable if it would have the effect of invalidating any insurance coverage of King County or the Lessee.

21. CONTRACTOR'S SURETY BOND. Prior to commencing construction of any of the Improvements, Lessee shall furnish to King County a General Contractor's performance and payment surety bond in the amount of the total estimated construction costs for the Improvements. The performance and payment surety bond shall be acceptable to the King County in its commercially reasonable discretion and shall state the following:

(i) Lessee and King County shall be named as dual obligee on the performance and payment surety bond.

(ii) That it is conditioned to secure the completion of the proposed construction, free from all liens and claims of contractors, subcontractors, mechanics, laborers, and material suppliers.

(iii) That the construction work shall be fully and faithfully performed by Lessee, the general contractor, or, on their default, the surety.

(iv) That in default of such completion and payment, such part of the amount of the surety bond as shall be required to complete the work shall be paid to King County as liquidated and agreed damages for the nonperformance of this Lease; it being agreed that the amount of King County's damages is extremely difficult to ascertain and determine.

That the surety will defend and indemnify King County against all loss, costs, damage, expense, claims, and liabilities arising out of or connected with the construction by Lessee.

In lieu of a single performance and payment surety bond, Lessee may furnish multiple performance and payment surety bonds supplied by Lessee's General Contractor and/or subcontractors, provided such payment and performance surety bonds contain the same conditions as stated in (i) through (iv) above, are issued jointly to Lessee and King County, and in the aggregate equal to the total estimated construction cost of the Improvements.

All payment and performance surety bonds required by this Section must be issued by a surety company licensed to do business in the State of Washington, acceptable to King County in its commercially reasonable discretion, and shall remain in effect until the entire cost of the improvements shall have been paid in full and the new improvements shall have been insured as provided in this Lease.

In lieu of the above performance and payment surety bonds, Lessee may provide some other instrument satisfactory to King County, including a letter of credit, or cash deposit which shall guarantee to King County completion of the Improvements.

22. PROPERTY RECONSTRUCTION FOLLOWING CASUALTY. In the event of the total or partial destruction by casualty or otherwise of the building, structures, or facilities currently on the Premises or subsequently constructed by the Lessee, the Lessee shall have the obligation to reconstruct such facilities to their former condition and usability and proceed with reasonable diligence to prepare plans and specifications for and carry out, all work necessary (a) to repair and restore the building and/or improvements on the Premises damaged by the casualty to their former condition, or (b) to replace said building and/or improvements with a new building and/or improvements on the Premises of a like quality and usefulness of the building and/or improvements which were damaged. The foregoing notwithstanding, if, upon completion of the repair and reconstruction required by this Section, there would be five (5) or fewer years remaining in the term of the Lease, Lessee shall have the right to elect, by written notice given to King County within ninety (90) days after the casualty, not to repair or reconstruct the building, structures and facilities on the Premises, provided, however, that Lessee has maintained the property insurance required by Section 19(A) above. If, under the preceding sentence, Lessee elects not to repair or reconstruct the building, structures and facilities on the Premises after a casualty, (1) the Lease shall terminate on the date Lessee gives notice of its election or upon such later date as Lessee may specify in such notice (not to be more than ninety (90) days after such notice is given) and (2) Lessee shall assign to King County all proceeds of Lessee's property insurance payable in respect to the casualty in question and shall deliver to King County all of such proceeds received by Lessee and not applied to the preservation and protection of the building, structures and facilities on the Premises prior to the date on which the Lease terminates.

23. SURRENDER OF PREMISES. Upon expiration or termination as contemplated herein, Lessee shall surrender to Lessor the Premises and improvements, structures, fixtures and building equipment supplied by Lessee as part of the Premises and Improvements, together with all alterations and replacements thereof without compensation, allowance or credit, subject to Lessee's covenants to maintain and repair accruing to the date of expiration or termination of the Term as provided in this Lease. Except for Improvements allowed to remain under Section 14(B) above Lessee shall remove all improvements, structures, fixtures, building equipment or any other items belonging to Lessee unless allowed to remain on the Premises as agreed upon in writing from Lessor. Upon expiration or termination, all right, title and interest to the Premises and Improvements shall vest in Lessor, free and clear of any liens and encumbrances.

24. DEFAULT AND RE-ENTRY. If any rents or other obligations provided herein, or any part thereof shall be and remain unpaid when the same shall become due, or if Lessee shall violate or default on any of the covenants and agreements herein contained, then King County may terminate this Lease upon giving five (5) days' notice (in the case of monetary defaults) and thirty (30) days' notice (in the case of non-monetary defaults). Lessee may cure any such default by its payment or performance within said periods, provided that if a non-monetary default cannot be cured within said 30-day period, then Lessee shall not be in default if Lessee commences its cure within said 30-day period and takes actions and steps to cure the non-monetary default within a commercially reasonable amount of time. Upon an uncured default, King County may re-enter said Premises using such force as may be required. Notwithstanding such re-entry by King County, the liability of the Lessee for the rent provided for herein shall not be extinguished for the balance of the term of this Lease, and Lessee covenants and agrees to make good to King County any deficiency arising from a re-entry and reletting of the Premises at a lesser rental than agreed to herein. The Lessee shall pay such deficiency each month as the amount thereof is ascertained by King County. In the event it becomes reasonably necessary to make any changes, alterations, or additions to the Premises or any part thereof for the purpose of reletting said Premises or any part thereof, Lessee shall also be responsible for such cost.

25. ASSURANCE OF PERFORMANCE. In the event a default in the performance of any obligation under this Lease which remains uncured for a period longer than specified in Section 24 above, King County may request and the Lessee shall provide adequate assurance of the future performance of all obligations under this Lease. The adequacy of any assurance shall be determined according to commercially reasonable standards for lessors of real property in the County of King, State of Washington. Adequate assurance shall include, but not be limited to, a deposit in escrow, a guarantee by a third party acceptable to King County, a surety bond, or a letter of credit. Lessee's failure to provide adequate assurance within twenty (20) days of receipt of a request shall constitute a material breach and King County may in its discretion terminate this Lease.

26. ADVANCES BY KING COUNTY FOR LESSEE. If Lessee fails to pay any fees or perform any of its obligations under this Lease other than payment of rent, King County will mail notice to Lessee of its failure to pay or perform. Twenty (20) days after mailing notice, if Lessee's obligation remains unpaid or unperformed, King County may, but is not obligated to, pay or perform these obligations at Lessee's expense. Upon written notification to Lessee of any costs incurred by King County under this Section, Lessee will reimburse King County within

twenty (20) days. Failure to comply with this Section 26 will result in a Lease default subject to the terms and conditions set forth in Section 24 Default and Re-entry.

27. NON-WAIVER. It is hereby agreed that no waiver of any condition or covenant in this Lease or any breach thereof, shall be taken to constitute waiver of any subsequent breach.

28. SIGNS. No sign, advertisement, notice, or other lettering will be exhibited, inscribed, painted, or affixed by Lessee on any part of the outside of the Premises without the prior written consent of King County, provided that such consent shall not be unreasonably withheld. If Lessee violates this provision, King County may remove the sign without any liability and may charge the expense incurred by such removal to the Lessee; provided, however, King County shall give Lessee written notice of Lessee's violation of this provision and Lessee shall have forty-eight (48) hours after receiving said notice to comply with the terms of this provision. All signs erected or installed by Lessee shall be subject to any federal, state or local statutes, ordinances or regulations applicable to signs.

29. INSPECTION AND "FOR RENT" SIGNS. King County reserves the right to inspect the Premises at any and all reasonable times throughout the term of this Lease, provided that King County shall give Lessee not less than twenty four (24) hours prior notice (except in an emergency, in which case King County shall give such advance notice as is practicable under the circumstances), shall not interfere unduly with Lessee's operations and shall use reasonable efforts to cooperate with any security measures Lessee may then have in effect. The right of inspection reserved to King County hereunder shall impose no obligation on King County to make inspections to ascertain the condition of the Premises, and shall impose no liability upon King County for failure to make such inspections. King County shall have the right to place and maintain "For Rent" signs in conspicuous places on the Premises for one hundred and eighty (180) days prior to the expiration or sooner termination of this Lease.

30. LIENS. It is understood and agreed that this Lease is executed and delivered upon the express condition that the Lessee will not and cannot contract any debt or debts for labor, materials, services, or otherwise which will or may become a lien against the interest of King County in the Premises, and King County hereby denies to Lessee any right, power, or authority to do any act, or contract any obligation or liability which would in any way subject the interest of King County in the Premises to any lien, claim, or demand whatsoever.

31. ASSIGNMENTS.

A. Lessee shall not assign or transfer this Lease or any interest therein, nor grant an option for such an assignment or transfer for the whole or any part of the Premises, nor shall this Lease or any interest hereunder be assignable or transferable by operation of law, or by any process or proceeding of any court or otherwise without the prior written consent of King County, which consent shall not be unreasonably withheld, conditioned or delayed. If Lessee is a corporation, partnership, limited liability company or other entity, Lessee further agrees that if at any time during the term of this Lease one-half (1/2) or more of the outstanding shares of any class of stock, partnership interests, membership interests or other equity interests of Lessee's corporation, partnership, limited liability company or

other form of entity shall belong to any stockholders, partners, members or other owners, as the case may be, other than those who own one-half (1/2) or more of the outstanding shares of that class of stock, partnership interests, membership interests or other equity interests at the time of the execution of this Lease, such change in the ownership shall be deemed an assignment of this Lease within the meaning of this Section.

1) The foregoing notwithstanding, the following (each, an "Exempt Transfer") shall not be deemed an assignment for purposes of Paragraph 31(A) and shall not require King County's consent: (a) a transfer of stock, partnership interests, membership interests or other equity interests in Lessee (i) by reasons of the death of the person holding such interests or (ii) to any member or members of the immediate family of a person holding such interests or to trusts for their benefit; (b) an assignment of the Lease or transfers of stock, partnership interests, membership interest or other equity interests in Lessee to any entity that controls, is controlled by or is under common control with Lessee (as "control" is defined in subparagraph 22(A)(2) below); (c) an assignment of the Lease or transfer of stock or other equity interests in Lessee, provided that such assignment or transfer is in connection with a bona fide acquisition or restructuring, by purchase of equity interests or assets, merger or otherwise, of the principal business engaged in by Lessee and other entities that control, are controlled by or are under common control with Lessee; or (d) an assignment of the Lease for collateral purposes to a recognized lending institution in connection with the financing of King County approved development of the Premises or the lending institution's subsequent realization on such collateral assignment.

2) As used in this Section 31, "control" (and derivatives thereof) shall mean the direct or indirect ownership of more than fifty percent (50%) of the issued and outstanding voting equity interests in an entity.

3) If King County shall give its consent to any assignment or transfer or if an assignment or transfer is made pursuant to this Section 31 that does not require King County's consent, this Section 31 shall nevertheless continue in full force and effect and no further assignment or transfer shall be made except in compliance with this Section 31.

B. If Lessee desires to assign or transfer, or grant an option for assignment or transfer, for the whole or part of the Premises, or any portion of this Lease or any interest herein, and such assignment or transfer requires King County's consent under Section 31(A) above, Lessee shall notify King County in writing of said desire and the details of the proposed agreement at least sixty (60) days prior to the proposed date of assignment or transfer, or grant of an option therefor, to a third party. The notification shall include but not be limited to a financial statement of the third party, including but not limited to a full disclosure of the

monetary payment or any other consideration involved, and an affidavit from the third party stating it has examined this Lease, and, understanding this Lease, agrees to assume and be bound by all of the Lessee's obligations and covenants under this Lease, the same as if it were the original Lessee hereunder, and the proposed date of assignment, transfer or grant of an option therefor. Lessee shall also provide any financial or other information regarding the proposed assignment or the assignee reasonably requested by King County.

C. Except pursuant to a transfer or assignment to an Exempt Transfer, King County reserves the right of first refusal in the event Lessee attempts to assign or transfer this Lease or any interest herein, or grant an option therefor, in a transaction that, under Section 31(A) above requires King County's consent. If King County exercises the right of first refusal, Lessee shall assign or transfer to King County, and King County shall acquire, the Lease or the interest therein, or the option therefor, on and subject to all of the terms and conditions of the proposed assignment or transfer or option therefor.

D. Prior to any assignment or transfer being effective, Lessee (Assignor) shall pay King County seventy-five percent (75%) of the Assignment Premium derived from that assignment or transfer. "**Assignment Premium**" shall mean (1) all rent, additional rent, and/or other moneys, property, and other consideration of every kind whatsoever received by Lessee (Assignor) from the assignee/transferee for, or by reason of, the assignment or transfer (including all amounts received by Lessee (Assignor) for any Included Property), less (2) the credits detailed in Section 31(E) below. "**Included Property**" means only the leasehold improvements and fixtures and all machinery, equipment, furniture, furnishings, supplies, inventory and other personal property, tangible and intangible, owned by the Lessee that are transferred to the assignee or transferee as part of the transaction. Lessee shall pay the Assignment Premium to King County as and when Lessee receives payment from such assignee or transferee.

E. Credits. The following shall be subtracted from the consideration that otherwise would be included in the calculation of the Assignment Premium:

1) Any transactional costs, fees or commissions actually paid by Lessee (Assignor) to procure the assignment or transfer, including, without limitation, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County;

2) The actual cost of alterations and leasehold improvements undertaken by Lessee, or undertaken by the transferee or assignee to the extent paid for or reimbursed by Lessee, solely to prepare the space for the assignee or transferee, including, without limitation, costs of planning, design, permitting and construction, including labor, materials and Washington state sales and use taxes, (amortized, if the consideration for the assignment or transfer is to be paid in installments, over the period of payment, commencing with the date on which the assignment or transfer commences);

3) The greater of either: a) the unamortized cost of the Included Property determined on a straight-line basis over the term of the Lease as certified to King County by Lessee's independent certified public accountant; or b) the fair market value of the Included Property as determined by an appraisal conducted by an independent and certified appraiser. Lessee shall pay the cost of such certification or appraisal and may deduct such costs from the Assignment Premium. If King County disputes the unamortized cost or fair market value of the Included Property as determined by the certified public accountant or appraiser, the procedures set forth in Section 11(C), shall be followed to determine the appropriate cost or fair market value;

4) The unamortized transactional costs, fees or commissions, determined on a straight-line basis over the original term of the Lease, actually paid by Lessee (Assignor) to procure the Lease itself (or, if only an interest in the Lease is being assigned or transferred, a ratable portion of such costs, fees and commissions), including, without limitation and without duplicating any of the costs included in Section 31(E)(1) above, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County; and

5) The "Goodwill Value" or Going Concern Value" of any business being sold or transferred as a part of the assignment. Unless otherwise agreed to by Lessee and King County, "Goodwill Value" or "Going Concern Value" shall be determined by a qualified valuation expert employing standard and generally recognized methods of business valuation. Lessee shall pay the cost of such valuation and may deduct such costs from the Assignment Premium.

F. Once King County has received all necessary information and documentation pursuant to this Section 31 of this Lease, King County will review the request and respond with either an approval or disapproval of the request (or, if King County so elects, King County's exercise of the right of first refusal provided for in Section 31(C) above) by the earlier of: thirty (30) days from the request or not later than ten (10) days prior to the proposed date of the assignment or transfer. Approval of any such request will not be unreasonably withheld and Lessee may in good faith dispute the reasonableness of King County's disapproval of a request. King County has the option, in its sole discretion, to charge to the Lessee a reasonable fee for administrative costs actually incurred reviewing and processing any requests for assignment or transfer pursuant to this Section, not to exceed, however, $1500.00.

Tenant's sole remedy for King County's failure to timely respond to a request for assignment shall be declaratory relief or specific performance, and shall not include monetary or consequential damages.

32. SUBLEASES.

A. Unless the sublease sought to be entered into is to an entity that controls, is controlled by or is under common control with Lessee (an "Exempt Sublease"), Lessee shall not sublet the whole or any part of the Premises, nor grant an option for sublease for the whole or any part of the Premises without the prior written consent of King County, which consent shall not be unreasonably withheld, conditioned or delayed. King County shall not withhold its consent to a proposed sublease or grant of an option for sublease on the ground of the subtenant's proposed use if such use is identified as a permitted use in this Lease. If King County shall give its consent to any sublease, this Section shall nevertheless continue in full force and effect and no further sublease shall be made without the County's consent. No sublease authorized under this Section shall relieve or release the Lessee from any obligation or responsibility required of the Lessee under this Lease.

B. Except with respect to an Exempt Sublease, if Lessee desires to sublease, or grant an option for sublease, for the whole or part of the Premises, or any portion of this Lease or any interest therein, Lessee shall notify King County in writing of said desire and the details of the proposed agreement at least sixty (60) days prior to the proposed date of sublease, or grant of an option therefor, to a third party. The notification shall include but not be limited to a financial statement of the third party, including but not limited to a full disclosure of the monetary payment or any other considerations involved, the proposed date of the sublease, and a copy of the sublease agreement between the Lessee and new tenant. Lessee shall also provide any financial or other information regarding the proposed sublease or the sublessee reasonably requested by King County.

C. Anything in Sections 32(A) or 32(B) to the contrary notwithstanding, if King County shall consent to a sublease to a subtenant that engages in the business of

letting office space, hangar space and/or tiedown spaces to third parties, no further notice to or consent from King County shall be required in connection with any such lettings, but Lessee shall provide or cause such subtenant to provide King County upon request with the names and addresses of the third parties to which such subtenant is then letting office space, hangar space and/or tiedown space.

D. King County reserves the right of first refusal in the event Lessee attempts to sublease, or grant an option therefor, any unimproved portion of the Premises to any party other than in an Exempt Sublease. A sublease of an unimproved portion of the Premises that is not an Exempt Sublease is hereinafter referred to as a "Ground Sublease."

E. If Lessee subleases all or any portion of the Premises in a Ground Sublease (other than in an Exempt Sublease), Lessee shall pay King County seventy-five percent (75%) of the Sublease Premium derived from that sublease. "Sublease Premium" shall mean (1) all rent, additional rent, and/or other moneys, property, and other consideration of every kind whatsoever received by Lessee from the sublessee for, or by reason of, the sublease (excluding all amounts received by Lessee for any Included Property) less (2) the credits detailed in Section 32(F) below. Lessee shall pay the Sublease Premium to King County as and when Lessee receives payment from such sublessee.

F. Credits. The allocable portion of the credits set forth in Sections 31(E)(2), (3) and (5) above, as applicable, and without duplicating any such allocable portion, the following shall be subtracted from what otherwise would be included in the consideration used to calculate the Sublease Premium:

1) Any costs, fees or commissions actually paid by Lessee (Sublessor) to procure the sublease, including, without limitation, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to procuring the sublease in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County;

2) An allocable portion (based on the square footage subject to the proposed Ground Sublease as compared to the square footage of the entire Premises) of the unamortized transactional costs, fees or commissions, determined on a straight-line basis over the original term of the Lease, actually paid by Lessee (Sublessor) to procure the Lease itself, including, without limitation, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public

accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County; and

3) The Base Rent, other amounts payable under this Lease as rent and leasehold excise tax allocable to the space covered by such Ground Sublease (as reasonably determined by King County) and paid by Lessee to King County after the date of such Ground Sublease.

G. Once King County has received all necessary information and documentation pursuant to this Section 32 of this Lease, King County will review the request and respond with either an approval or disapproval of the request not later than ten (10) days prior to the proposed date of the sublease. Disapproval of any such request shall be final and binding on the Lessee and not subject to any arbitration, provided that any approval will not be unreasonably withheld and Lessee may in good faith dispute the reasonableness of King County's disapproval of a request. King County, at its sole discretion, may charge to the Lessee a reasonable fee for administrative costs in reviewing and processing any sublease, or grant of an option therefor, not to exceed $1500.00.

Lessee's sole remedy for King County's failure to timely respond to a request to sublease shall be declaratory relief or specific performance, and shall not include monetary or consequential damages.

33. CONDEMNATION.

A. King County and Lessee will immediately notify the other in writing of the receipt of notice of any proceedings with respect to a condemnation or intent of any authority to exercise the power of eminent domain.

B. If all of the Premises are taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Lease, this Lease terminates as of the date condemnor takes possession, and Lessee will have no claim or interest in or to any award of just compensation except that the Lessee will be entitled to an amount equal to the fair market value, as determined by the court having jurisdiction over the condemnation, of the Lessee's leasehold interest in any improvement made to the Premises by the Lessee and taken by the condemnor. The fair market value amount determined pursuant to this subsection shall be paid to Lessee out of proceeds deposited into the court registry by the condemnor.

C. If part of the Premises is taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Lease, and such taking results in a material adverse effect on

Lessee's use or enjoyment of the Premises, Lessee may choose to terminate this Lease as of the date the condemnor takes possession. If Lessee does not elect to terminate this Lease, the rent will be reduced in the same proportion that the value of the portion of the Premises to be taken bears to the value of the entire Premises as of the date condemnor takes possession. Lessee will have no claim or interest in or to any award of just compensation or damages except that the Lessee will be entitled to an amount equal to the fair market value, as determined by the court having jurisdiction over the condemnation, of the part of the Lessee's leasehold interest in any improvements made to the Premises by the Lessee taken by the condemnor. The fair market value amount determined pursuant to this subsection shall be paid to Lessee out of proceeds deposited into the court registry by the condemnor.

D. If temporary use of all or a portion of the Premises is taken by any lawful authority for a period which would reduce the leasehold and, consequently, would cause the Premises to be untenantable for the use by Lessee for the purposes set forth in the Section of this Lease titled "Use," then, at Lessee's determination, Lessee may choose to terminate this Lease. If Lessee elects to terminate the Lease, the Lease will terminate the date the condemnor takes possession and Lessee will have no claim or interest in or to any award of just compensation except that the Lessee will be entitled to an amount equal to the fair market value, as determined by the court having jurisdiction over the condemnation, of the Lessee's leasehold interest in any improvements made to the Premises by Lessee, to be paid to Lessee out of proceeds deposited into the court registry by the condemnor. If Lessee does not elect to terminate this Lease, the Lease will continue in full force and Lessee will be entitled to receive any award from the condemnor for the use of all or part of the Premises, not to exceed that portion of the Rent paid by Lessee attributable to the portion of the Premises subject to the temporary taking (based on the square footage subject to the temporary taking as compared to the square footage of the entire Premises); EXCEPT that Lessee may elect to have the rents reduced by the amount proportionally attributable to any partial temporary taking, in which event Lessee shall not be entitled to any portion of the award attributable to said use.

E. It is understood and agreed that Lessee shall not be party to any negotiation or proceedings at law wherein King County claims compensation other than that which is defined statutorily as constituting "just compensation."

34. TERMINATION BY KING COUNTY. King County reserves the right to terminate this Lease upon twelve (12) months' notice in writing to the Lessee or the persons in possession of the Premises if the Premises are required by King County for the improvement or development of KCIA for public airport uses and purposes, and under such termination the Lessee or persons in possession of Premises shall be reimbursed by King County for the fair market value, as defined in Section 11(A) of this Lease, of any improvements placed on the Premises by the Lessee in accordance with the terms of this Lease. In the event that King County and Lessee

cannot agree upon the value of said Improvements, King County and Lessee shall submit to have the fair market value adjusted by arbitration in the manner described in Section 11(C).

35. NON-DISCRIMINATION.

A. Lessee shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical disability, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Ch. 12.16.125. Lessee shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. .

B. The Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a U.S. Department of Transportation ("**DOT**") program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

C. The Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expressions, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereof, no person on the grounds of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expressions, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

D. The Lessee assures that in its use of the Premises it will substantially observe and promptly comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expressions, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the Lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

E. In addition, this Lease is subject to certain grant assurances resulting from King County's receipt of funding from the federal government. In accordance with those grant assurances, in furnishing services to the public at the Airport, the Lessee shall furnish said services on a reasonable and not unjustly discriminatory basis to all users of the Airport and shall charge reasonable and not unjustly discriminatory prices for each unit or service; provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions, by way of example and not limitation, to volume purchasers, based aircraft, or charter customers.

F. Lessee will include the provisions of this Section 35, "Non-Discrimination", in all subleases of all or part of the Premises, and in all agreements at any tier for the use of all or part of the Premises.

G. Any violation of this Section 35, "Non-Discrimination", shall be considered a default of this Lease and, in addition to any other remedies available to the County, shall be grounds for termination of this Lease by the County, and may result in ineligibility for further County agreements.

36. HEIRS, AGENTS, AND ASSIGNS. Without limiting any provisions of this Lease pertaining to assignment, transfer and subletting, the provisions of this Lease bind the heirs, successors, agents and assigns of the parties to this Lease.

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

38. TIME IS OF THE ESSENCE. Time is of the essence of this Lease, and in the event of the failure of Lessee to pay any charges at the time in the manner herein specified, or to keep any of the covenants or agreements herein set forth, the Lessee shall be in default.

39. CUMULATIVE REMEDIES. No provision of this Lease precludes King County from pursuing any other remedies for Lessee's failure to perform his obligations.

40. ATTORNEY'S FEES/DEFAULT CHARGE. In the event legal action is brought by either party to enforce any of the terms, conditions, or provisions of this Lease, the prevailing party shall recover against the other party in addition to the costs allowed by law, its litigation expenses and such sum as the court may adjudge to be a reasonable attorney's fee. In addition to all other charges, Lessee shall pay a charge of $500.00 to King County for preparation of a notice of default.

41. HOLDING OVER. If the Lessee holds over after the expiration or earlier termination of this Lease, Lessee shall become a tenant from month-to-month at a rental rate equal to one hundred-fifty percent (150%) of the rent in effect upon the date of such expiration or termination, and otherwise subject to the terms, covenants, and conditions of this Lease, except those clearly inapplicable to the month-to-month tenancy. Acceptance by King County of rent after such expiration or earlier termination shall not result in a renewal of this Lease, nor affect King County's right of re-entry or any rights of King County hereunder or as otherwise provided by law. If Lessee fails to surrender the Premises upon the expiration of this Lease despite demand to do so by King County, Lessee shall indemnify and hold King County harmless from all loss or liability including, without limitation, any claim made by any succeeding Lessee founded on or resulting from such failure to surrender, together with interest, reasonable attorney's fees, costs, and expenses.

42. HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE.

A. Definitions. "**Hazardous Materials**" as used herein shall mean:

1) Any toxic substances or waste, sewage, petroleum products, radioactive substances, heavy metals, medical, corrosive, noxious, acidic, bacteriological or disease-producing substances; or

2) Any dangerous waste or hazardous waste as defined in:

a. Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105); or

b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

c. Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or

3) Any hazardous substance as defined in:

a. Comprehensive Environmental Response, Compensation and Liability Act as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); or

b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

4) Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.

B. Environmental Compliance.

1) In the conduct of its business at the Airport, and in its use and occupancy of the Premises and the areas of the Airport outside the Premises that are available for use by the Lessee and others ("the Public Areas"), the Lessee and Lessee's sublessees, assigns, contractors, agents, employees, or representatives (the "Lessee Parties") shall, at the Lessee's own expense, comply with all federal, state and local laws, ordinances, regulations, permits, decrees or other governmental requirements now or hereafter in effect related to Hazardous Materials and other environmental laws, including, but not limited to, laws and regulations pertaining to stormwater discharges as set by the U.S. Environmental Protection Agency and the Washington Department of Ecology, as well as such rules concerning environmental matters as may be promulgated by the Airport Manager ("Environmental Laws"). The Lessee warrants that its and the Lessee Parties' business and all activities to be conducted or performed in, on, or about the Premises and the Public Areas shall comply with all of the Environmental Laws. The Lessee agrees to change, reduce, or stop any non-complying activity, or install necessary equipment, safety devices, pollution control systems, or other installations as may be necessary at any time during the term of this Lease to comply with the Environmental Laws.

2) The Lessee shall not without first obtaining the County's prior written approval use, generate, handle, store, treat, transport, or sell of any Hazardous Materials in, on, or about the Premises or the Public Areas. In the event, and only in the event, that the County approves any of the foregoing, the Lessee agrees that such activity shall occur safely and in compliance with the Environmental Laws. King County hereby approves the use by Lessee at the Premises of the Hazardous Materials identified on Exhibit C hereto.

3) The Lessee shall not cause or permit to occur any violation of the Environmental Laws on, under, or about the Premises and the Public Areas, or arising from the Lessee's use or occupancy of the Premises and the Public Areas. Lessee shall not undertake, or allow others, including the Lessee Parties, to undertake by Lessee's permission, acquiescence, failure to act, or negligent activities that result in a release or threatened release of Hazardous Materials. If Lessee's or a Lessee Parties' act, omission or

breach of obligation under this Lease results in a release of Hazardous Materials into the environment on, about, or migrating from the Premises or the Airport that exceeds regulatory cleanup levels for unrestricted use of the Premises, Lessee shall, at Lessee's sole expense, promptly take all actions necessary to fully and completely remove (and to dispose of such in accordance with applicable law) all of such Hazardous Materials

4) The Lessee shall, in a timely manner and at the Lessee's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental or regulatory authorities ("the Authorities" or "Authority") with jurisdiction under Environmental Laws. If the Lessee fails to fulfill any duty imposed under this Section within the time specified by applicable law, or if no time is specified within a reasonable time, the County may take action; and in such case, the Lessee shall cooperate with the County in order to prepare all documents the County deems necessary or appropriate to determine the applicability of the Environmental Laws to the Premises and/or the Public Areas and the Lessee's use thereof, and for compliance with the Environmental Laws, and the Lessee shall execute all documents promptly upon the County's request. No such action by the County and no attempt made by the County to mitigate damages shall constitute a waiver of any of the Lessee's obligations under this Section 42. Lessee shall immediately notify County if Lessee becomes aware of any of the following: (a) a release or threatened release of Hazardous Materials on the Premises; (b) any actual or alleged violation of any of the Environmental Laws, including any inspection reports or any other notice received from any Authority that Lessee or the Lessee Parties may be in violation of any Environmental Law with respect to the Premises; and (c) any notification from any Authority that investigation, remediation or removal of Hazardous Materials is or may be required at the Premises.

5) Should any Authority demand that a remedial investigation and/or cleanup or remediation plan be prepared and that a cleanup or remediation be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials that occurs during the term of this Lease and arises from the Lessee's or the Lessee Parties' use or occupancy of the Premises, or which arises at any time from the Lessee's or the Lessee Parties' use or occupancy of the Premises and/or the Public Areas, then the Lessee shall, in a timely manner and at the Lessee's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and the Lessee shall carry out all such investigation and/or cleanup or remediation plans. Any such plans are subject to the County's prior written approval. Although the County reserves the right to review and approve such plans, the County assumes no responsibility for such plans or their compliance with Environmental Laws.

6) If King County determines in its sole discretion that an emergency exists (i) because of the deposit, spill, discharge or other release of Hazardous Materials at or from the Premises or (ii) which arises from the Lessee's or the Lessee Parties' use or occupancy of the Premises and/or the Public Areas, King County will take such action as King County, in its sole discretion, considers reasonable to contact the Lessee and advise it of the emergency situation. If the Lessee is unreachable, or is unwilling to take immediate action, King County may, but is not required to, take immediate action to address the emergency situation, and Lessee will reimburse the County for all of its costs and expenses related thereto, provided, with respect to clause (i) above, that the deposit, spill, discharge or other release of Hazardous Materials arises from the Lessee's use or occupancy of the Premises. The fact that King County takes immediate action shall not relieve Lessee of any of its responsibilities under this Lease and the Environmental Laws including, without limitation, Lessee's responsibility for complying with reporting requirements.

7) In the event Lessee discovers Hazardous Materials on or under the Premises during Lessee's construction of Improvements (including during demolition and grading activities associated with such construction), and such Hazardous Materials were not caused by Lessee or generated or released during Lessee's control of the Premises, then Lessee shall promptly notify King County of such discovery (the "Environmental Notice Date"). Lessee may terminate this Lease by written notice to King County given within 90 days of the Environmental Notice Date, during which 90-day period all rent under this Lease shall abate. If Lessee does not so terminate this Lease within said 90-day period, then this Lease shall remain in full force and effect and Lessee shall be responsible to pay to the County all rent abated, which shall be due and owing with the next monthly rent payment but shall not be deemed late unless Lessee fails to make that payment. In the event of termination under this Section, and in Lessor's sole discretion, any above ground improvements or above ground structures erected by Lessee shall be removed by Lessee. Lessee shall remove and appropriately handle and dispose of, and not stockpile or otherwise leave on site, any Hazardous Materials that have been excavated or otherwise disturbed by Lessee. Lessee shall leave the Premises in substantially the same condition as prior to Lessee's discovery of Hazardous Materials, subject to the provisions of this paragraph, and shall not leave any Hazardous Materials uncovered or otherwise exposed to humans or to the environment.

C. Indemnification and Release.

Lessee shall be fully and completely liable to the County for, and shall indemnify hold the County harmless and release from and against, any and all claims, liabilities, lawsuits, damages, demands, suits, losses, judgments, and costs,

including but not limited to removal, remedial action, or other costs recoverable under CERCLA or MTCA; any and all other requirements, charges, interest, fees, oversight costs, or penalties (civil or criminal or both) imposed by any Authority; and all other expenses including but not limited to claims for bodily injury or death, property damage, diminution in value or loss of use, including attorney's fees and other costs of defense ("Claims") caused by or arising from (1) Lessee's or Lessee Parties' use, disposal, transportation, generation, past, present or future release or threatened release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials in, on, around, about, or emanating from the Premises, including but not limited to Lessee's remediation activities conducted under Section 7 or Section 42 of this Lease, or from Lessee's activities on adjoining property, occurring during the term of the this Lease or at any time if caused by Lessee, including exacerbation or disturbance of existing Hazardous Materials that were released in, on or about the Premises prior to the Lease; or (2) Lessee's failure to comply with any obligation in Section 42 of this Lease; or (3) any actions by County under Sections 42(B)(6) or 42(C) of this Lease; provided that the foregoing is subject to the provisions of Section 42(B)(7). Without limiting the generality of the foregoing, the Parties acknowledge that Claims, as defined herein, are not limited to third party Claims, but include Claims made or incurred by Lessee. Lessee's duties under this paragraph 42(C) include the duty to pay or reimburse County's direct and indirect costs to monitor or oversee Lessee's cleanup or other corrective work, including but not limited to engineering and other consulting services, sampling and studies, confirmatory testing, compliance monitoring, and administrative costs and expenses incurred in procuring and managing the same.

D. Reporting Requirements. The Lessee shall comply with the Environmental Laws requiring the submission, reporting, or filing of information concerning Hazardous Materials with the Authorities, and shall provide to the County a full copy of any such submission, filing or report as submitted within 15 days of such submission.

E. Right to Check on the Lessee's Environmental Compliance. The County expressly reserves the right to conduct, and the Lessee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the Premises as the County, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems.

F. Remedies. Upon any default by the Lessee under this Section 42, Hazardous Materials and Environmental Compliance, and the expiration of the notice and cure period provided in Section 24 above, Default and Re-Entry, the County shall be entitled to the following rights and remedies in addition to any other rights and remedies that may be available to the County:

1) At the County's option, to terminate this Lease pursuant to Section 34 above, but effective immediately; and/or,

2) At the County's option, to perform such action as is required to bring the Premises and any other areas of the Airport affected by the Lessee's default into compliance with the Environmental Laws and to recover from the Lessee all of the County's costs and expenses in connection therewith; and/or

3) To recover from the Lessee any and all damages associated with the default, including but not limited to, response, remediation and cleanup costs, expenses and charges, civil and criminal penalties and fees, adverse impacts on marketing the Premises or any other areas of the Airport, loss of business and sales by the County and other Lessees of property at the Airport, diminution of value of the Premises and/or other areas of the Airport, the loss of or restriction of useful space in the Premises and/or other areas of the Airport, and any and all damages and claims asserted by third parties, and the County's reasonable attorneys' fees, costs and expenses.

G. Remediation on Termination of Lease. Upon the expiration or termination of this Lease, the Lessee shall remove, remediate or clean up any Hazardous Materials on, or emanating from, the Premises caused by Lessee as required by applicable laws ("Termination Cleanup"). The process for such Termination Cleanup is subject to the County's prior written approval. Although the County reserves the right to review and approve the Termination Cleanup process, the County assumes no responsibility for it or its compliance with the Environmental Laws.

If the Lessee fails or refuses to commence the Termination Cleanup process, or fails to reasonably proceed toward completion of such process, within the time specified by law or within a reasonable time if no time is specified, the County may elect to perform such Termination Cleanup after providing the Lessee with written notice of the County's intent to commence Termination Cleanup, and after providing the Lessee a reasonable opportunity, which shall not be less than ninety (90) days after such notice (unless the County is given notice by a government or regulatory agency with jurisdiction over such matter that Termination Cleanup must commence within a shorter time), to commence or resume the Termination Cleanup process. If the County performs such Termination Cleanup after said notice and the Lessee's failure to perform same, the Lessee shall pay all of the County's costs and expenses.

H. Survival. The Lessee's obligations and liabilities under this Section 42, Hazardous Materials and Environmental Compliance, shall survive the expiration or termination of this Lease.

43. PUBLIC USE AIRPORT. The Premises and KCIA are subject to the terms of certain sponsor's assurances made to guarantee the public use of the public airport area of KCIA as incidental to grant agreements between King County and the United States of America; provided, that in the event at any time during the term of this Lease the terms of such assurances should effectively prohibit Lessee's use of the Premises in the general manner contemplated by the parties to this Lease, then such effective prohibition shall be considered as taking by the public

and the Lessee or person or persons in lawful possession of the Premises may, upon thirty (30) days prior written notice given to King County, terminate this Lease.

44. RIGHT OF FLIGHT. There is hereby reserved to Lessor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

The right of free passage of aircraft shall be in the airspace over the above described Premises at the height prescribed by Part 77 of the Federal Aviation Regulations to an infinite height above said mean sea level and shall be for the exclusive benefit of Lessor, its successors and assigns (the "Aviation Right of Way").

Lessor shall have the continuing right to prevent the erection or growth upon the Premises of any building, structure, trees or any other object extending into the airspace above said surface at the height prescribed by Part 77 and to remove from said airspace, or at the sole option of Lessor, to mark and light as obstructions to air navigation, any such building, structure, trees or other objects now upon, or which in the future may be upon the Premises, together with the right of ingress to and egress from and passage over all the Premises (airspace and surface space) for such purposes.

In the event Lessee (or anyone holding through Lessee) interferes with Lessor's right of free passage, Lessor reserves the right to enter upon the Premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Lessee.

Lessee by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the Premises in any manner that might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, Lessor reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of Lessee.

45. EMPLOYEE CONDUCT. Lessee shall require and be responsible for the full compliance by its officers, agents, employees, customers and guests with the rules and regulations of the Federal Aviation Administration and KCIA.

46. SEVERABILITY. If any term or provision of this Lease or the application of any term or provision to any person or circumstance is invalid or unenforceable, the remainder of this Lease, or the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and will continue in full force.

47. GOVERNING LAW/VENUE. This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington. Venue for any legal proceeding shall be exclusively in King County Superior Court, Seattle, Washington.

48. QUIET ENJOYMENT. So long as Lessee is not in default under this Lease, subject to Sections 48(A) and (B) below, King County shall at all times during the term and subject to the

provisions of this Lease ensure that Lessee shall peacefully and quietly have and enjoy the possession of the Premises without any encumbrance or hindrance.

A. This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of said Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

B. This Lease shall be subordinate to the provisions of and requirements of any existing or future agreement between Lessor and the United States relative to the development, operation, or maintenance of the Airport. (FAA Order 5190.6AB-AGL-600).

SIGNATURES ON THE NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have subscribed their names as of the _____ day of _____, 2016.

LESSEE:

MENTE, LLC,
a Washington limited liability company

BY: Wendy Langen
Wendy Langen, Director

DATE: August 18, 2016

LESSOR:

KING COUNTY, a political subdivision of the State of Washington

BY: _____
Anthony Wright, Director
Facilities Management Division

DATE: _____

CONSENT:

KING COUNTY INTERNATIONAL AIRPORT

BY: _____
Randall Berg, Director

DATE: _____

APPROVED AS TO FORM:

BY: _____
Ian Taylor, Senior Deputy Prosecuting Attorney

DATE: _____

DocuSign Envelope ID: 8236B328-E4EF-4F5E-9E70-F500A12A4276

STATE OF WASHINGTON )
) ss.
COUNTY OF KING )

On this ____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Anthony Wright, to me known to be the Director of the King County Facilities Management Division, a Political Subdivision of the State of Washington, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that said person was authorized to execute the said instrument for King County.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

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

STATE OF WA )
) ss.
COUNTY OF King )

On this 18 day of August, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared, Wendy Langen, to me known to be the Director of MENTE, LLC, a Washington limited liability company, who executed the foregoing instrument and acknowledge the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that said person was authorized to execute said instrument on behalf of MENTE, LLC.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Mark A F Symington
Printed Name: Mark AF Symington
NOTARY PUBLIC in and for the State of Washington, residing at Seattle
My Commission Expires: 5-29-17

MARK A F SYMINGTON
COMMISSION EXPIRES
NOTARY
PUBLIC
5-29-17
STATE OF WASHINGTON

DocuSign Envelope ID: 8236B328-E4EF-4F5E-9E70-F500A12A4276

# EXHIBIT A

## LEGAL DESCRIPTION OF PREMISES UNDER LEASE

LEASE LINE DESCRIPTION:

(REF: RECORD OF SURVEY VOLUME 223 OF SURVEYS PAGES 148-255)

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 24 NORTH RANGE 4 EAST W.M. DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 33;
THENCE NORTH 88°09'02" WEST ALONG THE NORTHERLY LIMIT OF SAID NORTHEAST QUARTER, A DISTANCE OF 1949.05 FEET TO A POINT ON THE EASTERLY MARGIN OF SOUTHEAST APRON NO. 1;
THENCE SOUTH 28°41'29" EAST, A DISTANCE OF 639.83 FEET TO THE NORTH LINE OF KING COUNTY LEASE PARCEL 7092 AND THE TRUE PONT OF BEGINNING;
THENCE NORTH 61°18'31" EAST, ALONG THE NORTH LINE THEREOF, A DISTANCE OF 323.70 FEET TO THE WESTERLY MARGIN OF PERIMETER ROAD, SAID MARGIN LYING 15.00 FEET WESTERLY AS MEASURED PERPENDICULAR TO THE CENTER OF SAID ROAD;
THENCE SOUTH 16°29'17" EAST, ALONG SAID WESTERLY MARGIN, A DISTANCE OF 204.62 FEET;
THENCE NORTH 61°18'31"EAST, A DISTANCE OF 0.63 FEET;
THENCE SOUTH 16°21'46" EAST, A DISTANCE OF 240.55 FEET TO THE SOUTH LINE OF KING COUNTY LEASE PARCEL 7072;
THENCE SOUTH 61°18'31" WEST, ALONG THE SOUTH LINE THEREOF, A DISTANCE OF 442.22 FEET;
THENCE NORTH 28°41'29" WEST, A DISTANCE OF 435.00 FEET;
THENCE NORTH 61°18'31" EAST, A DISTANCE OF 212.50 FEET TO THE POINT OF BEGINNING.

CONTAINING 212,872.26 Sq. Ft. OR 4.9 ACRES MORE OR LESS.

NOTES:

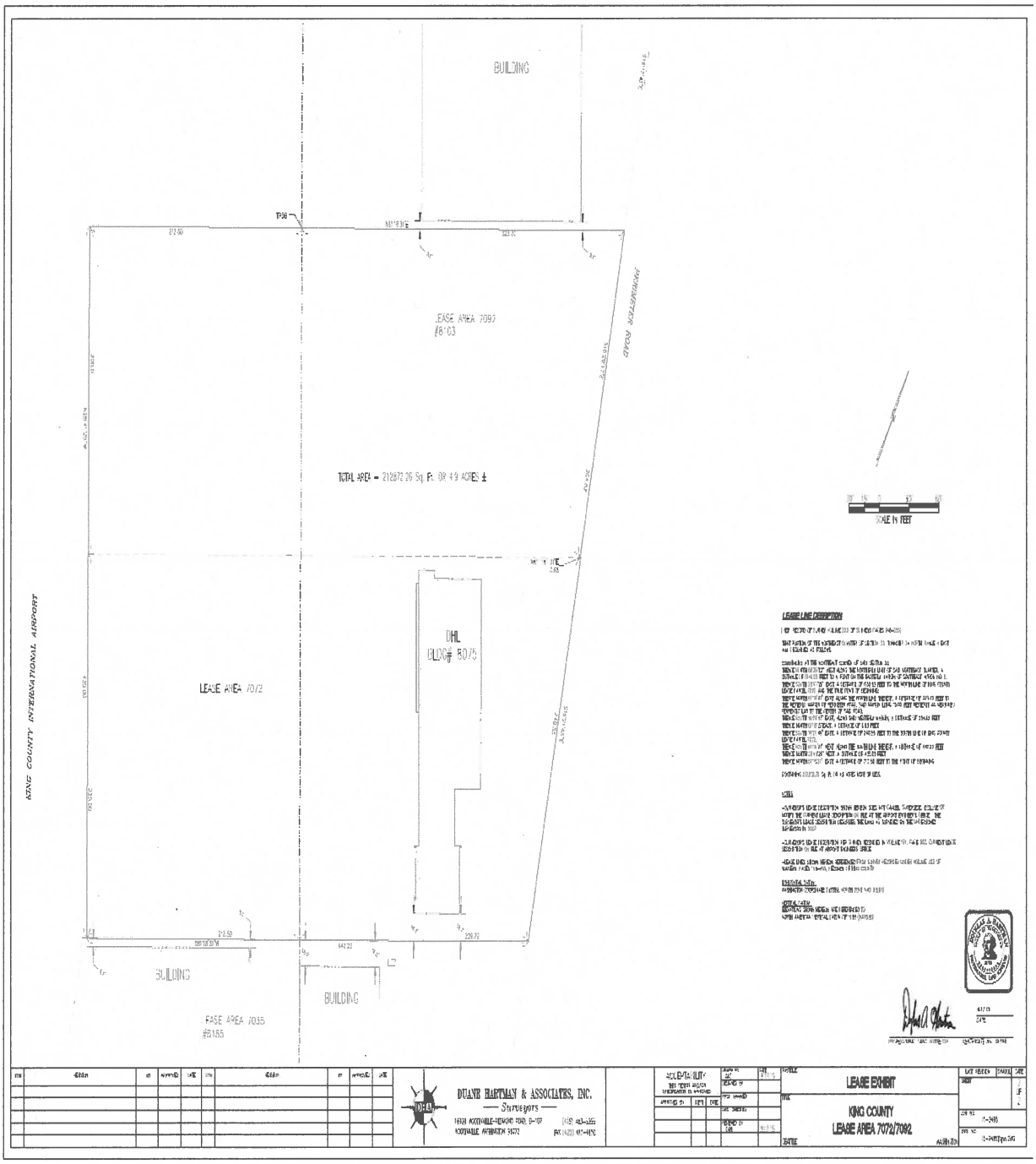
-SURVEYOR'S LEASE DESCRIPTION SHOWN HEREON DOES NOT CANCEL, SUPERSEDE, EXCLUDE OR MODIFY THE CURRENT LEASE DESCRIPTION ON FILE AT THE AIRPORT ENGINEER'S OFFICE. THE SURVEYOR'S LEASE DESCRIPTION DESCRIBES THE LAND AS SURVEYED BY THE UNDERSIGNED SURVEYORS IN 2007.

-SURVEYOR'S LEASE DESCRIPTION PER SURVEY RECORDED IN VOLUME 101, PAGE 263. CURRENT LEASE DESCRIPTION ON FILE AT AIRPORT ENGINEERS OFFICE.

-LEASE LINES SHOWN HEREON REFERENCED FROM SURVEY RECORDED UNDER VOLUME 223 OF SURVEYS, PAGES 148-255, RECORDS OF KING COUNTY

# EXHIBIT A-1

## DIAGRAM OF PREMISES UNDER LEASE



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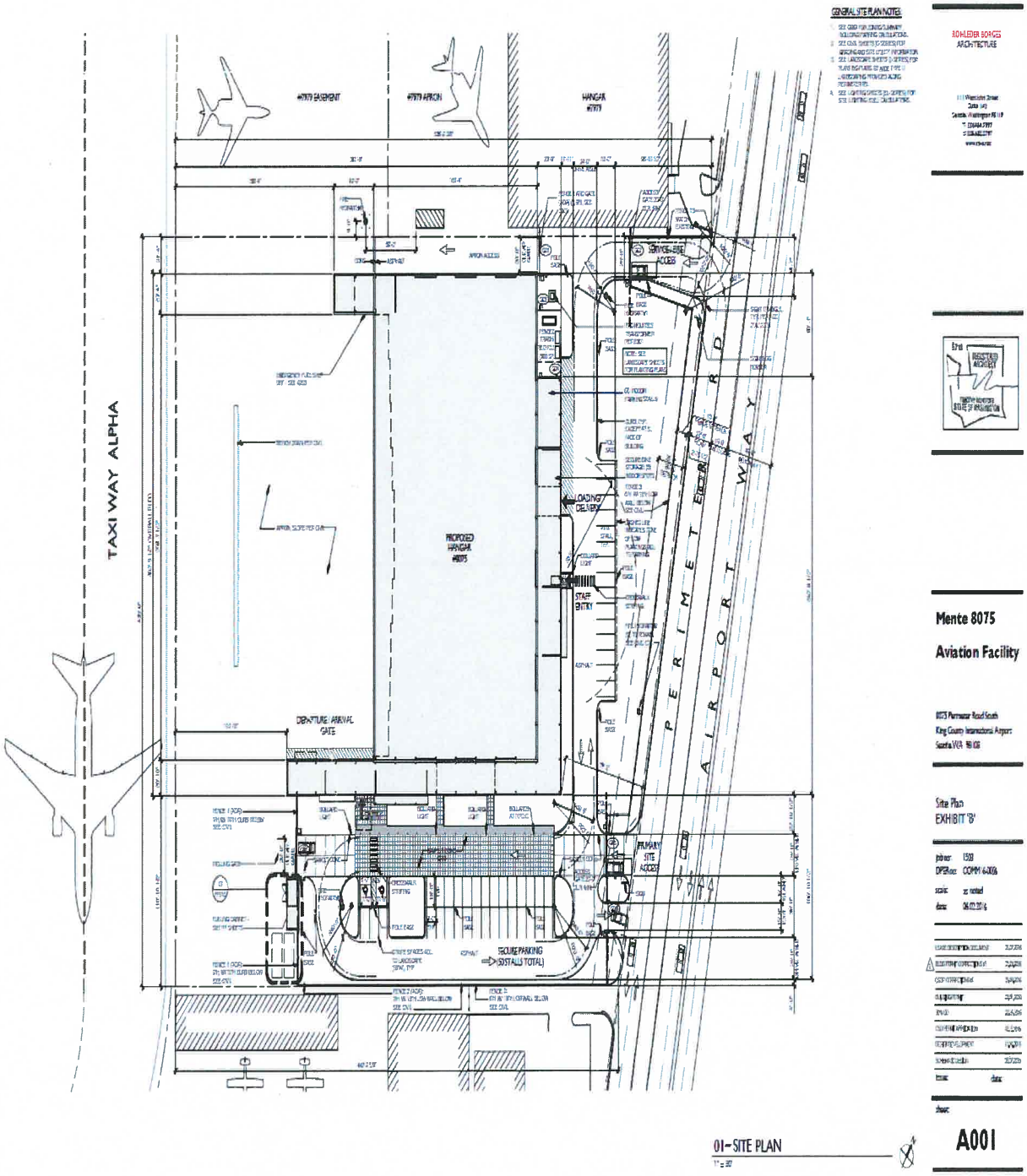
# EXHIBIT B

## CONCEPTUAL PLAN



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# EXHIBIT C

## LIST OF APPROVED HAZARDOUS MATERIALS

Mente LLC Potential Hazardous Materials

| | A | B | C |
|---|---|---|---|
| 1 | TYPE/ITEM NAME | MANUFACTURE | QUANITY |
| 2 | BUTANE FUEL | RONSON | 5 OZ |
| 3 | AEROSPACE SEALANT AC-665 B-2 BASE | 3M | 15 OZ |
| 4 | AEROSPACE SEALANT AC-665 B-2 CATALYST | 3M | 3 OZ |
| 5 | POLYGONE 300-AG POLYSULFIDE STRIPPER | RPM TECHNOLOGY | 3 OZ |
| 6 | AEROSPACE SEALANT AC-665 B-1/2 | 3M | 10 OZ |
| 7 | SEMKIT PACKAGE PR-1826 B-1/4 MODEL 655 SEMKIT | PPG INDUSTRIES | 10 OZ |
| 8 | ISOPROPYL ALCOHOL | TARR | 5 GAL |
| 9 | CA 8000D DESOTHANE HS | PPG AEROSPACE | 2 GAL |
| 10 | 910-012 ACTIVATOR COMPONENT | PPG AEROSPACE | 1 QT |
| 11 | 515K011 EXPOXY PRIMER | PPG AEROSPACE | 1 QT |
| 12 | 13100S URETHANE ACTIVATOR | DUPONT | 2 QT |
| 13 | HARDNER TAN INTER SN 575 | NOT AVAILABLE | 1 QT |
| 14 | JET GLO CM0578520 POLYURETHANE HARDENER | SHERWIN WILLIAMS | 2 QT |
| 15 | GENERAL PURPOSE ADHESIVE CLEANER | 3M | .5 QT |
| 16 | DOT 3 BRAKE FLUID | NAPA | .5 QT |
| 17 | GREEN ZINC CHROMATE METAL PRIMER | SPRAY | .25 QT |
| 18 | 134A REFRIDERANT | WEITRON | 25 LBS |
| 19 | MASTINOX 6856K | PPG AEROSPACE | 1 OZ |
| 20 | 1P9189A HARDNER PAINT | NOT AVAILABLE | 1 QT |
| 21 | SEEVENAX HARDNER 115-22 PAINT | NOT AVAILABLE | 1 QT |
| 22 | ALODINE 1201 | HENKEL CORPORATION | .75 QT |
| 23 | ALUMIPREP 33 | HENKEL CORPORATION | .75 QT |
| 24 | METHYL ETHYL KETONE (MEK) | CSD INC | 2 GAL |
| 25 | ACETONE | SUNNYSIDE | 2 GAL |
| 26 | MINERAL SPIRITS TYPE 1 | HISCO CO. | 1 GAL |
| 27 | VARSOL | RANDOLPH PRODUCTS | 2 GAL |
| 28 | CP AGE MASTER NO.1 RUBBER PROTECTIVE AGENT | GOODRICH | 1 QT |
| 29 | ICEX II | GOODRICH | 1 QT |
| 30 | SHINE MASTER PREP | GOODRICH | 1 QT |
| 31 | SHINE MASTER | GOODRICH | 1 QT |
| 32 | MIL-H-5606A HYDRAULIC FLUID | ROYCO | 2 GAL |
| 33 | SKYDROL LD-4 | SOLUTIA INC | 4 GAL |
| 34 | 586 M MINERAL OIL EC135 | NOT AVAILABLE | .75 QT |
| 35 | TURBO OIL 2380 | BP | 8 QT |
| 36 | TURBINE OIL 808 | ROYCO | 12 QT |
| 37 | JET OIL II | MOBIL | 8 QT |
| 38 | 756 | ROYCO | 13 QT |

**King County**
**Facilities Management Division**
**Anthony Wright, Interim Director**
Department of Executive Services
500 Fourth Avenue, Room 800
Seattle, WA 98104
Phone: (206) 296-0630
Fax: (206) 205-5070

March 4, 2015

The Honorable Dow Constantine
King County Executive
401 5th Avenue, Suite 800
Seattle, WA 98104

Dear Executive Constantine:

The purpose of this letter is to inform you that King County has entered into direct negotiations for a long term lease with Mente LLC, ("Mente") at King County International Airport ("KCIA"). If you disagree with this approach you may direct Facilities Management Division to offer the lease for competitive bidding.

Mente provides corporate aviation services for a variety of world-wide business and philanthropic entities. They currently are subtenants in another hangar facility at KCIA. They anticipate the delivery of a new aircraft in 2017 that requires a larger space than they currently occupy.

The agreement contemplates the demolition of structures and ramp and construction of a new hangar on a 4.8 acre leasehold. The length of the term will be 35 years at a fair market value rent for undeveloped land of $1.90/sf/year. A portion of the premises is improved ramp. The improved rent for that portion of the leasehold will be $2.40/sf/year. Total annual rent will be approximately $420,000.

King County Code section 4.56.160(B) allows King County to directly negotiate leases if the director of the facilities management division determines it is advantageous to the county to negotiate without bidding. I consider it advantageous to directly negotiate this lease for the reasons listed below.

1. Mente plans to fund and perform the demolition of an obsolete building and ramp, at its sole cost and expense, on the property and build approximately 40,000 square feet of hangar space and aircraft parking ramp to accommodate their corporate flight department. This commitment represents a greater amount of expense and demolition costs than would be expected from a potential tenant responding to a RFP process.

2. Given the requested length of lease, KCC 4.56.180 A.2 will require an investment amount equal to the value of the ground being leased. In this case that amount is $5.23 million. The improvements being proposed by Mente have an estimated value of more than $30 million, significantly in excess of what is required to satisfy the financial investment requirements.

Thank you for your consideration and support. If you have any questions regarding this proposal, please call me at 206-296-0630.

Sincerely,

Anthony Wright, Interim Director
Facilities Management Division

cc: Caroline Whalen, County Administrative Officer and Director, Department of Executive Services (DES)
Elissa Benson, Interim Deputy Director, Facilities Management Division (FMD), DES
Gail Houser, Manager, Real Estate Services Section (RES), FMD, DES
Heather Marlow, Acting Leasing Supervisor, RES
Harold Taniguchi, Director, Department of Transportation (DOT)
Robert I. Burke, Director, King County International Airport (KCIA)

**DECISION**

**___DISAPPROVED – CONDUCT PROCESS FOR COMPETITIVE BIDDING**

**___SEE ME**

# KING COUNTY FISCAL NOTE - *Property Leases and Sales*

## GENERAL TRANSACTION INFORMATION

| | | | | | |
|---|---|---|---|---|---|
| Ordinance/Motion: | | | | | |
| Title: | **KCIA Mente Lease** | | | Transaction Duration: | 35 Years |
| Affected Agency/Agencies: | King County International Airport | | | Fair Market Value: | NA |
| Note Prepared By: | Carolyn Mock/Tom Paine | Date Prepared: | 06/07/16 | Legal Transaction Type: | New Lease |
| Note Reviewed By: | | Date Reviewed: | | Fiscal Transaction Type: | Stand Alone |
| Description of Request: | KCIA Lease with Mente LLC for aircraft facility | | | | |

## FINANCIAL IMPACTS

### Part 1 - Net Present Value Analysis Results

| | | | |
|---|---|---|---|
| **Net Present Value to King County (all impacts): ***** | NA | **Net Present Value to Primary Impacted Agency (customer of transaction): ***** | NA |

### Part 2 - Revenue and Expenditure Impacts

As of the preparation date of this fiscal note, the impact of the above legislation on the **financial affairs** of King County is *estimated* to be as indicated below:

**Revenue to:** [2,3,5]

| Appropriation Unit | Appr. Number | Department | Fund Number | Project Number | Revenue Account Code and Source/Description | Sum of Revenues Prior to 2015 | 2015 / 2016 | 2017 / 2018 | 2019 / 2020 | Sum of Outyear Impacts [2] |
|---|---|---|---|---|---|---|---|---|---|---|
| KCIA | A71000 | 710001.00 | 4290 | 1028679 | 36250 Ext LT Space Fac Rent/Lease Revenue | $ - | $ 168,524 | $ 827,557 | $ 869,452 | $ - |
| | | | | | | $ - | $ - | $ - | $ - | $ - |
| | | | | | | $ - | $ - | $ - | $ - | $ - |
| **TOTAL** | | | | | | **$ -** | **$ 168,524** | **$ 827,557** | **$ 869,452** | **$ -** |

**Expenditures from:** [2,3,4,5]

| Appropriation Unit/Expenditure Type | Appr. Number | Department | Fund Number | Project Number | Expenditure Notes | Sum of Expenditures Prior to 2015 | 2015 / 2016 | 2017 / 2018 | 2019 / 2020 | Sum of Outyear Impacts [2] |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |
| Real Estate Services Labor Costs | | | | | | $ - | $ - | $ - | $ - | $ - |
| King County Project Management | | | | | | $ - | $ - | $ - | $ - | $ - |
| Lease Payments/Associated O&M | | | | | | $ - | $ - | $ - | $ - | $ - |
| Service Costs (Appraisal, Title, Move) | | | | | | $ - | $ - | $ - | $ - | $ - |
| Tenant and Other Improvements | | | | | | $ - | $ - | $ - | $ - | $ - |
| 10% Art for General Fund Transactions | | | | | | $ - | $ - | $ - | $ - | $ - |
| Other Transaction Costs | | | | | | $ - | $ - | $ - | $ - | $ - |
| SUBTOTAL | | | | | | **$ -** | **$ -** | **$ -** | **$ -** | **$ -** |
| | | | | | | | | | | |
| Real Estate Services Labor Costs | | | | | | $ - | $ - | $ - | $ - | $ - |
| King County Project Management | | | | | | $ - | $ - | $ - | $ - | $ - |
| Lease Payments/Associated O&M | | | | | | $ - | $ - | $ - | $ - | $ - |
| Service Costs (Appraisal, Title, Move) | | | | | | $ - | $ - | $ - | $ - | $ - |
| Tenant and Other Improvements | | | | | | $ - | $ - | $ - | $ - | $ - |
| 10% Art for General Fund Transactions | | | | | | $ - | $ - | $ - | $ - | $ - |
| Other Transaction Costs | | | | | | $ - | $ - | $ - | $ - | $ - |
| SUBTOTAL | | | | | | **$ -** | **$ -** | **$ -** | **$ -** | **$ -** |
| **TOTAL** | | | | | | **$ -** | **$ -** | **$ -** | **$ -** | **$ -** |

## APPROPRIATION IMPACTS

As of the preparation date of this fiscal note, the impact of the above legislation on the **budget appropriation** of King County is *estimated* to be as indicated below: [1]

| Appropriation Unit | Appr. Number | Department | Fund Number | Project Number | Appropriation Notes | | 2015 / 2016 Appropriation Change | Total 6-Year CIP Outyear Planning Level Costs |
|---|---|---|---|---|---|---|---|---|
| | | | | | The transaction was anticipated in the current budget; no supplemental appropriation is required. | | $ - | $ - |
| | | | | | | | $ - | $ - |
| | | | | | | | $ - | $ - |
| **TOTAL** | | | | | | | **$ -** | **$ -** |

*Assumption and Additional Notes:*

*** An NPV analysis was not performed because the tenant's use is consistent with the KCIA layout plan and it was determined that this is the highest and best use of the parcel.

1. If the expenditure impact equals or exceeds five percent of the fund expenditures, a copy of the most recent applicable appropriation unit financial plan is attached to this transmittal.
2. The sum of outyear impacts is provided for capital projects and agreements. This sum for revenue and expenditures includes all revenues/expenditures for the duration of the lease/other agreement or life of the capital investment.
3. This transaction does not require the use of fund balance or reallocated grant funding.
4. The transaction is backed by new revenue. The new revenue does not include grant revenue. The new revenue has not been received. The new revenue will be received when lease commences
5. A detailed explanation of how the revenue/expenditure impacts were developed is provided below, including major assumptions made in developing the values presented in the fiscal note and other supporting data:
   - Initial base rent is $1.90/sf/year with 2.5% annual increases on anniversary of commencement date. Rate is adjusted every 5th year based on fair market value appraisal
   - Tenant will pay for and demolish existing facilities and construct improvements valued at a minimum of $30M.
   -
   -

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# The Seattle Times

King County Real Estate Svcs
Tom Paine
500 4th Ave Rm 830

Seattle, WA 98104

Re: Advertiser Account # 144346

Ad #: 654027

Agency Account #: 0

Agency Name:

## Affidavit of Publication

STATE OF WASHINGTON
Counties of King and Snohomish

The undersigned, on oath states that he/she is an authorized representative of The Seattle Times Company, publisher of The Seattle Times of general circulation published daily in King and Snohomish Counties, State of Washington. The Seattle Times has been approved as a legal newspaper by others of the Superior Court of King and Snohomish Counties.

The notice, in the exact form annexed, was published in the regular and entire issue of said paper or papers and distributed to its subscribers during all of the said period.

| Newspaper and Publication Date(s) | |
|---|---|
| Seattle Times | 06/20/16 |
| Seattle Times | 06/27/16 |

Agent Sharon Seligman Signature Sharon Seligman

Subscribed and sworn to before me on June 29, 2016
DATE

Christina C. McKenna
Christina C. McKenna
(Notary Signature) Notary Public in and for the State of Washington, residing at Seattle

CHRISTINA C. MCKENNA NOTARY PUBLIC COMMISSION EXPIRES STATE OF WASHINGTON

# The Seattle Times

Re: Advertiser Account # 144346

Agency Account #: 0

Ad #: 654027

Agency Name:

AD TEXT

**King County** intends to execute a 35 year lease located at King County International Airport, and more specifically, at 8013-8075 Perimeter Road South, Seattle WA 98108. The parcel contains approximately 4.9 acres. A copy of the lease is available for public inspection at the Real Estate Services Section, King County Administration Building, 500 Fourth Avenue, Room 830, Seattle, Washington 98104.

# Lease Property Summary

**Photo of Property:**

**Property Owner:** King County
**Address:** 8013-8075 Perimeter Road South
**Cost Per Sq. Ft.:** $1.90/sf/year
**Operational Costs:** $0
**Term:** 35 years[1]
**Square Footage:** 212,872
**Council District:** Eight
**Funding Source:** N/A
**Previous Location:** N/A

## Lease Synopsis:

Mente, LLC has been a sublease tenant at King County International Airport (KCIA) on the King County Jet Center leasehold since 1997. They contacted KCIA in 2015 and expressed interest in developing and constructing their own aircraft facility. The premises that best accommodated their needs consisted of three adjacent pieces of property on the eastside of KCIA totaling 212,872 square feet. The southern 109,946 sf was obtained by Mente via a recent assignment from Pajaro, LLC. The remainder of the premises consisted of two parcels that were occupied by DHL via monthly rental agreements. DHL voluntarily vacated the property on June 1, 2016. All three parcels are being combined into one large parcel for this proposed long term lease. Mente will be constructing an approximately $30M aircraft

[1] Per KCC 4.56.180(3) the lease may be extended for up to 15 additional years if the conditions set forth in this code section are satisfied, as determined by the County, in its sole discretion.

facility, greatly in excess of the minimum improvement investment of $5.32M required by KCC 4.56.180(3).

## Context

*Rationale for transaction:* The proposed tenant is a long standing subtenant at KCIA. The tenant is going to pay for and demolish all existing facilities and construct improvements valued at a minimum of $30M. The code requirement for investments to qualify for a long term lease (longer than 10 years) on this parcel is $5.32M. The tenant is also going to pay fair market rent from the date of lease commencement (including during construction). The facility will permanently employ 27 FTE at occupancy with a provisioned facility capacity of 40 FTE. It was determined by the Director of the Facilities Management Division, and approved by the Executive, per KCC 4.56.160(B), that it was advantageous to the County to directly negotiate without competitive bidding. The County gave notice of intent to execute a lease by publishing a notice once a week for a term of two weeks, as required by King County Code 4.56.160 (B).

*Policy considerations*: This lease will provide for tenant-funded demolition of the existing obsolete facility as well as the construction of a substantial new aircraft hangar facility. The site was previously used as an air cargo package processing and sort facility. The previous tenant's business model changed and a move to SeaTac has been planned for over a year. Mente's proposed use is consistent with the KCIA Master Plan and Airport Layout Plan. Lease conditions discussed in the Lease Framework Working Group pertaining to lease term, reappraisal frequencies and annual interim rent adjustments are included in the lease.

*Political considerations:* N/A

*Community considerations or partnerships:* At this point there has been no community opposition or support for this proposal.

*Fiscal considerations:* Tenant will pay the independently appraised fair market value of $1.90/sf/year for the 212,872 square foot leasehold. The initial annual base rent is $404,457. During non-appraisal years the rent will adjust up 2.5% annually on the anniversary of the commencement date. The lease rent will adjust every 5$^{th}$ year based on a new fair market value appraisal.

*Other considerations*: Construction of the proposed facility will provide a significant improvement to the KCIA. Direct construction related employment will be 97 employees including architects, contractors and subcontractors. There will be an estimated 186-296 indirect construction jobs related to suppliers, offsite fabrication and manufacturing related to the project.

*CIP/operational impacts:* Construction of this facility is not expected to have any negative impacts on airport operations or the CIP.

*King County Strategic Plan impact:* This transaction supports the King County Strategic Plan guiding principle of Financial Sustainability.

*Equity and Social Justice impact:* In accordance with Real Property Asset Management Plan (RAMP) Strategy 2.0 and 24.0, FMD and KCIA reviewed this legislation for Equity and Social Justice (ESJ) impacts. The King County International Airport is located in the Georgetown neighborhood of Seattle and provides private and public airport services. There are similar tenants and services located in the vicinity of this parcel and no new ESJ impacts are anticipated from this lease.

*Energy Efficiency impact:* The tenant is not participating in the LEED Certification program. However, their goal is to design and develop a facility that exceeds State of Washington Energy Code requirements by at least 20% including a high performance building envelope, a variable refrigerant flow mechanical system. Notably, they are providing more than 300% of the landscaping requirements of K.C.C. sections 21A.16.070.B.2 (parking) and 21A.16.050.B (street frontage). In addition, they are undergoing a feasibility study for a solar photovoltaic roof array to offset electrical energy use but programming on this item is not complete at this time.

## Lease Alternatives Analysis

An aviation storage facility, as contemplated in this proposal, is the highest and best use of the parcel as determined by an independent appraisal. The tenant is proposing an investment and construction budget that will create infrastructure and facility improvements that will add to the airport's value. Therefore, no other alternatives were considered.

**Vicinity View Map**

**Parcel Map**

King County

# Metropolitan King County Council
# Budget and Fiscal Management Committee

## STAFF REPORT

| | | | |
|---|---|---|---|
| **Agenda Item:** | 8 | **Name:** | Hiedi Popochock<br>Miranda Leskinen |
| **Proposed No.**: | 2016-0373 | **Date:** | August 24, 2016 |

## SUBJECT

Proposed Ordinance 2016-0373 would authorize a second amendment to the lease agreement with South King Fire and Rescue and King County to implement the Puget Sound Emergency Radio Network Project.

## SUMMARY

The proposed second amendment to the King County and South King Fire and Rescue lease agreement would allow King County to install antenna equipment at the Federal Way radio tower site in the city of Auburn to implement the Puget Sound Emergency Network (PSERN) Project. PSERN Project staff estimates the equipment cost at $8,500. The proposed amendment would be an initial 25-year term with the option of three automatic five-year extension terms unless the county terminates upon notice. The rental rate terms of the lease agreement would remain unchanged.

Council's legal counsel has completed its legal review and has identified no material issues.

## BACKGROUND

Puget Sound Emergency Radio Network

On April 28, 2015, King County voters approved a nine-year, $273 million property tax levy to fund the Puget Sound Emergency Radio Network (PSERN), the replacement of the King County emergency radio communications system.

PSERN will replace and upgrade King County's nearly 20-year old emergency radio communications system, which is used to dispatch responders to incidents and allow responders to communicate with each other at those incidents. The vendor for the current countywide emergency radio network, King County Emergency Radio Communications System (KCERCS) will no longer support the current system in late 2018. Countywide, the current system consists of 26 transmitter sites and multiple interconnecting microwave and fiber systems, and it supports over 100 agencies and

approximately 17,000 radio users, each with a portable radio handset and/or installed mobile radio in a vehicle. KCERCS is owned in equal shares by King County, the city of Seattle, Valley Communications Center (ValleyCom), and the Eastside Public Safety Communications Agency (EPSCA).

Once completed, PSERN will replace the current countywide emergency radio network. PSERN will improve and upgrade the countywide emergency radio network by providing increased system reliability, increasing coverage capacity from 94 percent coverage to 97 percent coverage and providing better security on the network.

Vendor Contract and Project Management

On December 17, 2014, the Executive signed a $112 million, 20-year contract that made Motorola Solutions, Inc. (MSI) the vendor responsible for the design, development, implementation, testing and ongoing support and maintenance and upgrade of PSERN.[1] As part of its radio communications system design, MSI identified approximately 52 radio tower sites that would meet the intended coverage areas of the PSERN Project. Per the contract, the PSERN system vendor must meet specific performance criteria, including coverage and signal strength.

Federal Way Radio Tower Site

The South King Fire and Rescue's Federal Way radio tower site ("the Site"), which is located in the city of Auburn, was identified by MSI as a site that would be suitable for the PSERN Project. MSI chose the Site due to its existing coverage for the intended area, which will cover both the King County and Pierce County portions of the city of Auburn.

The Site has approximately 6,708 square feet of land and space on the tower. There is an existing 260 foot radio tower ('the Tower") on the Site, which is owned by King County. In addition to the Tower, the County owns a 1,025 square foot shelter, generator, diesel storage tank, communications equipment and other improvements on the Site. The Tower has been on the property since 1999 and currently serves the King County Emergency Radio Communication System (KCERCS), as well as other organizations including AT&T, Washington State Department of Transportation and ValleyCom.

**Lease Agreement.** In 1999, King County executed a 20-year lease agreement **(Attachment 4)** with the Federal Way Fire Department[2] (now South King Fire and Rescue), effective in November 1998 and will expire in October 2018. The lease includes an option to extend the term for an additional five-years unless terminated by

[1] 2015-0016.

[2] The Federal Way Fire Department transferred its interest in the Site and the lease to King County Fire Protection District No. 39, which merged into South King Fire and Rescue. By way of history, King County Fire Protection District No. 39 (the District) was formed on April 18, 1949. It later merged with Districts 22, 30, and 32, but retained its name. In 1991, the new City of Federal Way annexed the District. The District became informally known as the Federal Way Fire District, but its legal name continued to be King County Fire Protection District No. 39. On September 20, 2005, voters approved the merger of King County Fire Protection District No. 39 and King County Fire Protection No. 26. The districts, per the request of their respective Board of Commissioners, each adopted a resolution in support of changing the name of the newly formed district to 'South King Fire and Rescue'. These resolutions were filed with the King County Council for approval per RCW 52.30.060, and Ordinance 15307 approving the change in name of the merged King County Fire Protection District No. 39 and King County Fire Protection District No. 26 to South King Fire and Rescue was enacted November 3, 2005.

the county upon notice. The initial rental rent for the property in 1998 was $12,000 annually. The lease included a provision for the annual rental rate to be increased by 15 percent every five years. Currently, the rental rate for the Site is $18,251 annually. Operational costs for the Site is currently $12,000 annually.

**Amendment One.** In 2004, the first amendment to the lease agreement was executed by King County and the Federal Way Fire Department to add Section 11 authorizing the county to reconfigure its microwave system to allow for eight additional circuits. Moreover, in consideration of the county providing these services, the Federal Way Fire Department did not require at the time any current sublease rent that was due to be paid and waived receiving any sublease revenue due from the Tower until October 1, 2004. After October 1, the county began paying the Federal Way Fire Department 50 percent of any rents received from any sublease, as previously agreed in Section 5 of the lease agreement.

## ANALYSIS

Ordinance 2016-0373 would approve a second amendment to the lease agreement with South King Fire and Rescue to implement improvements at the Site for the PSERN Project. The proposed amendment would allow the PSERN Project to install six new racks of equipment, four new microwave antennas and four new land mobile radio antennas. PSERN Project staff estimates the cost for the equipment at $8,500.

The proposed amendment would include an initial lease term of 25 years commencing on the day the county modifies the radio tower on the Site to implement PSERN. The proposed amendment also includes three additional five-year extension terms that would be exercised automatically unless the county terminates upon notice. The rental rate terms of the lease agreement would remain unchanged.

Council's legal counsel has completed its legal review and has identified no material issues.

## ATTACHMENTS

1. Proposed Ordinance 2016-0373 and Attachment A, Lease Amendment
2. Transmittal Letter
3. Fiscal Note
4. 1998-2018 Federal Way Fire Department Lease Agreement including Amendment One
5. Federal Way Lease Property Summary

## INVITED

1. Anthony Wright, Director, Facilities Management Division, Department of Executive Services
2. David Mendel, PSERN Project Director, King County Information Technology

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# KING COUNTY

## Signature Report

**August 22, 2016**

**Ordinance**

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

**Proposed No.** 2016-0373.1 **Sponsors** Upthegrove

AN ORDINANCE relating to the authorization of a second amendment to an existing lease at 3203 S. 360th, Auburn, Washington, to support the Puget Sound Emergency Radio Network.

STATEMENT OF FACTS:

1. King County has established a capital improvement project ("the PSERN project") to build the Puget Sound Emergency Radio Network ("PSERN").

2. In 2015 King County voters approved Proposition 1 and King County adopted Ordinances 17993, 18074 and 18075, to fund the planning, deployment and testing of PSERN.

3. King County entered into a contract with Motorola Solutions, Inc. that requires Motorola to identify the sites needed for PSERN's communications equipment together with a list of equipment needed at each site. Motorola identified South King Fire and Rescue's Federal Way property as one of the needed sites.

4. The PSERN project, with the oversight of King County's Facilities Management Division, successfully negotiated a second amendment to the lease with South King Fire and Rescue that would enable the PSERN

project to continue using the site located at 3203 S. 360th, Auburn, Washington, in council district seven.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The executive is authorized to execute a second amendment to the lease for the property located at 3203 S. 360th, Auburn, Washington with South King

Fire and Rescue, substantially in the form of Attachment A to this ordinance, and to take all actions necessary to implement the terms of the second amendment to the lease.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

_____

J. Joseph McDermott, Chair

ATTEST:

_____

Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, _____.

_____

Dow Constantine, County Executive

**Attachments:** A. Lease Amendment

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# ATTACHMENT A:

# LEASE AMENDMENT

# AMENDMENT NO. 2
# TO
# COMMUNICATION SITE LEASE

**THIS AMENDMENT NO. 2 TO COMMUNICATION SITE LEASE** ("**Second Amendment**") is made by and between the South King Fire and Rescue, having offices for the transaction of business at 31617 First Avenue South, Federal Way, WA 98003 ("**Lessor**") and King County, a political subdivision of the State of Washington, having offices for the transaction of business at 500 Fourth Avenue, Suite 830, Seattle, Washington 98104 ("**Lessee**"). Lessor and Lessee may jointly be referred to herein as the "**Parties**" or individually, a "**Party**." The "**Effective Date**" of this Second Amendment shall be the last date signed by an authorized Party representative.

## RECITALS

I. **WHEREAS**, Federal Way Fire Department and Lessee entered into that certain Communication Site Lease, fully executed on June 22, 1999, as amended by that certain Amendment No. 1 to Communication Site Lease, entered into by Federal Way Fire District and Lessee, fully executed on October 18, 2004 (collectively, the "**Lease**"), whereby Lessee has leased the "**Premises**" for the construction and operation of Lessee's "**Antenna Facilities**" on real property located at 3203 S. 360th, Auburn, King County, Washington 98001 ("**Property**").

II. **WHEREAS**, fee simple interest in the Property was acquired by King County Fire Protection District #39 in 1978, which entity subsequently merged into South King Fire and Rescue, pursuant to Ordinance 15307 adopted November 3, 2005.

III. **WHEREAS**, Lessee plans to fund, procure sites for, and along with other municipalities in King County establish the Puget Sound Emergency Radio Network (the **"PSERN System")** to eventually provide emergency communications service in King County as authorized by Proposition 1 and King County Ordinances 17993, 18074 and 18075.

IV. **WHEREAS**, in order to use the Property for the PSERN System, Lessee desires to modify its Antenna Facilities, and the Parties desire to amend the Lease as set forth herein below.

## AGREEMENT

**NOW THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. **Lessor**. The Recitals set forth above are incorporated herein. The Parties hereby acknowledge and agree that South King Fire and Rescue is the current fee simple owner of the Property and the correct Lessor under the Lease. South King Fire and Rescue hereby ratifies and affirms all actions of the Federal Way Fire Department and Federal Way Fire District in entering into the Lease, granting Lessee use of the Premises for its Antenna Facilities, and management of the Premises prior to the full execution of this Second Amendment, and hereby confirms that the Lease remains in full force and effect, as amended by this Second Amendment.

2. **Premises**. By execution of this Second Amendment, Lessor hereby consents to Lessee's construction, installation, operation, maintenance, repair, replacement, upgrade, update and removal of

the antennas, cabinet, associated cables and equipment, as more completely described on the attached Exhibit #1-A annexed hereto, which Exhibit #1-A is a supplement to and incorporated into Exhibit #1 of the Lease. In the event of any inconsistencies between Lessee's Premises and Antenna Facilities set out in Exhibit #1 and that set out in Exhibit #1-A, the Premises and Antenna Facilities set out in Exhibit #1-A shall control. No less than fifteen (15) days prior to the commencement of any work necessary to effect the modifications contemplated herein, Lessee shall provide Lessor with a passing structural report and written notice of Lessee's anticipated construction schedule.

3. **Term**. Notwithstanding anything in the Lease to the contrary, as of the date Lessee commences modification of its Antenna Facilities for use of the PSERN System on the Premises ("**Commencement Date**"), the terms of Section 2.A. of the Lease shall be deleted in their entirety, and the new "**Initial Term**" of the Lease shall be twenty-five (25) years, expiring on the last day of the month in which the twenty-fifth anniversary of the Commencement Date occurs. Lessee shall provide the Lessor written notice of the Commencement Date at least ten (10) business days prior to Lessee's commencing modification of its Antenna Facilities for use of the PSERN System.

Lessee shall have the right to extend the term of the Lease for three (3) additional periods of five (5) years each (each an "**Extension Term**") subject to the following terms and conditions:

(a) That at the time of the exercise of such right, as well as at the time of the beginning of the Extension Term, Lessee shall not be in default in the observance or performance of any of the material terms, covenants or conditions of this Lease with respect to a matter as to which written notice of default has been given and which has not been remedied within the applicable cure period set forth in this Lease.

(b) That such Extension Term shall be upon the same terms, covenants and conditions as in this Lease.

(c) Each Extension Term shall be exercised automatically as long as Lessee does not deliver to Lessor a written notice of termination at least sixty (60) days prior to the end of the Initial Term or the end of the applicable Extension Term.

4. **Subletting and Assignment**. Section 5, Subletting and Assignment, of the Lease is hereby deleted in its entirety and replaced with the following:

5. **<u>Subletting and Assignment</u>**:

A. Upon Lessor's written consent, which shall not be unreasonably withheld, delayed or conditioned, Lessee may assign this Lease, in part or in whole, including its right to renew, to any person or business entity that assumes Lessee's leasehold interest. Lessee may grant or deny any sublease of the Premises, in part or in whole, without Lessor's prior written consent provided that Lessee shall remit to Lessor fifty percent (50%) of any net rents received from any sublease, excluding monies obtained from such sublessee to reimburse Lessee for its costs incurred to accommodate such sublease, including but not limited to leasing, permitting and construction costs of the Premises and Antenna Facilities being sublet.

B. Lessor acknowledges that Lessee and other municipalities participating in the PSERN System intend to establish a new governmental non-profit entity that will eventually own and operate the PSERN System. Notwithstanding anything in this Lease to the contrary, Lessee may assign its interest in this Lease, without the Lessor's consent, to that governmental non-profit entity or to any entity existing now or in the future that will be responsible for the operation,

maintenance, management, updating and upgrade or replacement of the PSERN System as authorized by law.

C. In the event of an assignment, the assignee shall assume all liability of the assignor and Lessee will be relieved of all future performance, liabilities and obligations under this Lease to the extent of such assignment.

5. **Notice**. Section 9, Notices, of the Lease is hereby deleted in its entirety and replaced with the following:

9. **Notices**: Wherever in this Lease written notices are to be given or made, they will be sent by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered, addressed to the Party as follows, unless a different address shall be designated in writing and delivered to the other Party:

Lessor: Allen D. Church, Fire Chief/Administrator
South King Fire & Rescue
31617 First Avenue South
Federal Way, WA 98003

Lessee: King County Facilities Management Division
Real Estate Services
Attention: Leasing Supervisor
Re: Federal Way PSERN Lease
500 Fourth Avenue, Suite 830
Seattle, WA 98104

With a copy to: King County Facilities Management Division
Director's Office
Attention: Gail Houser
RE: Federal Way PSERN Lease
500 Fourth Avenue, Suite 800
Seattle, WA 98104

With a copy to: King County Department of Information Technology
Puget Sound Emergency Radio Network
Attention: Marlin Blizinsky
RE: Federal Way PSERN Lease
401 Fifth Avenue, Suite 600
Seattle, WA 98104

Each Party shall appoint a manager to have responsibility for activities carried out under this Lease, and to resolve any disputes that may arise between the Parties, which shall be resolved in accordance with the terms of Section 20, Dispute Resolution, of the of the General Terms and Conditions attached to this Lease.

6. **Representations and Warranties**. The Lease is hereby amended to include an additional Section 12 as follows:

12. **Representations and Warranties**: Lessor represents, warrants and agrees that: (i) Lessor solely owns the Property as a legal lot in fee simple and has the full right, power and authority to grant this Lease to Lessee; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Lessee's rights under this Lease; and (iii) Lessor's execution and performance of this Lease will not violate any laws, covenants or the provisions of any mortgage, lease or other agreement binding on Lessor.

7. **Maintenance**. Section 5, Maintenance, of the General Terms and Conditions attached to the Lease is hereby amended to include an additional paragraph as follows:

Lessor shall maintain the Property, including access to the Premises, in good repair during the term of this Lease. Except as expressly set forth in this Lease, Lessor shall not maintain, repair or otherwise touch or interfere with Lessee's Antenna Facilities without Lessee's prior consent; provided that, in the event of an emergency posing an imminent threat of bodily injury or property damage, Lessor may take action necessary to abate the threat.

8. **Indemnification**. Section 8, Indemnity and Hold Harmless, of the General Terms and Conditions attached to the Lease is hereby deleted in its entirety and replaced with the following:

8. **Indemnity and Hold Harmless**:

A. Lessee agrees to indemnify and hold Lessor harmless as provided herein to the maximum extent possible under law. Accordingly, Lessee agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless Lessor, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, causes of action, judgments, damages, costs, attorney fees, government orders, penalties, or other requirements (hereafter "**Claims**"), including costs of defense thereof for injury to persons, death, or property damage that is caused by or arises out of Lessee's exercise of rights and privileges granted by this Lease, except to the extent of the Lessor's negligence.

B. Lessor agrees to indemnify and hold Lessee harmless as provided herein to the maximum extent possible under law. Accordingly, the Lessor agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless Lessee, its appointed and elected officials, and employees from and against liability for all Claims, including costs of defense thereof for injury to persons, death, or property damage which is caused by or arises out of Lessor's exercise of rights and privileges granted by this Lease, except to the extent of the Lessee's negligence.

C. Where such Claims result from the concurrent negligence of the Parties, the provisions provided in this Section shall be valid and enforceable only to the extent of each Party's negligence.

D. Each of the Parties agrees that its obligations under this Section 8 extend to any Claim brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such Claims under the industrial insurance provisions of Title 51 RCW.

E. In the event that any of the Parties incurs any judgment, award, and/or cost arising therefrom, including attorney fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's negligence.

F. The provisions of this Section 8 do not apply to Claims that are subject to Section 11, Hazardous Substances, of the General Terms and Conditions attached to the Lease.

9. **Insurance**. Sections 9 and 10, Insurance and Mutual Waiver of Subrogation, of the General Terms and Conditions attached to the Lease are hereby deleted in their entirety and replaced with the following:

9. **Insurance**:

A. Lessee maintains a fully funded Self-Insurance program for the protection and handling of the Lessee's liabilities including injuries to persons and damage to property.

B. Lessor acknowledges, agrees and understands that Lessee is self-funded for all of its liability exposures. Lessee agrees, at its own expense, to maintain, through its fully funded Self-Insurance program, coverage for all of its liability exposures for the Lease. Lessee agrees to provide Lessor with at least thirty (30) days prior written notice of any material change in Lessee's self-funded insurance program and will provide Lessor with a letter of self-insurance as adequate proof of coverage. Lessor further acknowledges, agrees and understands that Lessee does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore Lessee does not have the ability to name Lessor as an additional insured.

C. If Lessor is not a governmental agency which maintains a fully funded Self-Insurance program in accordance with applicable law, Lessor will maintain Commercial General Liability insurance in the amount of One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) general aggregate, based on ISO Form CG 00 01 or equivalent, and will include Lessee as an additional insured with respect to claims arising out of or related to the Lease.

D. Lessor shall carry "All Risk" property insurance in an amount equal to the full replacement value of its improvements on the Property.

E. Lessee shall maintain "All Risk" property insurance in an amount equal to the full replacement value of all its improvements and personal property located on the Premises or shall self-insure improvements and personal property on the Premises.

10. **Mutual Waiver of Subrogation**: Notwithstanding any language to the contrary contained in the Lease, Lessor and Lessee agree that they shall not make a claim against or seek recovery from the other for any loss or damage to their property, or the property of others, resulting from fire or other hazards covered by fire insurance or required to be covered under the Lease, and each hereby releases the other from any such claim or liability regardless of the cause of such loss.

**10. Non-Discrimination**. Section 13, Anti-Discrimination, of the General Terms and Conditions attached to the Lease is hereby deleted in its entirety and replaced with the following:

13. **Non-Discrimination**: Lessee and Lessor, for themselves, their successors, and assigns as a part of the consideration hereof, do hereby covenant and agree to comply with all civil rights and anti-discrimination requirements of federal, state or local laws applicable to the Property, including, without limitation, Chapter 49.60 RCW. Lessee and Lessor shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement

provisions, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Ch. 12.16.125. Lessee and Lessor shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, Chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a default of this Lease and shall be grounds for cancellation, termination, or suspension, in whole or in part, of this Lease and may result in ineligibility for further agreements between the Parties.

11. **Default**. Subsections 16.E, Lessor's Breach, and 16.F, Lessee's Breach, under Early Termination of the General Terms and Conditions attached to the Lease are hereby deleted in their entirety and replaced with the following:

E. Lessor's Breach: If Lessor should fail to remedy any default in the keeping of any term, covenant or condition herein with all reasonable dispatch, within a reasonable period of time no sooner than forty-five (45) days after receipt of written notice within which time frame said default has not been cured, then in any of such event(s), Lessee shall have the right, at its option, in addition to and not exclusive of any other remedy Lessee may have by operation of law, to remedy Lessor's failure to perform or terminate this Lease upon written notice to Lessor. In such event(s): 1) Lessor shall be responsible for any costs incurred by Lessee in remedying Lessor's default, and/or 2) Lessee shall only be responsible for Rent and utilities through the date of termination.

F. Lessee's Breach: If Lessee should fail to remedy any default in the keeping of any term, covenant or condition herein with all reasonable dispatch, within a reasonable period of time no sooner than forty-five (45) days after receipt of written notice within which time frame said default has not been cured, then in any of such event(s), Lessor shall have the right, at its option, in addition to, and not exclusive of, any other remedy Lessor may have by operation of law, terminate this Lease upon written notice to Lessee. In such event(s) Lessee shall only be responsible for Rent and utilities through the date of termination.

12. **Termination**. Section 16, Early Termination, of the General Terms and Conditions attached to the Lease is hereby amended to include an additional paragraph as follows:

H. Lessee's Additional Termination Rights: Lessee retains the right to terminate this Lease for any reason whatsoever upon sixty (60) days written notice to Lessor. Lessee also retains the right to terminate this Lease upon thirty (30) days written notice to Lessor if Lessee or Lessee's vendor of the PSERN System determines that, for design, interference, environmental, economic or title reasons, the Premises are not necessary or suitable for the operation of the PSERN System or the use described in this Lease.

13. **Removal of Personal Property by Lessee and Surrender of Premises**. The last sentence of Section 4.A, Lessee Improvements, of the General Terms and Conditions attached to the Lease is hereby deleted in its entirety. In addition, Section 17, Surrender of Premises, of the General Terms and Conditions of the Lease is hereby deleted in its entirety and replaced with the following:

17. **Removal of Personal Property by Lessee**:

A. All portions of the Antenna Facilities brought onto the Property by Lessee will be and remain Lessee's personal property during the term of this Lease. During the term of the Lease and upon termination, Lessee shall have the right to remove some or all of its personal property, whether or not attached to the Premises, provided that such may be removed without serious damage

to the Property. All damage to the Property caused by removal of Lessee's personal property shall be promptly restored or repaired by Lessee. All personal property not so removed within forty-five (45) days after the expiration or earlier termination of this Lease shall be deemed abandoned by Lessee.

B. Upon the expiration or early termination of this Lease, Lessee shall restore the Premises to the condition that existed prior to Lessee's occupancy, reasonable wear and tear excepted, including removal of Lessee's personal property/equipment, but excluding the replacement of trees or other landscaping that was removed during the construction process. This work shall be done at Lessee's sole expense and to the reasonable satisfaction of Lessor.

C. Notwithstanding anything in this Lease to the contrary, upon the expiration or earlier termination of this Lease, Lessee at its option may leave on the Property any service buildings, foundations, roads and underground utility cables and conduit installed by or at Lessee's direction, in which case Lessor shall assume ownership thereof without the need for any additional documentation, and such facilities will become part of Lessor's Property.

14. **Dispute Resolution**. Section 20, Arbitration, of the General terms and Conditions attached to the Lease is hereby deleted in its entirety and replaced with the following:

20. **Dispute Resolution**.

A. In the event of a dispute between the Lessor and Lessee arising by reason of this Lease, the dispute shall first be referred to managers designated by Lessor and Lessee to have oversight over the administration of this Lease. The officers or managers shall meet within a reasonable time, not later than five (5) calendar days after either Party's request for a meeting, whichever request is first, and the Parties shall make a good faith effort to achieve a resolution of the dispute.

B. If the Parties are unable to resolve the dispute under the procedure set forth in this Section, the Parties may agree to refer the matter to mediation. The Parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the Parties.

C. If the Parties fail to achieve a resolution of the dispute through meeting or mediation within the cure periods provided for in Subsections 16.E and 16.F, either Party may seek any and all remedies at law against the other Party for default or breach of this Lease.

15. **Memorandum of Lease**. Lessor agrees to sign a short form Memorandum of Lease evidencing the Lease, as amended, that Lessee may record at Lessee's expense.

16. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Lease and this Second Amendment, the terms of this Second Amendment shall control. Except as expressly set forth in this Second Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Second Amendment.

17. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

[SIGNATURES ON FOLLOWING PAGES]

**IN WITNESS WHEREOF,** the Parties have caused this Second Amendment to be executed of the date and year opposite their signature blocks.

**Lessor:**
SOUTH KING FIRE AND RESCUE

By:_____
Name:_____
Title:_____

**DATED: _____**

STATE OF WASHINGTON )
) ss.
COUNTY OF _____)

On this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ _____, to me known to be the individual(s) that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said individual(s), for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument, and that the seal affixed is the seal of _____ County.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my seal the day and year first written above.

_____
**NOTARY PUBLIC** in and for the State of
Washington, residing at _____.
My commission expires: _____

DATED: _____

King County Lease #: 1668
King County Site: Federal Way (fka Auburn, WA)

**Lessee:**
KING COUNTY,
a political subdivision of the State of Washington

By:_____
Name:_____
Title:_____

**DATED: _____**

STATE OF WASHINGTON )
) ss.
COUNTY OF KING )

On this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ _____, to me known to be the individual(s) that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said individual(s), for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument, and that the seal affixed is the seal of said County.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my seal the day and year first written above.

_____
**NOTARY PUBLIC** in and for the State of
Washington, residing at _____.
My commission expires: _____

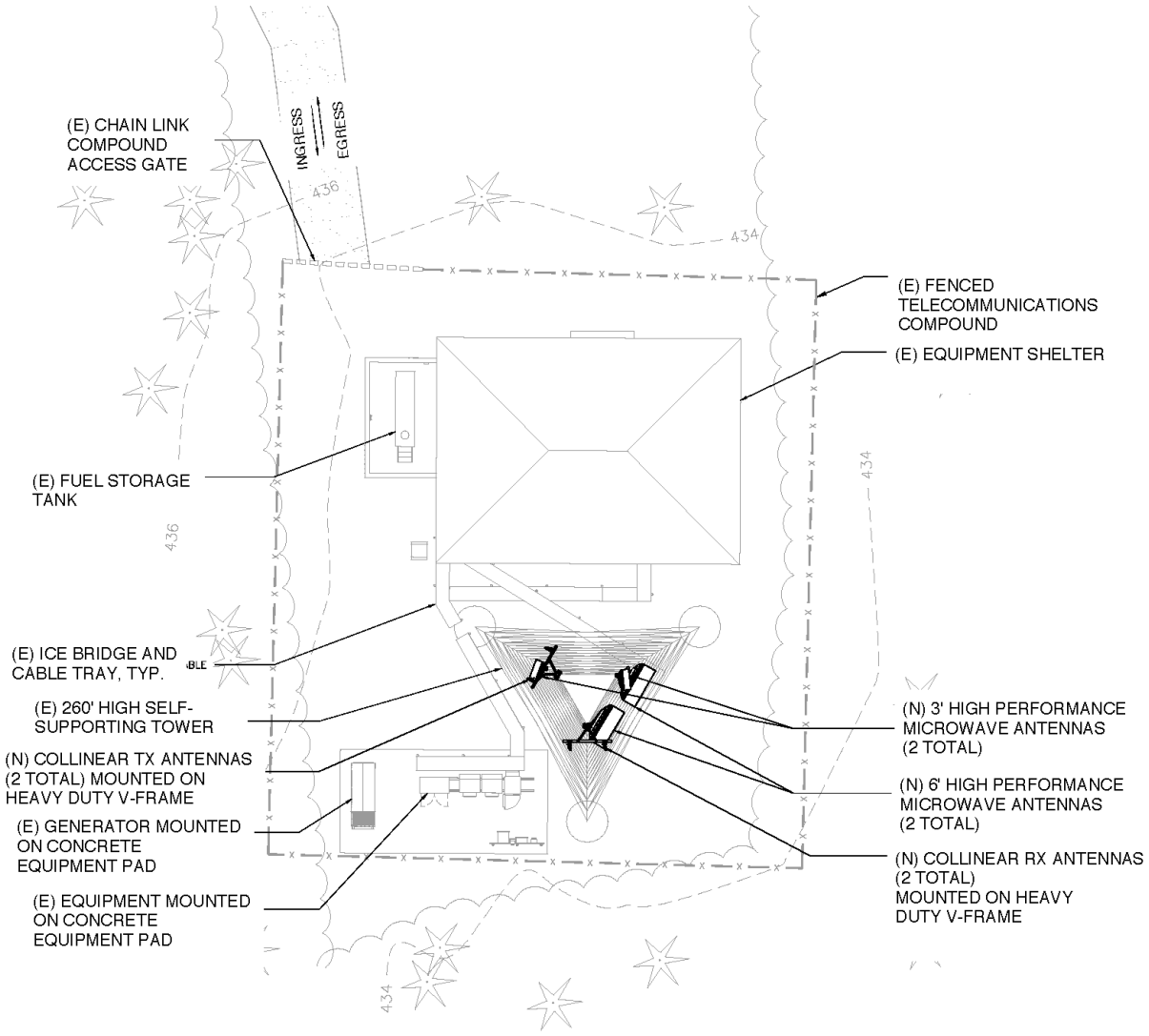
DATED: _____

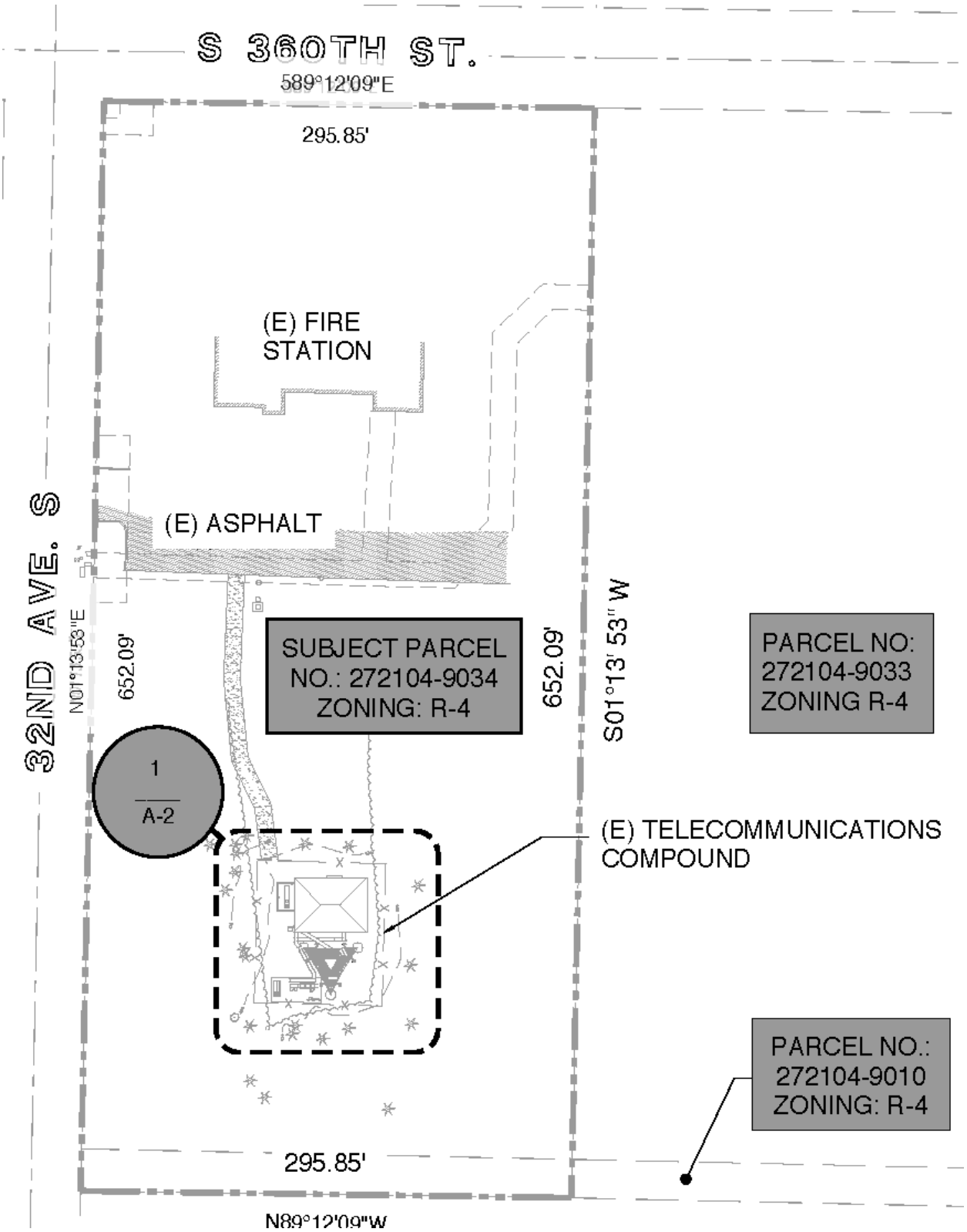
Approved as to form:

_____
Busch Law Firm PLLC

**EXHIBIT #1-A**
**(Supplement to Exhibit #1 of the Lease)**
**(Description of Premises and Antenna Facilities)**

Installation of 4 microwave dishes and 4 LMR "whip" antennas on the existing 260' tower; supporting equipment installed within the existing equipment shelter.




S 360TH ST.
S89°12'09"E
295.85'
(E) FIRE STATION
(E) ASPHALT
32ND AVE. S
N01°13'53"E
652.09'
SUBJECT PARCEL NO.: 272104-9034 ZONING: R-4
652.09'
S01°13' 53" W
PARCEL NO: 272104-9033 ZONING R-4
1
A-2
(E) TELECOMMUNICATIONS COMPOUND
PARCEL NO.: 272104-9010 ZONING: R-4
295.85'
N89°12'09"W

ATTACHMENT 2

July 6, 2016

The Honorable Joe McDermott
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember McDermott:

This letter transmits an ordinance that will enable King County to amend the lease for a telecommunication site located at 3203 S. 360th, Auburn, Washington from South King Fire and Rescue in support of the provision of the Department of Information Technology's Puget Sound Emergency Radio Network (PSERN) project.

This transaction is recommended per the rationale and considerations provided in the attached property summary.

Amending the lease at this property furthers the strategic plan guiding principles of financial sustainability and regional collaboration.

Thank you for your consideration of this ordinance.

If you have any questions, please feel free to contact Anthony Wright, Director, Facilities Management Division at 206-477-9352.

Sincerely,

Dow Constantine
King County Executive

Enclosures

cc: King County Councilmembers
ATTN: Carolyn Busch, Chief of Staff
Anne Noris, Clerk of the Council
Carrie S. Cihak, Chief of Policy Development, King County Executive Office
Dwight Dively, Director, Office of Performance, Strategy and Budget
Caroline Whalen, County Administrative Officer, Department of Executive Services (DES)
Anthony Wright, Director, Facilities Management Division (FMD), DES
Hien Dung, Interim Manager, Real Estate Services, FMD, DES
William Kehoe, Chief Information Officer, Department of Information Technology (KCIT)
David Mendel, Project Director, PSERN Project, KCIT
Marlin Blizinsky, Government Relations Officer, PSERN Project, KCIT

# KING COUNTY FISCAL NOTE - *Property Leases and Sales*

## GENERAL TRANSACTION INFORMATION

| | | | | | |
|---|---|---|---|---|---|
| Ordinance/Motion: | Ordinance | | | | |
| Title: | **Federal Way Lease - Second Amendment** | | | Transaction Duration: | 25 yrs |
| Affected Agency/Agencies: | KCIT and FMD/Real Estate Services | | | Fair Market Value: | Not Applicable for this lease |
| Note Prepared By: | Marlin Blizinsky | Date Prepared: | 6/2/2016 | Legal Transaction Type: | 2nd Amendmen to lease |
| Note Reviewed By: | Mike Morrison | | | Fiscal Transaction Type: | Standalone Ordinance |
| Description of Request: 25 year lease amendment | | | | | |

## FINANCIAL IMPACTS

### Part 1 - Net Present Value Analysis Results

| | | | |
|---|---|---|---|
| **Net Present Value to King County (all impacts):** [1] | NA | **Net Present Value to Primary Impacted Agency (customer of transaction):** [1] | NA |

### Part 2 - Revenue and Expenditure Impacts

As of the preparation date of this fiscal note, the impact of the above legislation on the **financial affairs** of King County is *estimated* to be as indicated below:

**Revenue to:**

| Appropriation Unit | Appr. Number | Department | Fund Number | Project Number | Revenue Account Code and Source/Description | Sum of Revenues Prior to 2015 | 2015/2016 | 2017/2018 | 2019/2020 | Sum of Outyear Impacts [3] |
|---|---|---|---|---|---|---|---|---|---|---|
| PSERN Capital Fund | NA | KCIT | 3361 | 1126875 | 31111 PSERN Property Tax Levy [2] | | $ 8,500 | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| **TOTAL** | | | | | | | **$8,500** | | | **$0** |

**Expenditures from:**

| Appropriation Unit/Expenditure Type | Appr. Number | Department | Fund Number | Project Number | Expenditure Notes | Sum of Revenues Prior to 2015 | 2015/2016 | 2017/2018 | 2019/2020 | Sum of Outyear Impacts [3] |
|---|---|---|---|---|---|---|---|---|---|---|
| PSERN Capital Fund | NA | KCIT | 3361 | 1126875 | | | | | | |
| Real Estate Services Labor Costs | | | | | | | | | | |
| King County Project Management | | | | | | | | | | |
| Lease Payments/Associated O&M [4] | | | | | | | $0 | | | $0 |
| Service Costs (Appraisal, Title, Move) | | | | | | | | | | |
| Tenant and Other Improvements | | | | | | | $ 8,500 | | | |
| 10% Art for General Fund Transactions | | | | | | | | | | |
| Other Transaction Costs | | | | | | | | | | |
| SUBTOTAL | | | | | | | **$8,500** | | | **$0** |
| | | | | | | | | | | |
| Real Estate Services Labor Costs | | | | | | | | | | |
| King County Project Management | | | | | | | | | | |
| Lease Payments/Associated O&M | | | | | | | | | | |
| Service Costs (Appraisal, Title, Move) | | | | | | | | | | |
| Tenant and Other Improvements | | | | | | | | | | |
| 10% Art for General Fund Transactions | | | | | | | | | | |
| Other Transaction Costs | | | | | | | | | | |
| SUBTOTAL | | | | | | | | | | |
| **TOTAL** | | | | | | | | | | |

## APPROPRIATION IMPACTS

As of the preparation date of this fiscal note, the impact of the above legislation on the **budget appropriation** of King County is *estimated* to be as indicated below: [5]

| Appropriation Unit | Appr. Number | Department | Fund Number | Project Number | Appropriation Notes | | 2015/2016 Appropriation Change | Total 6-Year CIP Outyear Planning Level Costs |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| **TOTAL** | | | | | | | | |

*Assumption and Additional Notes:*

1. A NPV analysis was not performed because the site location selection process for the lease is based primarily on the criteria of radio coverage optimization.
2. Though the PSERN project is supported by a voter approved property tax levy, the Executive Finance Committee has authorized pool borrowing for the temporary occasions when expenditures exceed PSERN fund balance just prior to the April and October property tax collection schedule.
3. According to the PSERN project plan, the responsibiity for lease cost payment after the 2020 completion of the PSERN project will be transferred from the PSERN project to the non-County PSERN operator.
4. According to the PSERN project plan, the lease and operating and maintenance costs will be paid using levy proceeds. A "$0" entry in the biennium columns indicates there are no lease or O&M costs for the PSERN project.
5. The PSERN appropriation amount for improvements at the site are for minor tenant improvements to the radio shelter.

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**Lease #:** K.C. #1668

**Site Name:** Auburn, WA

# COMMUNICATION SITE LEASE

THIS LEASE is made by and between **Federal Way Fire Department**, hereinafter called "Lessor", and **King County**, a municipal corporation and political subdivision of the State of Washington, hereinafter called "Lessee."

## AGREEMENT

In consideration of the mutual covenants contained in this Lease, the parties agree as follows:

**1. Premises:** Lessor does hereby agree to lease to Lessee and Lessee agrees to lease from Lessor, upon the following terms and conditions, Premises located in King County, Washington, and comprising approximately 6,708 square feet, legally described as shown in Attached Exhibit #1, which consists of Pages C1 and A1-1 of 7 of the construction plans for this site.

**2. Term:**

A. This lease term shall be for twenty (20) years and shall commence on November 1, 1998 and shall end on October 31, 2018, unless terminated sooner as provided herein and in the General Terms and Conditions. Lessee reserves the right to exercise an option to extend this lease for additional five (5) year periods upon written notice to Lessor at least ninety (90) days prior to expiration of the term or then current renewal period, subject to the written concurrence by the Lessor for each renewal period, which concurrence shall not be unreasonably withheld.

B. If Lessor cannot deliver possession of the Premises to Lessee on the above commencement date, this lease shall not be void or voidable, provided that delivery of the Premises can be made within a reasonable period of time. But, in that event, no rent shall be owing by Lessee or, in the alternative, there shall be a proportionate reduction of rent commensurate with Lessee's use of the Premises for the period between the above commencement date and the time when Lessor can deliver full possession to Lessee.

**3. Rent:** Lessee shall pay to Lessor a rent of ONE THOUSAND DOLLARS ($1,000) per calendar month of the lease term, payable in advance on or before the first (1st) day of each and every calendar month of the lease term. Upon the commencement of each five year period, the annual Rent for each five year period shall increase by fifteen percent (15%) over the annual rent paid for the immediately preceding five year period. All rent shall be made payable to the FEDERAL WAY FIRE DEPARTMENT and is to be received in the office of the:

Federal Way Fire Department
31617 First Avenue South
Federal Way, WA 98003

4. **Use of Premises:**

A. Lessee shall use said Premises for the construction and operation of a communications site including, but not limited to, a two hundred sixty foot (260') self-supporting antenna tower with a radio equipment building at its base. The primary purpose of this communications site is to function as part of the regional 800 MHz trunked radio system which provides 2-way communications for public safety agencies in King County, including the Lessee.

B. Lessee shall have full control of and authority over the Premises including, but not limited to, the tower and building with respect to managing said Premises as a communications site.

C. During the term of this Lease and any extensions and hold-overs thereof, Lessor agrees to cooperate with Lessee in obtaining, at Lessee's expense, all licenses and permits required for Lessee's use of the Premises (the "Governmental Approvals"), and Lessor agrees to allow Lessee to perform any surveys, soils testing and other tests, studies and/or engineering procedures on, under and over the Premises necessary to determine that the Premises will be acceptable to Lessee's engineering specifications, system design and Governmental Approvals.

5. **Subletting and Assignment:** Lessee may grant or deny any sublease of the Premises, provided that Lessee shall not sublet the whole or any part of the Premises, nor assign this Lease or any interest thereof, without the prior written consent of the Lessor. Lessee shall remit to Lessor fifty percent (50%) of any rents received from any sublease.

6. **General Terms and Conditions:** Attached hereto and incorporated herein by reference are the General Terms and Conditions. The General Terms and Conditions shall constitute terms of this Lease in addition to those stated herein. In the event of a conflict or inconsistency between the terms of this Lease herein and the General Terms and Conditions, the terms of this Lease, as included herein, shall control.

7. **Interference:**

A. It is agreed that the transmitting and receiving equipment authorized by this agreement including, but not limited to, the equipment of any sublessee, shall adhere to Western Washington Interference Committee (WWCIC) Engineering Standard No. 6 Rev. C (02-97) (See Exhibit 2) and shall not cause electromagnetic interference to Lessor's transmitters and receivers and that any such interference caused Lessor shall be eliminated by the Lessee at Lessee's expense. If the interference cannot be eliminated, such shall constitute a material breach of this Lease, and Lessor may terminate this Lease on ninety (90) days' written notice to Lessee pursuant to Paragraph 16 of the General Terms and Conditions ("Early Termination").

B. It is further agreed that any transmitting and receiving equipment owned or operated by Lessor or any other of Lessor's tenants or sub-tenants shall adhere to Engineering Standard No. 6 Rev. C and shall not interfere with Lessee's Antenna Facilities, or the operation thereof, in any direct or indirect manner whatsoever and that Lessor shall eliminate any such interference or cause such interference to be eliminated. If the interference cannot be eliminated, such shall constitute a material breach of this Lease, and Lessee may terminate this Lease on ninety (90) days' written notice to Lessor pursuant to Paragraph 16 of the General Terms and Conditions ("Early Termination").

8. **Entire Agreement - Amendments:** This Lease, together with the attached General Terms and Conditions and 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 Lease shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

9. **Notices:** Required notices, except legal notices, shall be given in writing to the following respective addresses:

If to LESSOR, to:

Jim Hamilton, Administrator
Federal Way Fire Department
31617 First Avenue South
Federal Way, WA 98003

If to LESSEE, to:

King County Property Services Division
500A King County Administration Building
500 - 4th Avenue
Seattle, WA 98104

10. **Severability:** The unenforceability, invalidity or illegality of any provision of this Lease shall not render the other provisions unenforceable, invalid or void, and such other provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the Lessor and Lessee have executed this lease on the dates specified below.

LESSOR:
Federal Way Fire Department

By: _____

Date: 6/22/99

LESSEE:
King County, Washington

By: _____
David Preugschat, Manager
Property Services Division

Date: 6/16/99

APPROVED AS TO FORM ONLY:

By: _____
Robert Stier, Deputy Prosecuting Attorney
King County, Washington

Date: 6-16-99

STATE OF WASHINGTON )
) ss
COUNTY OF KING )

I certify that Dave Preugschat signed this instrument, on oath stated that he was authorized by the King County Executive to execute the instrument and acknowledged it as the Manager of the Property Services Division of the Department of Construction and Facility Management of King County, Washington, to be the free and voluntary act of said County for the uses and purposes mentioned in the instrument.

Date: 6/16/99

Mark R. Phillips
NOTARY PUBLIC
Mark R. Phillips
(printed name)
in and for the State of Washington residing at
Bellevue. My appointment
expires 6/15/00.

STATE OF WASHINGTON )
) ss
COUNTY OF KING )

I certify that James Hamilton signed this instrument, on oath stated that he was authorized by the Federal Way Fire District to execute the instrument and acknowledged it as the Administrator to be the free and voluntary act of said Fire District for the uses and purposes mentioned in the instrument.

Date: 6/22/99

Steven H. Pritchard
NOTARY PUBLIC
Steven H. Pritchard
(printed name)
in and for the State of Washington residing at
Federal Way. My appointment
expires 5-9-2000

**Lease #:** K.C. #1668

**Site Name:** Auburn, WA

## GENERAL TERMS AND CONDITIONS

1. **Property Survey:** Lessee shall have the right to have the property surveyed. In the event that any defects are shown by the survey which, in the opinion of Lessee, may adversely affect Lessee's use of the Premises, Lessee shall have the right to immediate termination of this Lease upon notice to Lessor with no liabilities for termination.

2. **License Fees and Taxes:** Lessee shall pay, as they become due and payable, all applicable taxes and all fees, charges and expenses for licenses and/or permits required for or occasioned by Lessee's use of the Premises.

3. **Utilities:** Lessee shall be responsible for obtaining any utility service to the Premises that it desires. Lessee shall pay, when due, all costs, expenses, fees, services and charges of all kinds for heat, light, water, gas and telephone and for all other public utilities used on said Premises during the term of the Lease or any extension or hold-over so that the same shall not become a lien against the Premises.

4. **Lessee Improvements:**

A. Lessee shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities including, but not limited to, a tower and base, radio transmitting and receiving antennas and an electronic equipment building (collectively the "Antenna Facilities"). The Antenna Facilities shall remain the exclusive property of Lessee during the term of the Lease and any extension or hold-over. Upon final termination of the Lease, any Antenna Facilities remaining on the Premises shall become the property of the Lessor. Lessor retains the right to require removal of the Antenna Facilities pursuant to Paragraph 17 of the General Terms and Conditions ("Surrender of Premises").

B. Lessee shall have the right to install and maintain utilities, at Lessee's expense. Lessee shall have the right to permanently place utilities on or to bring utilities across the Premises and across Lessor's property in order to service the Premises and the Antenna Facilities. The Lessor shall execute an easement evidencing this right upon Lessee's request.

C. Lessee shall have a non-exclusive right of ingress, egress and access over and under Lessor's property to the Premises adequate to service the Premises and the Antenna Facilities at all times during this Lease and any extension or hold-over thereof at no additional charge to Lessee. The Lessor shall execute an easement evidencing this right upon Lessee's request.

5. **Maintenance:** Lessee shall, at its own expense, maintain the Premises and all Antenna Facilities in good working order, condition and repair. Lessee shall keep the Premises free of debris and anything of a dangerous or toxic nature or which would create an unsafe or unsanitary condition.

6. **Non-Ionizing Electromagnetic Radiation (NIER):** Lessee shall comply with standards and requirements in effect for non-ionizing electromagnetic radiation levels as established by the Environmental Protection Agency and other governmental agencies.

7. **Waiver of Lessor's Lien:** Lessor hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof which shall be deemed personal property for the purpose of this Lease, regardless of whether or not the same is deemed real or personal property under applicable laws, and the Lessor gives Lessee the right to remove all or any portion of the same from time to time in Lessee's sole discretion and without Lessor's consent.

8. **Indemnity and Hold Harmless:**

A. Lessor and Lessee mutually agree that in any and all causes of action and/or claims, or third party claims, arising under the terms, activities, use and/or operations of this Lease, including the Premises, each party shall be responsible to the other only to the extent of each other's comparative fault in causing alleged damages or injuries. Lessor and Lessee agree to indemnify the other to the extent of the indemnitor and indemnitee's proportional share.

B. As to any and all causes of action and/or claims or third-party claims, arising under the sole fault of a party to this Lease, said party shall have a duty to defend, save and hold the other party harmless and, upon failure to do so, said party shall pay reasonable attorney's fees, costs and expenses incurred by the other party to this Lease in defense of said claims and/or actions.

9. **Insurance:** The Lessor acknowledges, accepts and agrees that the Lessee is self-insured, and Lessee shall provide proof of such self-insurance upon the request of the Lessor.

10. **Mutual Waiver of Subrogation:** To the extent a loss is covered by insurance in force, Lessor and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance policies, including any extended coverage endorsements thereto, provided that this Lease provision shall be inapplicable if it would have the effect of invalidating any insurance coverage of Lessor or Lessee.

11. **Hazardous Substances:**

A. Lessor and Lessee mutually agree that no generation, use, release, handling, transportation, treatment or storage of hazardous substances (Hazardous Substances) exist on the Premises. Lessor acknowledges and fully discloses that the Premises contain no Hazardous Substances as defined by applicable law. Upon the execution of this Lease, if Lessor subsequently discovers the existence of Hazardous Substances on the Premises, Lessor shall disclose this material fact and act within full compliance of all applicable laws, regulations and safety practices governing Hazardous Substances. Lessor and Lessee further mutually agree that in any and all causes of action and/or claims, or third-party claims, arising under the terms, activities, use and/or operations of this Lease, each party shall be responsible to the other, to the extent of each other's comparative fault in causing the alleged damages or injuries, and notwithstanding Paragraph 20 of these General Terms and Conditions ("Arbitration"), each party agrees to indemnify, defend and

hold harmless each other, its appointed and elected officials, employees and agents, from and against any and all claims, liabilities, damages and expenses, including reasonable attorney's fees, asserted against Lessor or Lessee by a third party including, without limitation, any agency or instrumentality of the federal, state or local government, for injuries to persons, including death of a person, physical damage to or loss of use of property or clean-up activities (including, but not limited to, investigation, study, response, remedial action or removal), fines or penalties arising out of or relating to the presence, release or threat of release of a Hazardous Substance existing on or emanating from the Premises, except that which existed on or emanated from the Premises prior to Lessee's possession of the Premises or to the extent caused by the act or omission of Lessor, which shall be the sole responsibility of Lessor.

B. Definition of Hazardous Substances: "Hazardous Substances" as defined in this Lease shall mean:

1. Any toxic substances or waste, sewage, petroleum products, radioactive substances, heavy metals, medical, corrosive, noxious, acidic, bacteriological or disease-producing substances; or

2. Any dangerous waste or hazardous waste as defined in:

a. Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW CH. 70.105); or

b. Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or

3. Any hazardous substance as defined in:

a. Comprehensive Environmental Response, Compensation and Liability Act as now existing or hereafter amended (42 U.S.C. 9601 et seq.); or

b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

4. Any pollutants, contaminants or substances posing a danger or threat to public health, safety or welfare or to the environment, which are regulated or controlled as such by any applicable federal, state or local laws or regulations as now existing or hereafter amended.

**12. Liens:** Lessor and Lessee shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Lessee or Lessor.

**13. Anti-Discrimination:** Lessor and Lessee shall not discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age or the presence of any sensory, mental or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits associated with this Lease. Lessor and Lessee shall comply fully with all applicable federal, state and local laws, executive orders

and regulations which prohibit such discrimination. These laws include, but are not limited to, Chapter 49.60 of the Revised Code of Washington and Titles VI and VII of the Civil Rights Act of 1964.

**14. Condemnation:**

A. Lessor and Lessee shall immediately notify the other in writing of the receipt of notice of any proceedings with respect to a condemnation action or intent of any authority to exercise the power of eminent domain.

B. If all or a portion of the Premises is taken by any lawful authority under or pursuant to the power of eminent domain during the term of this Lease or any extension or hold-over, Lessee may elect to terminate this Lease as of the date the condemnor takes possession. If Lessee does not elect to terminate this Lease, the rent shall be reduced in the same proportion that the value of the portion of the Premises to be taken bears to the value of the entire Premises as of the date condemnor takes possession. Lessee shall have no claim or interest in or to any award of just compensation except that the Lessee shall be entitled to an amount equal to the fair market value of the Lessee's interest in any improvements made to the Premises by Lessee which are taken by the condemnor.

C. If temporary use of all or a portion of the Premises is taken by any lawful authority for a period which would reduce the use and, consequently, would cause the Premises to be untenantable for the use by Lessee as set forth in this Lease, Lessee may elect to terminate this Lease. Said termination shall occur as of the date the condemnor takes possession. If Lessee does not elect to terminate this Lease, Lessee shall be entitled to receive any award from the condemnor for the use of all or a portion of the Premises, EXCEPT that Lessee may elect to have the rents reduced by the amount proportionally attributable to any partial temporary taking, in which event, Lessee shall not be entitled to any portion of the award attributable to said use.

**15. Quiet Enjoyment:** Lessor warrants that Lessee shall have the quiet enjoyment of the Premises during the term of this Lease or any extension or hold-over thereof, without interference or disturbance, direct or indirect, by Lessor or any person having title paramount to Lessor's title or by any person claiming under Lessor.

**16. Early Termination:** This paragraph is in addition to any other provision of this Lease authorizing or otherwise relating to early termination of said Lease.

A. Government Approvals: This Lease is contingent upon Lessee obtaining all necessary governmental approvals, certificates, permits or licenses which Lessee may deem necessary. In the event that any of Lessee's applications for said approvals, certificates, permits or licenses should be finally rejected or any approval, certificate, permit or license issued to Lessee canceled or otherwise withdrawn or terminated by a governmental authority so that Lessee, in its sole discretion, will be unable to use the Premises for its intended purpose, Lessee shall have the right to terminate this Lease upon ninety (90) days' written notice to Lessor.

B. Premises Unsuitable: This Lease is also contingent upon the Premises meeting Lessee's technical requirements. In the event that Lessee, in its sole discretion, determines that the

Premises fails to meet the technical requirements necessary for Lessee's telecommunication purposes, Lessee shall have the right to terminate this Lease upon ninety (90) days' written notice to Lessor.

C. Damage or Destruction: In the event that the Premises or Lessee's Antenna Facilities or any portion thereof are damaged or destroyed so as to hinder effective use of the Premises or Antenna Facilities for Lessee's telecommunication purposes, Lessee may elect, in its sole discretion, to terminate this Lease upon ninety (90) days' written notice to Lessor.

D. Withdrawal of Funding: Lessee may terminate this Lease if necessitated by any governmental action resulting in the withdrawal of funding which supports this Lease, upon ninety (90) days' written notice to Lessor.

E. Lessor's Breach: Lessee may terminate this Lease upon a material breach of the terms of this Lease, upon ninety (90) days' written notice to Lessor.

F. Lessee's Breach: Lessor may terminate this Lease only upon a material breach of the terms of this Lease, upon ninety (90) days' written notice to Lessee.

G. Termination Process: Unless otherwise specified in this Lease, written notice of termination shall be delivered by certified mail, return receipt requested, and shall be effective upon receipt of such notice, as evidenced by the return receipt. Upon such termination, Lessee shall be entitled to the reimbursement of any rent prepaid by Lessee for any period after termination.

**17. Surrender of Premises:** At the end of the term of this Lease or any extension or hold-over thereof or other early termination of this Lease, Lessee shall peaceably deliver up to Lessor possession of the Premises in the same condition as received, except for ordinary wear and tear and damage by fire, earthquake, act of God or the elements. Upon Lessor's request, Lessee, at Lessee's expense, shall remove the Antenna Facilities. Such removal shall be done in a workmanlike and careful manner and without interference or damage to any other equipment, structures or operations on the Premises.

**18. Holding-Over:** If Lessee holds over after the expiration of the term of this Lease or any extension thereof, Lessee shall become a tenant from month-to-month upon the terms of this Lease herein specified.

**19. Agents, Successors and Assigns:** All of the agreements, conditions and provisions of this Lease shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, agents and assigns of Lessor and Lessee.

**20. Arbitration:** Lessor and Lessee agree that should any dispute arise concerning this Lease, both parties shall submit to binding arbitration. Arbitration shall be as agreed by the parties or, if the parties cannot agree, arbitration shall be administered through the American Arbitration Association. The cost of arbitration shall be divided equally between Lessor and Lessee.

**21. Costs and Attorney's Fees:** Except as provided in Paragraph 20 of these General Terms and Conditions ("Arbitration"), if a legal action is instituted by reason of any default or breach on the part of either party in the performance of any of the terms of this Lease, the losing party agrees to pay all reasonable costs and attorney's fees in connection therewith. It is agreed that the venue of any legal action brought under the terms of this Lease shall be in the county in which the Premises are located.

**22. Compliance with all Laws and Regulations:** In using the Premises, Lessee shall comply with all applicable laws and regulations of any and all authorities having jurisdiction.

**23. Survivability:** The provisions of Paragraphs 8 ("Indemnity and Hold Harmless") and 11 ("Hazardous Substances") of these General Terms and Conditions shall survive the expiration, hold-over or earlier termination of this Lease for any event occurring prior to or on the date of such expiration, hold-over or termination.

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

**EXHIBIT 2**

## *WESTERN WASHINGTON COOPERATIVE INTERFERENCE COMMITTEE*

### WWCIC ENGINEERING STANDARD #6 REV. C (02-97)

### FOR RADIO TRANSMITTING AND RECEIVING DEVICES

### AND FM BROADCAST

All communications fixed transmitter installations shall employ isolators or alternative techniques meeting the same criteria to minimize spurious radiation and intermodulation products. Additional filtering may be required according to frequency and interconnect devices as listed below. As the industry progresses, superior devices may be available and installed.

1. Transmitters in the 29.8 to 54 MHz range shall have a low pass filter, band pass filter or cavity providing a minimum of 30 dB attenuation removed 1.0 MHz from the operating frequency.
2. Transmitters in the 66 to 88 MHz range shall have at least 25 dB of isolation followed by a band pass cavity providing at least 20 dB of attenuation 1.0 MHz removed from the operating frequency.
3. Transmitters in the 88 to 108 MHz range operating at a power level of 350 watts or less shall have at least 25 dB of isolation followed by a band pass cavity providing at least 35 dB of attenuation 1.0 MHz from the operating frequency.
4. Transmitters in the 88 to 108 MHz range at power levels above 350 watts shall have a band pass cavity providing at least 25 dB of attenuation 1.4 MHz from the operating frequency.
5. Transmitters in the 130 to 225 MHz range shall have at least 50 dB of isolation followed by a low pass filter and band pass cavity with a minimum of 15 dB of attenuation 1.0 MHz removed from the operating frequency.
6. Transmitters in the 400 to 470 MHz range shall have at least 50 dB of isolation followed by a low pass filter and band pass cavity with a minimum of 15 dB of attenuation 2.0 MHz removed from the operating frequency.
7. Transmitters in the 806 to 990 MHz range shall have at least 50 dB of isolation followed by a low pass filter or a band pass filter with a minimum of 15 dB of attenuation 10 MHz removed from the operating frequency and 40 dB of attenuation at 20 MHz.

<u>The following engineering standards will be observed:</u>

1. A band pass cavity/filter or crystal filter is recommended at the input of all receivers. Its purpose is to protect against RF energy "off frequency" from mixing in a non-linear device such as the first RF amplifier in a receiver which can re-radiate causing interference.
2. The band reject duplexer (cross notch duplexer) may not be used without the use of cavities or isolators.
3. Single braid coax cable is prohibited. Double shielded cable must have over 98.5% shield coverage. Single braid cable with resistive terminations is acceptable ONLY as a fixed method for relative signal strength measurements.
4. Packeted coaxial cable is required. Unjacketed transmission line of any type is prohibited.
5. Use of N, TNC, DIN or other types of constant impedance connector is preferred over a non-constant impedance type. Effort should be made to prevent the use of coax adaptors.

6. All equipment is to be grounded. Grounding is to be done with low impedance conductor to the station ground grid, preferably with flat copper strap or heavy braid. The "green wire" of the AC power plug is not an acceptable grounding point. The site manager has the responsibility of providing a suitable ground for users.
7. Transmitting systems must be checked periodically, which includes the isolator, VSWR on the load port of the isolator and overall system insertion loss.
8. Bare metallic ties are prohibited for securing transmission lines to towers. In the case of large lines, use of stainless steel or galvanized hangers is permitted. Hardware capable of rusting and dissimilar metals are prohibited. Transmission lines are to be insulated from metallic structures/objects. It is the duty of installation personnel to prevent "diode junctions" from taking place.
9. All loose wire or metal objects are to be removed from the tower and site. Metal fencing should be plastic coated.
10. All equipment shall be licensed and operated in full accordance with all applicable rules and regulations of the regulating agency, (FCC, NTIA). There shall be no modifications which violate "FCC Type Acceptance."
11. It is recommended that all equipment be labeled with the owner's name and a current 24-hour telephone contact number, (service agency is acceptable).
12. Every effort should be made to protect the equipment from lightning damage. Feed-through lightning protectors should be used on all coaxial cable connections to equipment enclosures. Gas, Gap, MOV and Silicone Avalanche Diode (SAD) protectors should be used in control, audio, telephone and power connections.

## INTERFERENCE POLICY STATEMENT

In the event Radio Interference (RI) occurs, all users of the site are required to participate in solving the problem by providing technical personnel and test equipment to locate the source of the specific problem. If these standards are complied with, additional isolators, filters, cavities, etc. may be required. All equipment must be maintained in good working order and meet original manufacturer's and FCC specifications for reduction of transmitter spurious radiation. In the event radio interference (RI) occurs, and these standards are complied with, additional isolators, filters, cavities, etc. may be required to correct specific problems.

Involved systems not in full compliance with these standards will be asked to comply immediately at their own expense.

It is customary for the offending transmitter owner/operator to finance the required corrections or equipment necessary to correct the problem. It is also good practice to allow the affected receiver owner/operator to provide the necessary equipment (if one so chooses) for installation by the offender without surrendering ownership of the equipment and expect its use to be uninterrupted, i.e., not taken out of service without notifying the owner.

The PCS industry is developing the 2.0 Ghz band. It is unknown at this time what interference may be expected or caused and what products will be available for interference mitigation. Policies and standards will be developed by this committee as needed.

These are minimum standards of good engineering practice in the operation and maintenance of electronic sites. These standards will be revised as deemed necessary by the committee.

*Back to Home Page*

*For more information please send an email to Alan Robinson at alanr@wwcic.org.*

# EXHIBIT 2

## *WESTERN WASHINGTON COOPERATIVE INTERFERENCE COMMITTEE*

### WWCIC ENGINEERING STANDARD #6 REV. C (02-97)

### FOR RADIO TRANSMITTING AND RECEIVING DEVICES

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<u>The following engineering standards will be observed</u>:

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4. Packeted coaxial cable is required. Unjacketed transmission line of any type is prohibited.
5. Use of N, TNC, DIN or other types of constant impedance connector is preferred over a non-constant impedance type. Effort should be made to prevent the use of coax adaptors.

ORIGINAL

**King County Lease #: 1668**
**King County Site: Auburn, WA**

# Amendment No. 1 to Communication Site Lease

THIS AMENDMENT to Communication Site Lease #1668 is made by and between, **Federal Way Fire District**, hereinafter called "Lessor" and **King County**, a municipal corporation and political subdivision of the State of Washington, hereinafter called "Lessee."

## RECITALS

This is the first (1st) Amendment between Lessor and Lessee to Communication Site Lease #1668, said Communication Site Lease having been fully executed and made effective on November 1, 1998.

*WHEREAS:*

1. Lessee has subleased a portion of the Premises from Lessor and is required to forward sublease rents as defined in the Communication Site Lease; and

2. Lessee is preparing to provide services to Lessor as described herein; and

3. Lessee will forward a portion of future collocation rents as defined herein and in the Communication Site Lease.

NOW, THEREFORE, LESSOR AND LESSEE HEREBY MUTUALLY AGREE TO THE FOLLOWING:

Effective Immediately, Section 11 shall be added to the Communication Site Lease:

**11. Services In Lieu of Prior Collocation Rent:**

Lessee will reconfigure the Lessee's microwave system between the tower on the Premises and Federal Way Fire Station 62 to provide one (1) T1 circuit from the demarcation at the Station 62 tower site to the Lessee's microwave demarcation at Valley Communications Center and seven (7) individual T1 circuits from the demarcation at the Station 62 tower site to the Lessee's microwave demarcation at the tower on the Premises. Any additional equipment or wiring needed to allow these circuits to be put to beneficial use by Lessor are strictly the responsibility of Lessor.

In consideration of Lessee providing these services, Lessor shall not require any currently due sublease rent to be paid and will forego receiving any sublease revenue from the tower on the Premises until October 1, 2004. After that date, Lessee will begin paying Lessor fifty percent (50%) of any rents received from any sublease as previously agreed. Lessee retains full

ownership of the microwave equipment at Station 62 and at the tower on the Premises and agrees to maintain the equipment for the benefit of Lessor on a time and material basis until such time as the equipment becomes unserviceable due to lack of parts availability or support from the original equipment manufacturer. Should the identified equipment, listed on Exhibit 3 attached hereto and incorporated herein, become unserviceable, Lessee will send notice of same to Lessor within 30 days of such determination at which point Lessor has 60 days to purchase the identified equipment for a fee of $ 1.00.

In addition, ALL OTHER TERMS AND CONDITIONS OF THE LEASE SHALL APPLY.

IN WITNESS WHEREOF, Lessor and Lessee agree to and execute this Lease Amendment on the dates specified below:

LESSOR:
Federal Way Fire District

By: Grant G Gaspard

Name: GRANT G. GASPARD

Date: 10/12/04

LESSEE:
King County, Washington

By: Calvin Hoggard
Calvin Hoggard, Manager
Real Estate Services Section

Date: 10-18-04

APPROVED AS TO FORM ONLY:

By: Robert Stier, Senior Deputy Prosecuting Attorney
King County, Washington

Date: 10/18/04

STATE OF WASHINGTON )
) ss
COUNTY OF KING )

I certify that Calvin Hoggard signed this instrument, on oath stated that he was authorized by the King County Executive to execute the instrument and acknowledged it as the Manager of the Real Estate Services Section of the Facilities Management Division of the Department of Executive Services of King County, Washington, to be the free and voluntary act of said County for the uses and purposes mentioned in the instrument.

Date: 10/18/04

TOM A. PAINE
COMMISSION EXPIRES
NOTARY
PUBLIC
AUG 15, 2007
STATE OF WASHINGTON

Tom Paine
NOTARY PUBLIC
TOM PAINE
(printed name)
in and for the State of Washington residing at SEATTLE. My appointment expires 8/15/07.

STATE OF WASHINGTON )
) ss
COUNTY OF KING )

I certify that Grant G. Gaspard signed this instrument, on oath stated that he was authorized by Federal Way Fire District to execute the instrument and acknowledged it as the Chief Financial Officer to be the free and voluntary act of said Fire District for the uses and purposes mentioned in the instrument.

Date: 10/12/04

PATRICIA M. GENTRY
COMMISSION EXPIRES
NOTARY
PUBLIC
9-11-05
STATE OF WASHINGTON

Patricia M. Gentry
NOTARY PUBLIC
Patricia M. Gentry
(printed name)
in and for the State of Washington residing at Federal Way. My appointment expires 9/11/05.

# EXHIBIT 3

## Equipment List

**Federal Way Fire Station 62 Equipment**

Harris Microstar
Model: DRMUEVOARA
Serial: M0421730

Load Center Power system
Model: 9RE111HBBACO
Serial: C10108-2

RFS 6ft dish

Elliptical Waveguide

Andrew dehydrator

**King County RCS Site**

Harris Microstar
Model: DRMUEVOARA
Serial: M0421731

RFS 6 ft dish.

Elliptical Waveguide

# Federal Way
# Lease Property Summary

**Photo of Property:**

| | |
|---|---|
| **Property Owner:** | South King Fire and Rescue |
| **Address:** | 3203 S. 360th, Auburn, King County, Washington 98001 - Parcel No. 2721049034 |
| **Cost Per Month:** | $1,520.88 |
| **Operational Costs:** | $ 1,000 per month |
| **Term:** | 25 years with a Lessee's right to extend for three additional five-year periods |
| **Square Footage:** | Approximately 6,708 square feet of land and space on the tower |
| **Council District:** | Seven |
| **Funding Source:** | Puget Sound Emergency Radio Network Capital Fund, Number 3361 |
| **Previous Location:** | Same |

## Lease Synopsis:

The Federal Way Fire Department owned this parcel of land in 1998. The Federal Way Fire Department and King County entered into the underlying lease, King County Lease #1668, commencing in November 1998, and expiring in October 2018. After the Lease's commencement, Federal Way Fire Department transferred its interest in the Property and the Lease to King County Fire Protection District #39, which entity was subsequently merged into South King Fire and Rescue (South King) by King County Ordinance 15307,

adopted November 3, 2005. The Lease grants the County the right to use the land as a site in today's County Emergency Radio Communications System (Current Network). The County amended Lease #1668 for the first time in October, 2004 (Amendment 1). This is the proposed Second Amendment to the Lease (Amendment 2).

The County currently owns a tower, 1025 square foot shelter, generator, diesel storage tank, communications equipment, and other improvements on the site. Amendment 2 would enable the new Puget Sound Emergency Radio Network (PSERN) to make modifications to County's equipment at the site. If Amendment 2 is signed, PSERN will add six new racks of equipment, four new microwave antennas, and four new land mobile radio antennas for its own use. We will also be removing the same quantity of existing equipment. Amendment 2 does not alter the rent; there may be a slight reduction in biennial operating costs because of the greater efficiency of equipment, but this amount cannot be determined at this time.

## Context

*Rationale for transaction:* This site is critical for emergency radio coverage in Auburn and the surrounding areas. Our contract requires the PSERN system vendor to meet specific performance criteria, including coverage and signal strength. The PSERN vendor identified the site as part of its system design as required in the contract for designing the radio communication system. Sites are placed in specific locations for the PSERN to meet these critical requirements.

*Policy considerations*: Council approved the PSERN project: Ordinances 17993, 18074, 18075; and PSERN capital fund 3361. There is urgency in completing the PSERN. The Current Network is aging and the vendor will stop supporting the system at the end of 2018. PSERN staff reviewed the radio communication needs for this area and determined that using the existing communications system location would be more timely and cost-effective than leasing, permitting and developing a new site in this area.

*Political considerations:* The PSERN Levy, in 2015, was supported by 65% of voters, and will improve public safety communications. South King and its attorney have approved the lease language and it is expected South King's Board will approve it in due course. The existing tower will not be modified under this Amendment 2 and there should be little change in visual impact. PSERN will cover both the King County and Pierce County portions of the City of Auburn and will enable seamless communications with other police and fire departments providing mutual aid.

*Community considerations or partnerships:* Most of the surrounding residents are unlikely to be aware of the improvements and the net visual impact will be near zero. Several organizations, including AT&T, Washington State Department of Transportation, and Valley Communications Center, use the County's facilities at this site. They will not be impacted by these improvements.

*Fiscal considerations:* The PSERN project's work at the site will total approximately $8,500 consisting of the following components: Installation (replacement) of certain

equipment in the shelter and antennas on the tower. The funding for these improvements has previously been appropriated by Council. Rent will not change as a result of this work. Expenses for electrical power may decrease slightly.

*Other considerations*: This Lease will be taken in the County's name and the improvements described above will be completed by the County's contractor. When the subsequent non-profit is formed to manage and operate the PSERN, this Lease may be assigned to that organization or the County may decide to sublease the space to such organization and retain control of the facility for purposes of managing the site for the other tenants thereon.

*CIP/operational impacts:* The construction costs associated with this site were approved as part of Ordinances 17993, 18074, 18075; PSERN capital fund 3361. We estimate that once work is completed there may be a slight reduction in operating costs, in an amount that cannot be determined at this time, because of the greater efficiency of equipment. The construction is not expected to impact the current wireless companies that have equipment on the tower.

*King County Strategic Plan impact:* This transaction supports the King County Strategic Plan guiding principles of Financial Sustainability and Regional Collaboration. Construction and operation of the PSERN project supports the Strategic Plan goal of providing for safe communities. PSERN will be used to dispatch police, fire, and medical services to emergency locations where they are needed and will allow responders to communicate at those locations. It will also be used to coordinate the activities of water, sewer, and electricity utilities in restoring service after natural disasters.

*Equity and Social Justice impact:* In accordance with the Real Property Asset Management Plan (RAMP) Strategy 2.0, FMD and PSERN staff evaluated this location for Equity and Social Justice (ESJ) considerations. PSERN is an emergency radio network and will serve a larger share of the County than the Current Network, which was completed nineteen years ago. This radio tower is located in the Five Mile Lake neighborhood of Federal Way. Property records indicate the current radio tower has been located here since 1999, which will allow the program to continue without any new ESJ impacts.

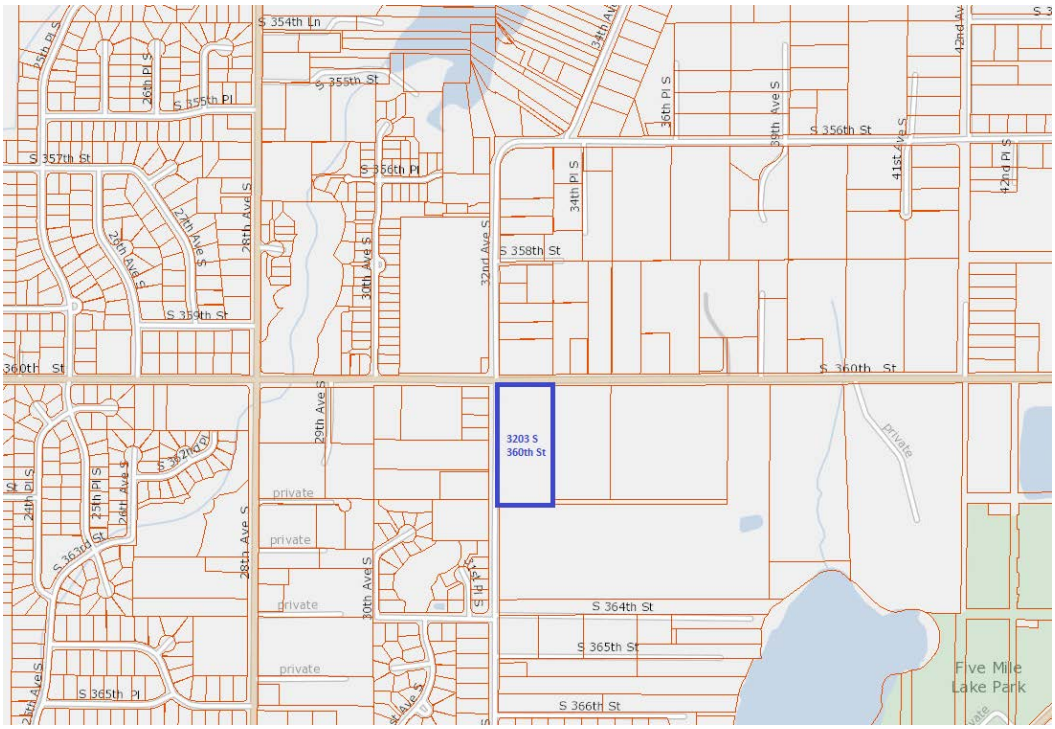
*Energy Efficiency impact:* Most of the electronic components in the Current Network are twenty years old; the equipment PSERN is buying is significantly more energy efficient.

## Lease Alternatives Analysis

*Summary:* This location was identified by the County's vendor who has responsibility for designing the new PSERN system and identifying sites. The County's contract makes a single vendor responsible for the communications system design, sites and equipment. Federal Way was chosen because it was an existing site that provides coverage for the intended area. There are no other sites that provide the desired coverage. Thus, the only alternative would be to build a new site at far greater cost and delay.

## Vicinity View Map

## Parcel Map



King County

# Metropolitan King County Council
# Budget and Fiscal Management Committee

## STAFF REPORT

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| **Agenda Item:** | 9 | **Name:** | Patrick Hamacher |
| **Proposed No.:** | 2016-0396 | **Date:** | August 24, 2016 |

## SUBJECT

Proposed Ordinance 2016-0396 would authorize the County Executive to execute a lease for tidelands adjacent to Colman Dock in downtown Seattle. This lease would be executed with the purpose of constructing a new Passenger Only Ferry (POF) dock on the site.

## SUMMARY

The County operates POF lines between downtown Seattle and Vashon Island and between downtown Seattle and West Seattle. The Washington State Ferry (WSF) system is in the process of rebuilding the Colman Dock into a new multi-modal site and the lease proposed by this ordinance would incorporate the POF facility into those plans. The lease has an initial term of 50 years and has a county option for an additional 25 years. The cost of the lease is $7,007.40 the first year plus inflation by the increase in the consumer price index (CPI) for each year of the term.

## BACKGROUND

With passage of Ordinance 17935, King County took over the operations previously performed by the King County Ferry District. The County's Marine Division located within the Department of Transportation has responsibility for operation of two POF lines. One between Seattle and Vashon Island and one between downtown Seattle and West Seattle.

WSF is currently undertaking a capital project to renovate and expand the Colman Dock located at Pier 50 in downtown Seattle. This new terminal will be a multi-modal facility and King County has an opportunity to participate in this project provided this ordinance can be executed and a subsequent construction contract for construction of the actual facility can be executed between King County and the State.

## ANALYSIS

**Financial:** When analyzing this lease agreement, the financial terms are essentially negligible due to the exceedingly low cost of the lease. The State has determined that the 9,160 square feet of tidelands have a value of 8.5 cents per month. Additionally,

because it will be used for a public benefit the County will get a 25% discount. This means that the tidelands lease for $584 a month or just over $7,000 per year. In addition, subsequent years will increase based upon inflation. However, even assuming 5% annual inflation for the term of this lease, the annual costs would only be about $285,000 in the year 2094 or 2095 (assuming a 2018 or 2019 execution date).

The construction of the new facility is expected to cost between $22 million and $25 million and take between 12 and 18 months to complete and would be funded through the Ferry District property tax levy.

**Lease Agreement:** The lease terms generally are similar to language that would be expected in a county-originated lease. Specifically, key terms of the lease are:

- Term: 50 year original terms with a county-option for an additional 25 year term. The state cannot unreasonably withhold the lease extension.
- Costs: $7000 per year plus inflation based upon CPI.
- Shared Expenses: State and County will share operations and maintenance costs for shared spaces in the terminal.
- Cooperation: there are provisions for joint-decision making and dispute resolution

Much of the rest of the agreement surrounds typical boiler plate language on items like insurance, indemnification, hazardous materials and other standard provisions.

The one substantive term raised by staff and legal review is the termination clause. Washington State remains the owner of the property and there are circumstances where the lease may need to be terminated early due to the State changing the use of the facility. In these circumstances the State has agreed to reimburse the County for relocation and some construction costs <u>only if there is an appropriation by the Legislature to do so.</u>

This provision does need to be put into the proper context. The State could cancel the lease with shorter notice for areas where the county is at fault, including:

- 30 days if the County abandons the site for a continuous period of 90 days
- 45 days if the county defaults
- 60 days if the county fails to cure a default or remedy O&M issues, commences bankruptcy proceedings, seeks the appointment of a receiver or trustee,

These provisions are fairly standard and similar language is contained in most similar county leases. The provision where staff wanted Councilmembers to draw their attention is in regard to a potential situation where WSF would need to end the lease early because the State has need to use the facility and relocate the county due to a legislatively approved and funded capital project.

In this circumstance, the State would be required to give two years' notice before termination of the County's lease. The State would be required to reimburse the County for any non-depreciated value portions of the County's project they would continue to use (for example, the lease refers to pilings and trestles). However, the State would only

reimburse the County for relocation and portions of the County's project they would not be re-using if the Legislature provided an appropriation to do so.

The potential outcome that would be harmful to the County would be an outcome where the State terminates the lease, WSF seeks funding, but the Legislature does not approve the funding for relocation and construction buyout. In this circumstance, the State would not be obligated to reimburse the County for either relocation or unamortized non-reused construction costs.

Staff have been apprised of these negotiations as they have been ongoing and the Executive Branch believes that the likelihood of this occurring is low and that the benefits of being co-located with the new facility outweigh the potential risks at some point in the future. Further, the Executive believes that these very large transportation projects are very difficult to approve and fund and the likelihood of this occurrence is low. This provision represents a business or policy decision by the Executive and by the County if the lease is executed.

**AMENDMENT**

Amendment 1 deletes the transmitted lease agreement and inserts a new lease with clarifying changes recommended by legal counsel.

**ATTACHMENTS**

1. Amendment 1 with attachment
2. Proposed Ordinance 2016-0396 (and its attachment)
3. Property Summary
4. Transmittal Letter
5. Fiscal Note

**INVITED**

1. Tony Wright, Director, Finance and Business Operations Division
2. Paul Brodeur, Director, Marine Division, Department of Transportation

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8/22/2016
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Sponsor: Upthegrove

Proposed No.: 2016-0396

**AMENDMENT TO PROPOSED ORDINANCE 2016-0396, VERSION 1**

Delete Attachment A, Lease Agreement, and insert Attachment A, Lease Agreement dated 8-22-2016.

**EFFECT:** ***Makes corrections to the agreement recommended by the Council's legal counsel to clarify termination provisions.***

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**ATTACHMENT A:**

**LEASE AGREEMENT**
**8.22.16 version**

**Attachment A**

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

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

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

## Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Days** means calendar days.

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

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

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

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

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

**DNR** means the Washington State Department of Natural Resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**POF** means passenger-only ferry.

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

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

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

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

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

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

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

Tidelands to locate the POF Facility.

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

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

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

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

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

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

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

**WSDOT** means the Washington State Department of Transportation.

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

**WSF** means the Washington State Ferries.

## 1. Parties

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

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

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

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

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

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

2.4 Personal Property.

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

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

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

**3. Uses Permitted Under Lease.**

3.1 Permitted Uses

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

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

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

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

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

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

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

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

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

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

1. The docking of the COUNTY Vessels;

2. The loading and unloading of passengers, bicycles, baggage, and supplies from the COUNTY Vessels;

3. the moorage of the COUNTY Vessels during non-service hours during the day and night tie-up and COUNTY Vessel maintenance work conducted while vessels are tied up; and

4. The COUNTY-sponsored special event sailings to/from the POF Facility, subject to advance notice to and coordination with WSF operations personnel.

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

3.3. Advertising, Signage, and Naming Rights.

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

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

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

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

A. The Parties shall comply with all Applicable Laws; and

B. The COUNTY shall secure and maintain all necessary permits and licenses for the COUNTY's use of the POF Facility as authorized under this Lease.

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

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

**4. Term, Term Extension and Commencement Notice.**

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

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

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

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

## 5. Consideration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**6. Operations and Maintenance Obligations.**

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

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

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

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

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

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

**7. Indemnity.**

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

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

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

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

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

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

**8. Insurance.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**10. Releases by WSF and Existing Environmental Conditions.**

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

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

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

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

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

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

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

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

**11. Damage and Repair.**

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

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

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

## 12. Assignment, License, and Subletting.

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

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

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

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

## 13. Termination and Potential Renewal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Prevents use of Pier 50 by pedestrians and functionally precludes the COUNTY's passenger-only ferry operations due to reasons of safety; and

2. Cannot be accommodated or managed through temporary revisions to or re-routing of the COUNTY's passenger-only ferry uses, or through relocation of the COUNTY's POF operations to a portion of Pier 52.

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

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

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

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

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

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

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

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

14.3 In general.

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

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

**15. Notice.**

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

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

COUNTY:

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

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

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

**16. Taxes and Assessments.**

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

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

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

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

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

**17. No Liens or Other Encumbrances.**

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

17.2 Liens.

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

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

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

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

1. Diligently pursue lien and successfully complete removal;

2. Deposit sufficient cash with WSF to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim; or

3. Procure and record a bond which releases the Premises from the claim of the lien from any action brought to foreclose the lien.

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

**18. Restoration and Vacation of Premises.**

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

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

**19. Joint Decision Making and Dispute Resolution.**

19.1. Joint Decision Making.

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

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

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

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

19.2 Dispute Resolution.

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

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

| WSF: | COUNTY: |
|---|---|
| Director of Terminal Engineering | King County, DOT |
| 2901 Third Avenue, Suite 500 | Director, Marine Division |
| Seattle, WA 98121-3014 | 201 S. Jackson Street |

Seattle, WA 98103

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

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

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

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

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

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

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

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

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

**20. Force Majeure.**

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

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

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

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

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

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

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

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

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

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

## 21. Other Terms and Conditions.

21.1 Maintenance of records; Audit:

A. Availability of Records

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

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

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

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

21.2 Governing Law; Venue; Attorney Fees and Costs:

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

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

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

A. Each Party hereto is of equal bargaining strength;

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

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

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

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

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

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

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

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

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

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

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

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

**TERMS AND CONDITIONS CONTINUE ON NEXT PAGE**

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

A. Section 7 (Indemnity)

B. Sections 9 and 10 (Hazardous Materials)(Releases by WSF and Existing Environmental Conditions)

C. Section 14.3.A (Applicable Laws)

**SIGNATURES**

| **KING COUNTY** | **WASHINGTON STATE DEPARTMENT OF TRANSPORTATION** |
|---|---|
| By: _____ | By _____ |
| Anthony Wright, Director<br>Facility Management Division,<br>King County Department of<br>Executive Services | Lynne Griffith<br>WSDOT Assistant Secretary<br>For Washington State Ferries |
| Date: _____ | Date: _____ |

**NOTARY BLOCKS FOLLOW**

## COUNTY ACKNOWLEDGMENT

STATE OF WASHINGTON )
) ss
COUNTY OF KING )

On this _____ day of _____, 20___, before me personally appeared _____ , to me known to be the duly appointed _____ and that he/she executed the within and foregoing instrument and acknowledged the said instrument to be free and voluntary act and deed of said _____, for the uses and purposes therein set forth, and on oath states that she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
_____ day of _____, 20___.

Notary Public in and for the State of Washington

Residing at _____

My commission expires _____

Print Name _____

## WSDOT ACKNOWLEDGMENT

STATE OF WASHINGTON )
) ss
COUNTY OF THURSTON )

On this _____ day of _____, 20___, before me personally appeared _____, to me known to be the duly appointed _____, WSDOT/Washington State Ferries, and that he executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
_____ day of _____, 20___.

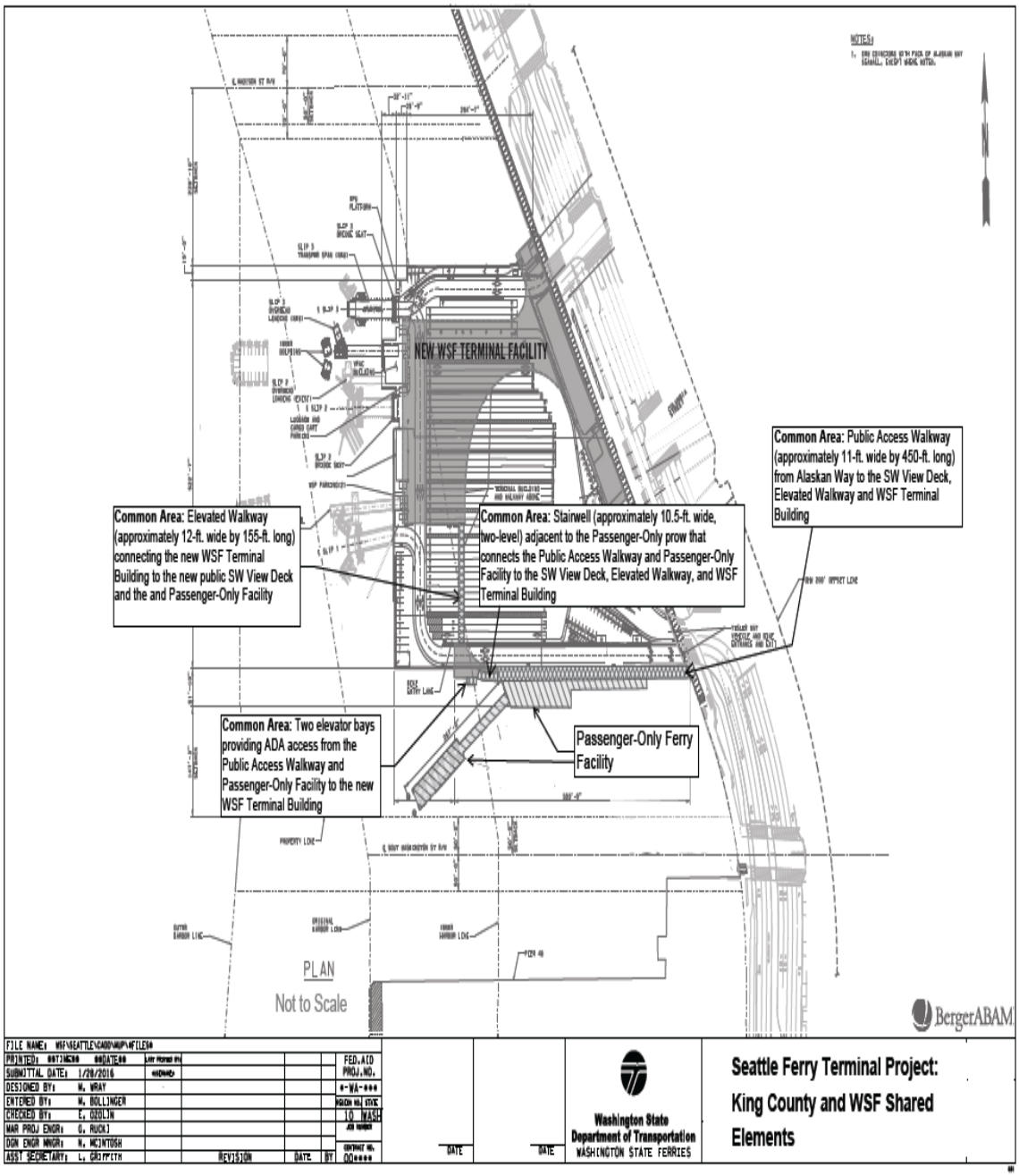
Notary Public in and for the State of Washington

Residing at _____

My commission expires _____

Print Name _____

**EXHIBIT A**
**Description and diagram of Common Areas**



# EXHIBIT B
# RESOLUTION 452 AND DIAGRAM OF PUBLIC PLACE

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

RESOLUTION NO. 452

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

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

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

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

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

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

SECTION 6. The State of Washington, Department of Natural Resources has prepared a map[1] showing the proposed relocation of the outer harbor line as well as designating a portion of the harbor area as a "Public Place."

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

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

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

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

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

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

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

APPROVED AS TO FORM:

Victoria W. Sheldon 5-22-84

JOT/jd
5/22/84

King County
Mtce # 525

Supplemental Map
FROM
DNR
TO
STATE OF WASHINGTON
IN
King County

King County: Seattle
Ferry Terminal

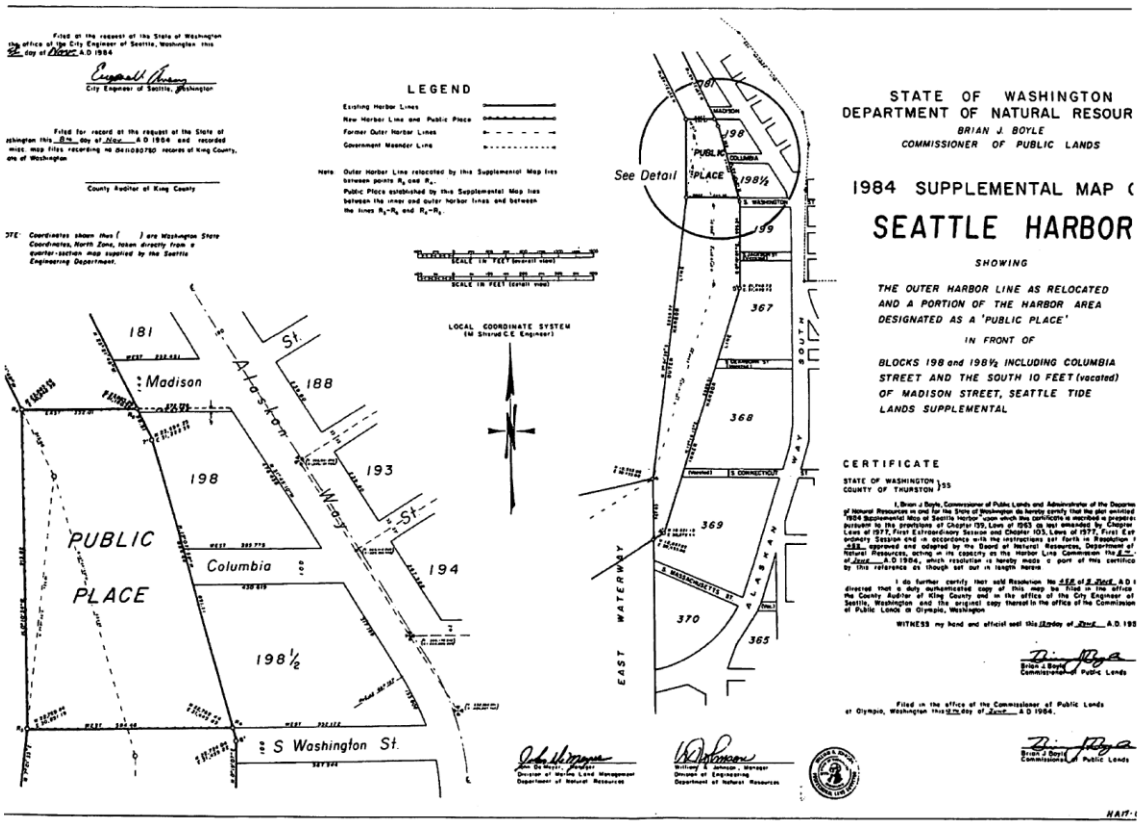

LEGEND
STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOUR
BRIAN J. BOYLE
COMMISSIONER OF PUBLIC LANDS
1984 SUPPLEMENTAL MAP
SEATTLE HARBOR
SHOWING
THE OUTER HARBOR LINE AS RELOCATED AND A PORTION OF THE HARBOR AREA DESIGNATED AS A 'PUBLIC PLACE'
IN FRONT OF
BLOCKS 198 and 198½ INCLUDING COLUMBIA STREET AND THE SOUTH 10 FEET (vacated) OF MADISON STREET, SEATTLE TIDE LANDS SUPPLEMENTAL
CERTIFICATE
See Detail
PUBLIC PLACE
Madison
Columbia
S Washington St.
Alaska St.
West St.
EAST WATERWAY
SOUTH BAY
LOCAL COORDINATE SYSTEM
SCALE IN FEET

**EXHIBIT C1**
**LEGAL DESCRIPTION AND DIAGRAM OF LEASED TIDELANDS**

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

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

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

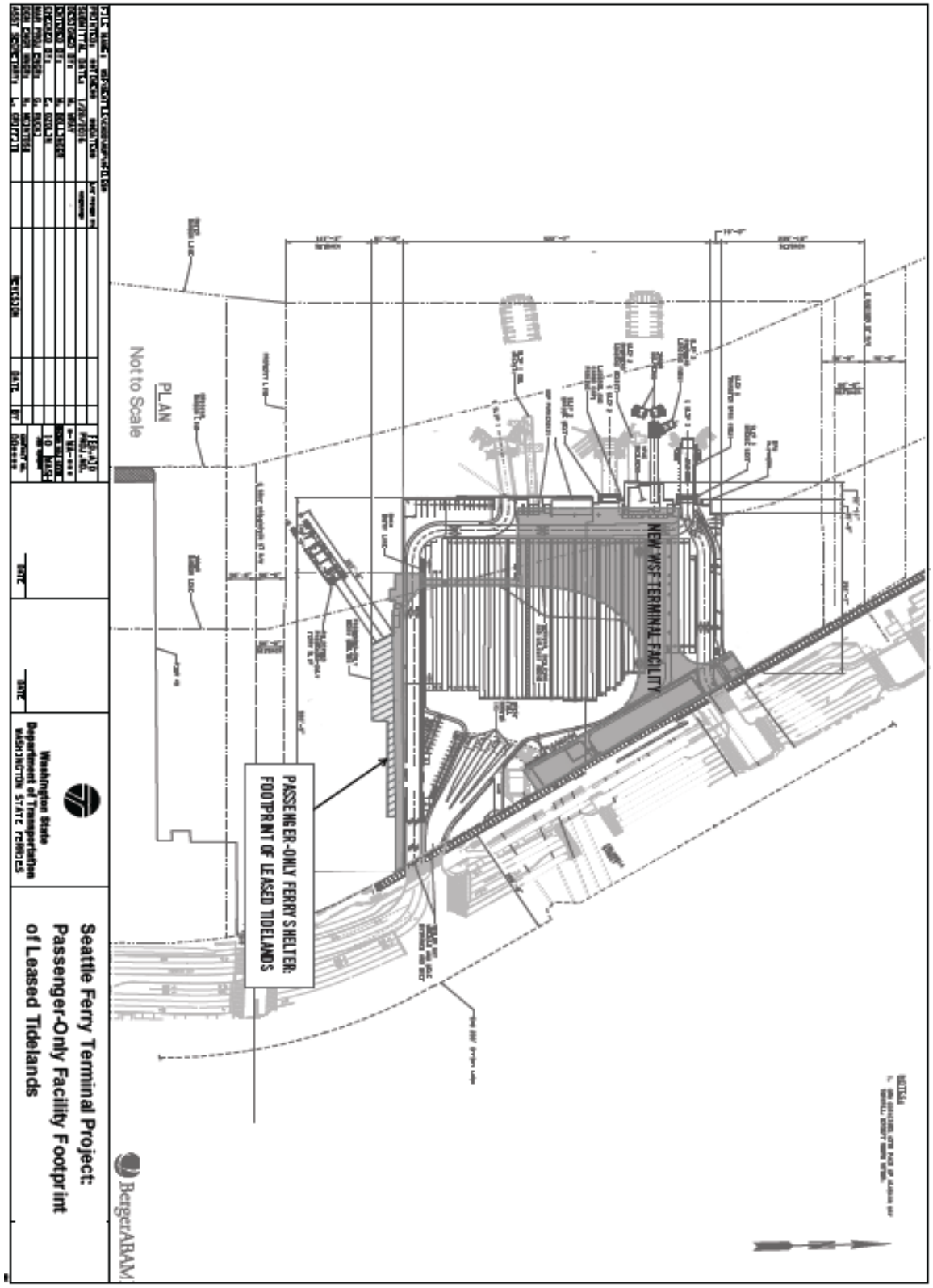

NEW WSF TERMINAL FACILITY
PASSENGER-ONLY FERRY SHELTER:
FOOTPRINT OF LEASED TIDELANDS
PLAN
Not to Scale
BergerABAM
Washington State
Department of Transportation
WASHINGTON STATE FERRIES
Seattle Ferry Terminal Project:
Passenger-Only Facility Footprint
of Leased Tidelands

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

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

## EXHIBIT D

## DESCRIPTION OF PERSONAL PROPERTY OWNED BY COUNTY

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

**EXHIBIT E**

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

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

RECITALS

A. WSF and COUNTY are parties to a certain Lease, dated _____, ____, 2016.

B. Section 21.8 of the Lease provides for written modifications.

C. Both Parties desire to amend certain terms and exhibits in the Lease.

AGREEMENT

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

**1. Amendment to Section ____ of the Lease.** Section _____ is amended in its entirety to read as follows:

**2. Amendment to Section _____ of the Lease.** Exhibit _____ is replaced by the revised Exhibit _____ which is attached and incorporated into the Lease.

**3. New Exhibit _____.** A new **Exhibit _____** identifying _____ is attached and incorporated into the Lease.

**4. Other Provisions Unaffected.** All other provisions of the Lease remain in full force and effect and are not altered or affected in any way unless specifically modified herein. The provisions of the Lease modified by this Amendment shall apply equally to any and all other provisions in the Lease as though the modified provisions were originally written as amended hereby.

**5. Authority.** Each person executing this Amendment represents and warrants that he/she has full power and authority to execute and deliver this Amendment on behalf of the party for whom he/she is executing and to bind such party to all the terms and provisions of this Amendment.

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

| KING COUNTY | WASHINGTON STATE<br>DEPARTMENT OF TRANSPORTATION<br>FERRIES DIVISION |
|---|---|
| By: _____ | By: _____ |
| _____ | _____ |
| _____ | _____ |
| Date: _____ | Date: _____ |

**EXHIBIT F**
**FORM OF COMMENCEMENT NOTICE**

[Insert Date Here]

King County
[Insert Address for King County Here]

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

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

**SIGNATURES**

**WASHINGTON STATE FERRIES** **KING COUNTY**

**By:_____** **By:_____**

# EXHIBIT G
# MAINTENANCE RESPONSIBILITY MATRIX

| Item | Responsible Party | Notes |
|---|---|---|
| Stairs<br>• Sweep, pick up, and dispose of refuse and litter<br>• Wipe down and clean walls, railings, and control panels<br>• Touch up paint<br>• Remove graffiti<br>• Repair/replace damaged handrails<br>• Any special cleaning and spill removal<br>• Repair/replace all lighting<br>• Security and trespassing abatement<br>• Snow and ice treatment<br>• Repair/replace stair nosing as needed | Split according to design phase agreement | Both agencies to check with operations team |
| Elevators<br>• Maintain and repair all elevator mechanical and electrical systems, equipment, and control panels<br>• Sweep, pick up, and dispose of refuse and litter<br>• Wipe down and clean walls, railings, and control panels<br>• Touch up paint<br>• Remove graffiti<br>• Repair/replace damaged handrails<br>• Any special cleaning and spill removal<br>• Repair/replace all lighting<br>• Security and trespassing abatement | Split 50/50 | Use WSF elevator maintenance contract; County to have authority to request repair and required to send service report, notify of maintenance |
| Pedestrian Bridge (superstructure/foundation)<br>• Touch up paint<br>• Remove graffiti<br>• Repair/replace damaged sidewalk, canopy/wind screens/ platforms/ benches/leaning rails and signs<br>• Clean out/repair/replace roof and floor drains<br>• Any special cleaning and spill removal<br>• Snow, ice and sand removal<br>• Sweep, pick up refuse, litter<br>• Empty waste receptacles<br>• Inspect/repair/replace all lights and switches for proper operation<br>• Maintain all ADA accessibility components | Split according to design phase agreement | |
| At-grade walkway<br>• Touch up paint<br>• Remove graffiti<br>• Repair/replace damaged sidewalk, canopy/wind screens/ platforms/ benches/leaning rails and signs | Split according to design phase agreement | |

| | | |
|---|---|---|
| • Clean out/repair/replace roof and floor drains<br>• Any special cleaning and spill removal<br>• Snow, ice and sand removal<br>• Sweep, pick up refuse, litter<br>• Empty waste receptacles<br>• Inspect/repair/replace all lights and switches for proper operation<br>• Maintain all ADA accessibility components | | |
| POF float & gangway | TBD | |
| POF Terminal | TBD | |
| Security | KC to secure/monitor its own facility; WSF to monitor common areas | |
| Dock structure | TBD | |
| Garbage removal | KC to use WSF dumpster, as is done today | If possible, KC design team will make room for dumpster. This is unlikely. |
| Fire suppression<br>• Inspect/report damage<br>• Repair/replace | Split 50/50 | WSF to be key point of contact for inspection and repairs |

**EXHIBIT H**
**ANNUAL DEPRECIATION FOR POF FACILITY**

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

**Depreciation – Shared Facilities at Colman Dock**

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

# EXHIBIT I

# DNR LETTER

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

Caring for
your natural resources
... now and forever

April 21, 2016

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

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

Dear Mr. McGuigan:

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

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

Sincerely,

for

Derrick Toba, Assistant Division Manager
Shoreline District Aquatics

c: District File
Aquatic Resources File

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

RECYCLED PAPER

**EXHIBIT J**

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

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

**MEMORANDUM OF TIDELANDS LEASE**

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

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

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

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

1. Tidelands Lease. Lessee has leased the real property described in Exhibit A, attached hereto and by this reference incorporated herein (the "Tidelands") to Lessee pursuant to the terms and conditions set forth in that certain Tidelands Lease No. GCB____ at Seattle Multimodal Terminal, dated _____ by and between Lessor and Lessee (the "Tidelands Lease"). The Tidelands Lease has an Initial Term of fifty (50) years expiring on _____, and may be extended for an additional twenty twenty-five (25) year period.

2. Definition of Terms. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Tidelands Lease.

3. Purpose of Memorandum. This Lease Memorandum is prepared for purposes of recordation only and does not set forth all of the terms and conditions set forth in the Tidelands Lease.

DATED the date first above written.

**LESSOR:**

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION FERRIES DIVISION

By: _____

Name: _____

Title: _____

Date: _____

**LESSEE:**

KING COUNTY, a political subdivision of the state of Washington

By: _____

Name: _____

Title: _____

Date: _____

STATE OF WASHINGTON

COUNTY OF KING }  ss.

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

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

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

STATE OF WASHINGTON

COUNTY OF KING }  ss.

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

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

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

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# KING COUNTY

## Signature Report

**August 22, 2016**

**Ordinance**

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

**Proposed No.** 2016-0396.1 **Sponsors** McDermott

AN ORDINANCE authorizing the execution of a new lease to support the operations of the marine division.

STATEMENT OF FACTS:

1. In 1994, King County began a demonstration water taxi service to West Seattle during the summer season with operations contracted to Argosy Cruises.

2. In 2007, Ordinance 15739 created the King County Ferry District, with independent taxing authority as authorized in RCW 36.54.110 to manage the operation of King County passenger ferry services.

3. In 2008, the King County Ferry District contracted with the marine division to take over operations of the passenger-only ferry service between Vashon Island and Colman dock in downtown Seattle from Washington State Ferries, and to continue the West Seattle ferry service between Seacrest dock in West Seattle and Colman dock.

4. On December 8, 2014, the King County Ferry District approved a motion directing the chair of the district board to execute documents to allow King County to assume the powers and duties of the King County Ferry District.

5. At midnight on December 31, 2014, the power and duties of the King County Ferry District transferred to King County.

6. In 2015, the marine division submitted a ferry expansion options report to the council outlining a number of options under consideration for expansion of the King County passenger ferry system.

7. In 2017, Washington State Ferries expects to begin construction on Colman dock to update deteriorating pilings, make seismic retrofits and address safety conflicts between vehicle and pedestrian traffic.

8. To preserve multimodal access at Colman dock, Washington State Ferries and King County have been coordinating on construction planning for Colman dock to include a passenger-only ferry facility.

9. Washington State Ferries plans to construct a passenger-only facility at Colman dock, on tideland that King County will lease from the state. The agreement defines the terms and conditions under which King County will lease tideland from Washington State Ferries for the construction and operations of a passenger-only ferry facility.

10. The facilities management division received a request for space on January 11, 2016, from the marine division.

11. The marine division needed space for the purpose of constructing a new passenger-only ferry facility at Colman dock as Washington State Ferries will be rebuilding the facility.

12. The facilities management division determined on January 11, 2016, that there was not an appropriate county-owned option.

13. The facilities management division determined, through consultation with the marine division, that leasing was the most cost-effective option for the county.

14. The facilities management division successfully negotiated to lease space from Washington State Ferries, located at Colman dock, 801 Alaskan Way, Pier 50, Seattle, WA 98104, within council district eight.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The executive is authorized to execute a lease for the passenger-

only ferry facility at Colman dock substantially in the form of Attachment A to this ordinance, and to take all actions necessary to implement the terms of the lease.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

_____

J. Joseph McDermott, Chair

ATTEST:

_____

Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, _____.

_____

Dow Constantine, County Executive

**Attachments:** A. Lease Agreement.

# ATTACHMENT A:

# LEASE AGREEMENT

**Attachment A**

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

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

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

## Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Days** means calendar days.

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

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

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

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

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

**DNR** means the Washington State Department of Natural Resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**POF** means passenger-only ferry.

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

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

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

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

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

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

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

Tidelands to locate the POF Facility.

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

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

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

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

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

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

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

**WSDOT** means the Washington State Department of Transportation.

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

**WSF** means the Washington State Ferries.

## 1. Parties

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

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

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

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

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

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

2.4 Personal Property.

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

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

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

**3. Uses Permitted Under Lease.**

3.1 Permitted Uses

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

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

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

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

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

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

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

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

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

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

1. The docking of the COUNTY Vessels;

2. The loading and unloading of passengers, bicycles, baggage, and supplies from the COUNTY Vessels;

3. the moorage of the COUNTY Vessels during non-service hours during the day and night tie-up and COUNTY Vessel maintenance work conducted while vessels are tied up; and

4. The COUNTY-sponsored special event sailings to/from the POF Facility, subject to advance notice to and coordination with WSF operations personnel.

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

3.3. Advertising, Signage, and Naming Rights.

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

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

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

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

A. The Parties shall comply with all Applicable Laws; and

B. The COUNTY shall secure and maintain all necessary permits and licenses for the COUNTY's use of the POF Facility as authorized under this Lease.

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

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

**4. Term, Term Extension and Commencement Notice.**

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

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

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

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

## 5. Consideration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**6. Operations and Maintenance Obligations.**

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

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

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

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

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

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

**7. Indemnity.**

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

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

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

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

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

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

**8. Insurance.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**10. Releases by WSF and Existing Environmental Conditions.**

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

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

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

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

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

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

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

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

**11. Damage and Repair.**

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

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

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

## 12. Assignment, License, and Subletting.

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

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

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

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

## 13. Termination and Potential Renewal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. to the extent of prior legislative appropriation, all Relocation Costs associated with relocating the COUNTY's POF operations at the Seattle Multimodal

Terminal and all non-amortized COUNTY capital costs for those improvements that WSF will not re-use as part of its legislatively approved and funded project. WSF shall seek as part of the appropriation for the legislatively approved and funded WSF project sufficient funds to reimburse the COUNTY for all such Relocation Costs and non-amortized COUNTY capital costs.This commitment by WSF to seek funding is based in part on the COUNTY's likely repayment obligations to the FTA should the Lease be terminated before the end of the useful life of the POF Facility.

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

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

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

1. Prevents use of Pier 50 by pedestrians and functionally precludes the COUNTY's passenger-only ferry operations due to reasons of safety; and

2. Cannot be accommodated or managed through temporary revisions to or re-routing of the COUNTY's passenger-only ferry uses, or through relocation of the COUNTY's POF operations to a portion of Pier 52.

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

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

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

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

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

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

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

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

14.3 In general.

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

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

**15. Notice.**

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

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

COUNTY:

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

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

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

**16. Taxes and Assessments.**

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

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

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

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

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

**17. No Liens or Other Encumbrances.**

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

17.2 Liens.

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

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

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

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

1. Diligently pursue lien and successfully complete removal;

2. Deposit sufficient cash with WSF to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim; or

3. Procure and record a bond which releases the Premises from the claim of the lien from any action brought to foreclose the lien.

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

**18. Restoration and Vacation of Premises.**

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

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

**19. Joint Decision Making and Dispute Resolution.**

19.1. Joint Decision Making.

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

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

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

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

19.2 Dispute Resolution.

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

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

| WSF: | COUNTY: |
|---|---|
| Director of Terminal Engineering | King County, DOT |
| 2901 Third Avenue, Suite 500 | Director, Marine Division |
| Seattle, WA 98121-3014 | 201 S. Jackson Street |

Seattle, WA 98103

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

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

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

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

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

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

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

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

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

**20. Force Majeure.**

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

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

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

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

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

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

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

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

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

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

## 21. Other Terms and Conditions.

21.1 Maintenance of records; Audit:

A. Availability of Records

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

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

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

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

21.2 Governing Law; Venue; Attorney Fees and Costs:

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

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

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

A. Each Party hereto is of equal bargaining strength;

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

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

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

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

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

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

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

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

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

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

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

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

**TERMS AND CONDITIONS CONTINUE ON NEXT PAGE**

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

A. Section 7 (Indemnity)

B. Sections 9 and 10 (Hazardous Materials)(Releases by WSF and Existing Environmental Conditions)

C. Section 14.3.A (Applicable Laws)

**SIGNATURES**

| **KING COUNTY** | **WASHINGTON STATE DEPARTMENT OF TRANSPORTATION** |
|---|---|
| By: _____ | By _____ |
| Anthony Wright, Director<br>Facility Management Division,<br>King County Department of<br>Executive Services | Lynne Griffith<br>WSDOT Assistant Secretary<br>For Washington State Ferries |
| Date: _____ | Date: _____ |

**NOTARY BLOCKS FOLLOW**

## COUNTY ACKNOWLEDGMENT

STATE OF WASHINGTON )
) ss
COUNTY OF KING )

On this _____ day of _____, 20___, before me personally appeared _____ , to me known to be the duly appointed _____ and that he/she executed the within and foregoing instrument and acknowledged the said instrument to be free and voluntary act and deed of said _____, for the uses and purposes therein set forth, and on oath states that she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
_____ day of _____, 20___.

Notary Public in and for the State of Washington

Residing at _____

My commission expires _____

Print Name _____

## WSDOT ACKNOWLEDGMENT

STATE OF WASHINGTON )
) ss
COUNTY OF THURSTON )

On this _____ day of _____, 20___, before me personally appeared _____, to me known to be the duly appointed _____, WSDOT/Washington State Ferries, and that he executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
_____ day of _____, 20___.

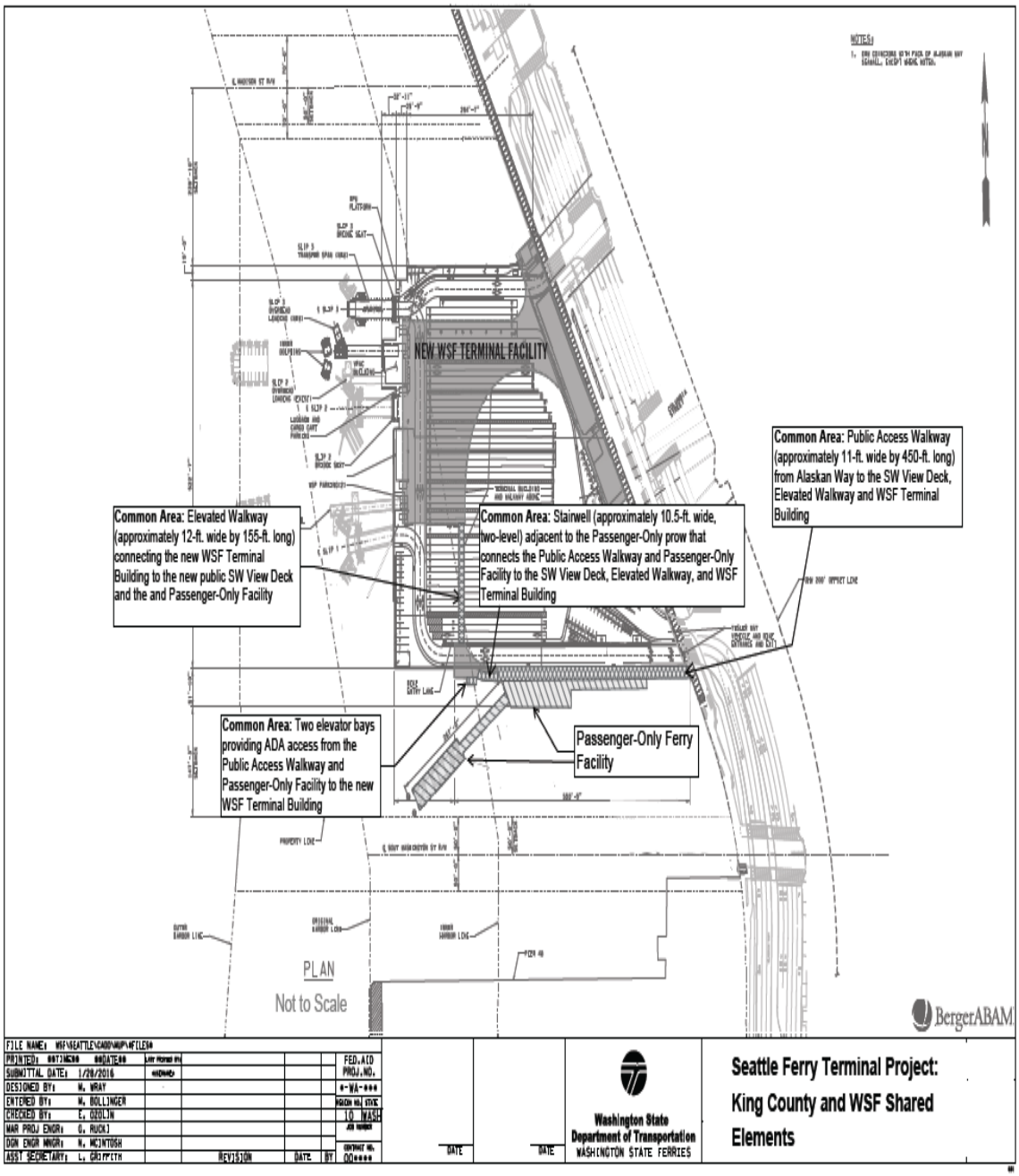
Notary Public in and for the State of Washington

Residing at _____

My commission expires _____

Print Name _____

**EXHIBIT A**
**Description and diagram of Common Areas**



# EXHIBIT B
# RESOLUTION 452 AND DIAGRAM OF PUBLIC PLACE

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

RESOLUTION NO. 452

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

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

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

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

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

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

SECTION 6. The State of Washington, Department of Natural Resources has prepared a map[1] showing the proposed relocation of the outer harbor line as well as designating a portion of the harbor area as a "Public Place."

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

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

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

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

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

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

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

APPROVED AS TO FORM:

Victoria W. Sheldon 5-22-84

JOT/jd
5/22/84

King County
Mtce # 525

Supplemental Map
FROM
DNR
TO
STATE OF WASHINGTON
IN
King County

King County: Seattle
Ferry Terminal

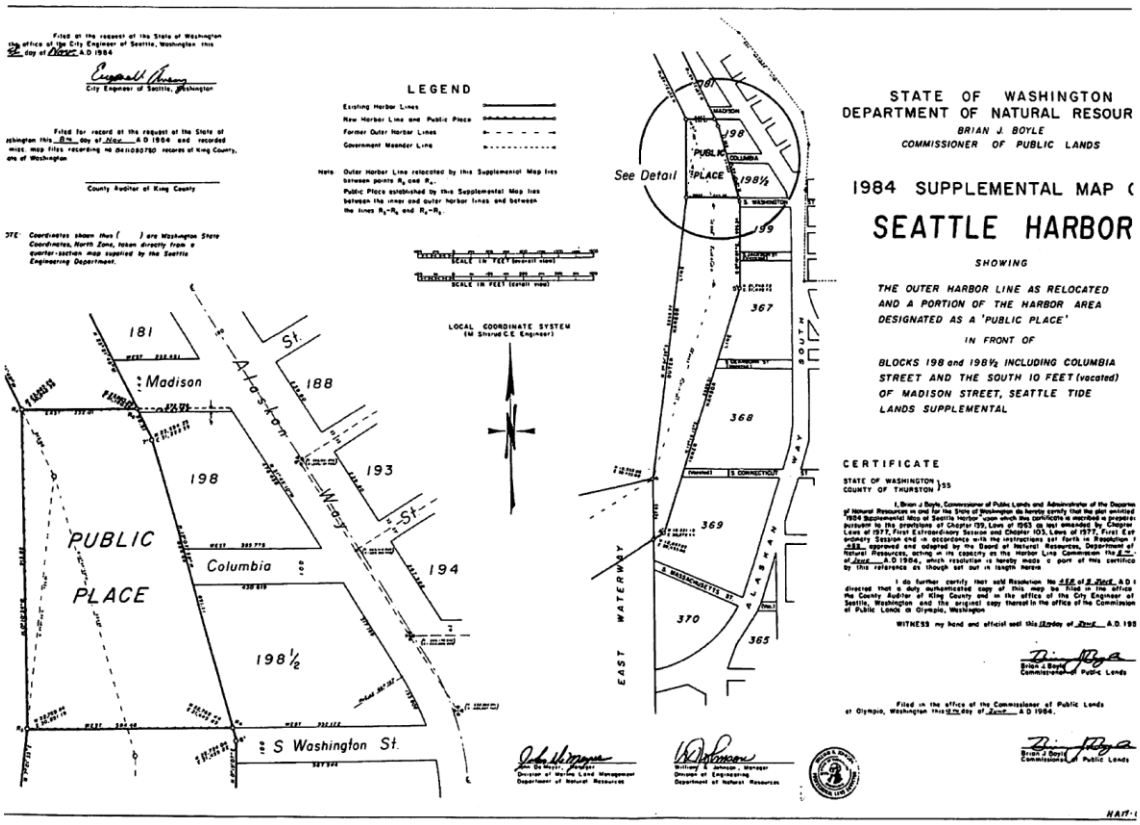

LEGEND
STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOUR
BRIAN J. BOYLE
COMMISSIONER OF PUBLIC LANDS
1984 SUPPLEMENTAL MAP
SEATTLE HARBOR
SHOWING
THE OUTER HARBOR LINE AS RELOCATED AND A PORTION OF THE HARBOR AREA DESIGNATED AS A 'PUBLIC PLACE'
IN FRONT OF
BLOCKS 198 and 198½ INCLUDING COLUMBIA STREET AND THE SOUTH 10 FEET (vacated) OF MADISON STREET, SEATTLE TIDE LANDS SUPPLEMENTAL
CERTIFICATE
See Detail
PUBLIC PLACE
Madison
Columbia
S Washington St.
Alaskan Way
EAST WATERWAY
SOUTH
LOCAL COORDINATE SYSTEM
SCALE IN FEET (Detail view)
SCALE IN FEET (Detail view)
181
188
193
194
198
198½
199
367
368
369
370
365

**EXHIBIT C1**
**LEGAL DESCRIPTION AND DIAGRAM OF LEASED TIDELANDS**

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

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

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

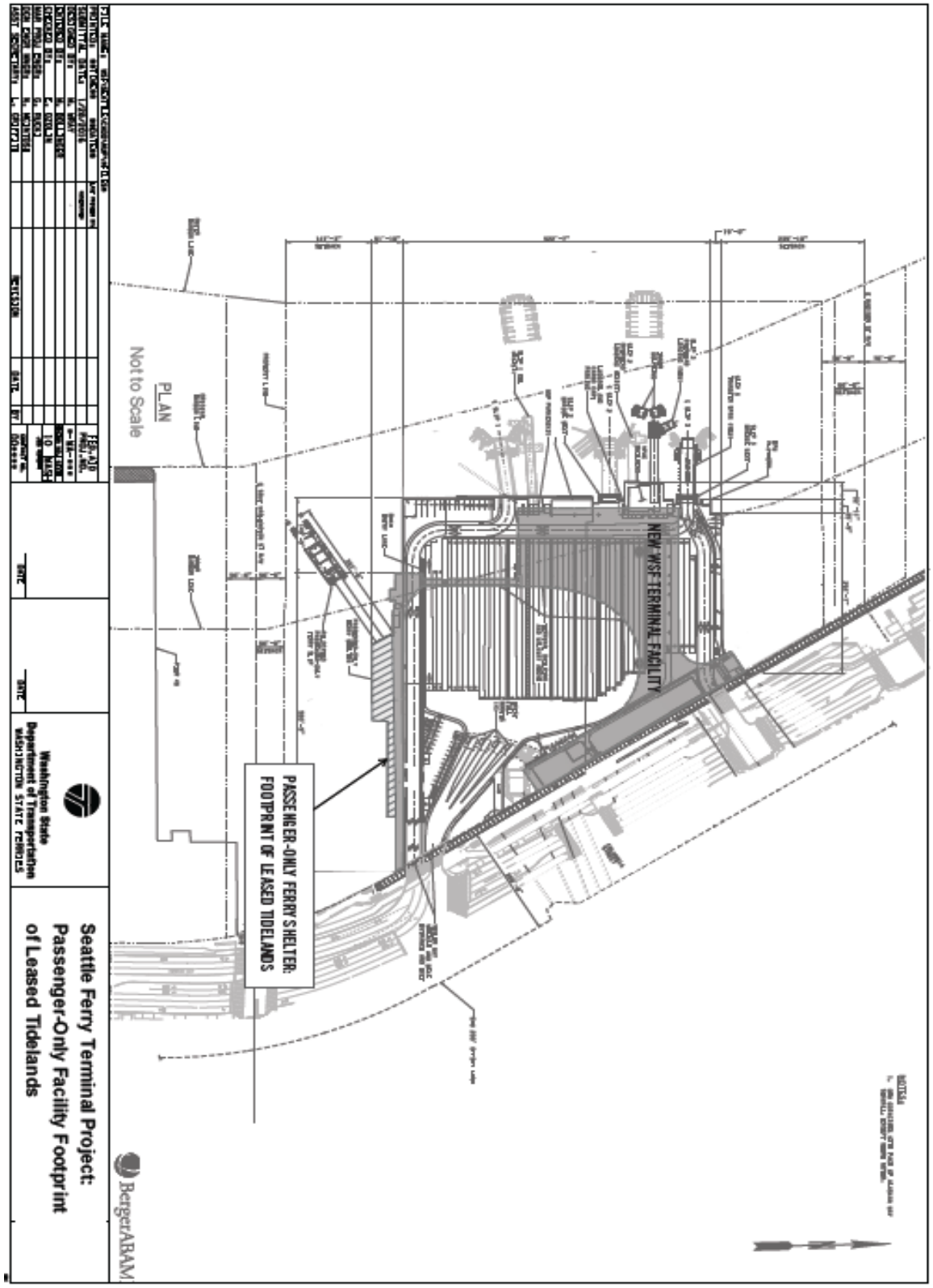

NEW WSF TERMINAL FACILITY
PASSENGER-ONLY FERRY SHELTER:
FOOTPRINT OF LEASED TIDELANDS
PLAN
Not to Scale
Washington State
Department of Transportation
WASHINGTON STATE FERRIES
Seattle Ferry Terminal Project:
Passenger-Only Facility Footprint
of Leased Tidelands
BergerABAM

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

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

## EXHIBIT D

## DESCRIPTION OF PERSONAL PROPERTY OWNED BY COUNTY

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

**EXHIBIT E**

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

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

RECITALS

A. WSF and COUNTY are parties to a certain Lease, dated _____, ____, 2016.

B. Section 21.8 of the Lease provides for written modifications.

C. Both Parties desire to amend certain terms and exhibits in the Lease.

AGREEMENT

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

**1. Amendment to Section ____ of the Lease.** Section _____ is amended in its entirety to read as follows:

**2. Amendment to Section _____ of the Lease.** Exhibit _____ is replaced by the revised Exhibit _____ which is attached and incorporated into the Lease.

**3. New Exhibit _____.** A new **Exhibit _____** identifying _____ is attached and incorporated into the Lease.

**4. Other Provisions Unaffected.** All other provisions of the Lease remain in full force and effect and are not altered or affected in any way unless specifically modified herein. The provisions of the Lease modified by this Amendment shall apply equally to any and all other provisions in the Lease as though the modified provisions were originally written as amended hereby.

**5. Authority.** Each person executing this Amendment represents and warrants that he/she has full power and authority to execute and deliver this Amendment on behalf of the party for whom he/she is executing and to bind such party to all the terms and provisions of this Amendment.

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

| KING COUNTY | WASHINGTON STATE<br>DEPARTMENT OF TRANSPORTATION<br>FERRIES DIVISION |
|---|---|
| By: _____ | By: _____ |
| _____ | _____ |
| _____ | _____ |
| Date: _____ | Date: _____ |

**EXHIBIT F**
**FORM OF COMMENCEMENT NOTICE**

[Insert Date Here]

King County
[Insert Address for King County Here]

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

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

**SIGNATURES**

**WASHINGTON STATE FERRIES** **KING COUNTY**

**By:**_____ **By:**_____

# EXHIBIT G
# MAINTENANCE RESPONSIBILITY MATRIX

| Item | Responsible Party | Notes |
|---|---|---|
| Stairs<br>• Sweep, pick up, and dispose of refuse and litter<br>• Wipe down and clean walls, railings, and control panels<br>• Touch up paint<br>• Remove graffiti<br>• Repair/replace damaged handrails<br>• Any special cleaning and spill removal<br>• Repair/replace all lighting<br>• Security and trespassing abatement<br>• Snow and ice treatment<br>• Repair/replace stair nosing as needed | Split according to design phase agreement | Both agencies to check with operations team |
| Elevators<br>• Maintain and repair all elevator mechanical and electrical systems, equipment, and control panels<br>• Sweep, pick up, and dispose of refuse and litter<br>• Wipe down and clean walls, railings, and control panels<br>• Touch up paint<br>• Remove graffiti<br>• Repair/replace damaged handrails<br>• Any special cleaning and spill removal<br>• Repair/replace all lighting<br>• Security and trespassing abatement | Split 50/50 | Use WSF elevator maintenance contract; County to have authority to request repair and required to send service report, notify of maintenance |
| Pedestrian Bridge (superstructure/foundation)<br>• Touch up paint<br>• Remove graffiti<br>• Repair/replace damaged sidewalk, canopy/wind screens/ platforms/ benches/leaning rails and signs<br>• Clean out/repair/replace roof and floor drains<br>• Any special cleaning and spill removal<br>• Snow, ice and sand removal<br>• Sweep, pick up refuse, litter<br>• Empty waste receptacles<br>• Inspect/repair/replace all lights and switches for proper operation<br>• Maintain all ADA accessibility components | Split according to design phase agreement | |
| At-grade walkway<br>• Touch up paint<br>• Remove graffiti<br>• Repair/replace damaged sidewalk, canopy/wind screens/ platforms/ benches/leaning rails and signs | Split according to design phase agreement | |

| | | |
|---|---|---|
| • Clean out/repair/replace roof and floor drains<br>• Any special cleaning and spill removal<br>• Snow, ice and sand removal<br>• Sweep, pick up refuse, litter<br>• Empty waste receptacles<br>• Inspect/repair/replace all lights and switches for proper operation<br>• Maintain all ADA accessibility components | | |
| POF float & gangway | TBD | |
| POF Terminal | TBD | |
| Security | KC to secure/monitor its own facility; WSF to monitor common areas | |
| Dock structure | TBD | |
| Garbage removal | KC to use WSF dumpster, as is done today | If possible, KC design team will make room for dumpster. This is unlikely. |
| Fire suppression<br>• Inspect/report damage<br>• Repair/replace | Split 50/50 | WSF to be key point of contact for inspection and repairs |

**EXHIBIT H**
**ANNUAL DEPRECIATION FOR POF FACILITY**

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

**Depreciation – Shared Facilities at Colman Dock**

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

# EXHIBIT I

# DNR LETTER

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

Caring for
your natural resources
... now and forever

April 21, 2016

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

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

Dear Mr. McGuigan:

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

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

Sincerely,

for

Derrick Toba, Assistant Division Manager
Shoreline District Aquatics

c: District File
Aquatic Resources File

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

RECYCLED PAPER

**EXHIBIT J**

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

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

**MEMORANDUM OF TIDELANDS LEASE**

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

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

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

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

1. Tidelands Lease. Lessee has leased the real property described in Exhibit A, attached hereto and by this reference incorporated herein (the "Tidelands") to Lessee pursuant to the terms and conditions set forth in that certain Tidelands Lease No. GCB____ at Seattle Multimodal Terminal, dated _____ by and between Lessor and Lessee (the "Tidelands Lease"). The Tidelands Lease has an Initial Term of fifty (50) years expiring on _____, and may be extended for an additional twenty twenty-five (25) year period.

2. Definition of Terms. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Tidelands Lease.

3. Purpose of Memorandum. This Lease Memorandum is prepared for purposes of recordation only and does not set forth all of the terms and conditions set forth in the Tidelands Lease.

DATED the date first above written.

**LESSOR:**

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION FERRIES DIVISION

By: _____

Name: _____

Title: _____

Date: _____

**LESSEE:**

KING COUNTY, a political subdivision of the state of Washington

By: _____

Name: _____

Title: _____

Date: _____

STATE OF WASHINGTON

COUNTY OF KING }  ss.

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

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

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

STATE OF WASHINGTON

COUNTY OF KING }  ss.

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

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

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

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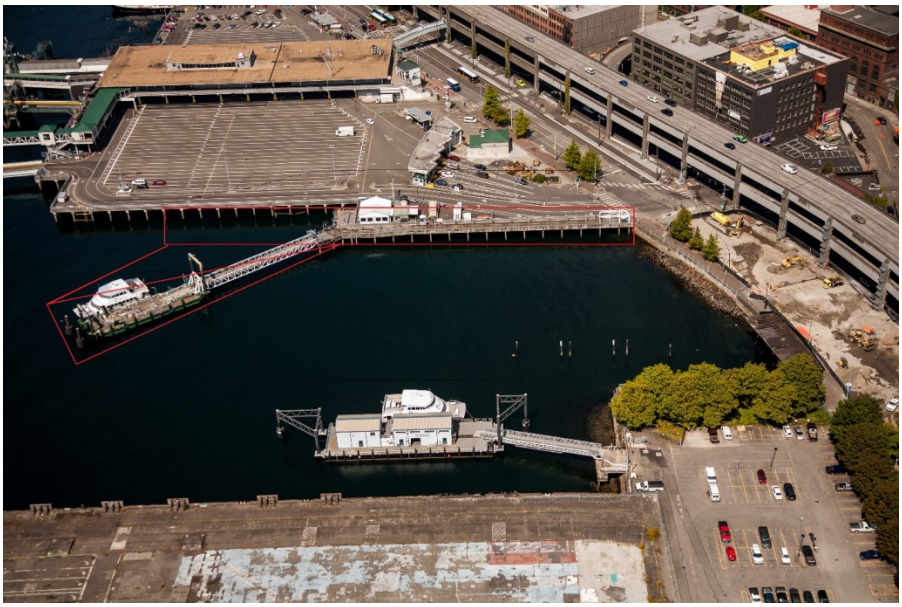
# Lease Property Summary



**Property Owner:** Washington State Department of Transportation Ferries Division
**Address:** Pier 50 Passenger Only Ferry Terminal, 801 Alaskan Way, Seattle, adjacent to the Seattle Ferry Terminal at Colman Dock in downtown Seattle
**Cost Per Sq. Ft.:** Eight and one-half cents ($0.085) per square foot x square feet of Tidelands x seventy-five percent (0.75), reflecting 25% discount for public benefit. $583.95 per month or $7,007.40 per year.
**Operational Costs:** Electricity and Water will be billed separately and there will be shared maintenance costs.
**Term:** Initial Term: Fifty (50) years,
Extension: One (1) additional twenty five (25) years
**Square Footage:** 9,160 Square Feet
**Council District:** Eight
**Funding Source:** King County Ferry District property tax levy
**Previous Location:** Expanded use at the same location

## Lease Synopsis:

Lease is for tidelands on the south side of Pier 50. King County will pay for construction of new pilings, a platform and a passenger only ferry terminal structure on the leased tidelands as part of Washington State Ferries' Seattle Multimodal Terminal expansion project. Funding for the constructed assets will come from a combination of local and federal funds, and all constructed assets paid for by the County will be owned by the County with the exception of an elevator, overhead walkway and stairway which will be owned by the Washington State Ferries. Leasing the tidelands to facilitate construction of the new

Passenger Only Ferry terminal will provide a stable, long term operational hub for King County's passenger only ferry service.

## Context

*Rationale for transaction:* The lease provides for the continuation of operating the King County Passenger Only Ferry from Downtown Seattle to Vashon Island and West Seattle. The location allows for a multi-modal facility that connects customers with other ferry, bus, streetcar and light rail options.

*Policy considerations*: This legislation will enable the County to operate passenger only ferry service after the state redevelops Colman Dock. The Council previously expressed support for plans related to this project via their support of the ferry district resolutions (FD2014-11, FD2014-12 and FD2014-13). The County assumed the rights and obligations of the Ferry District under Ordinance 17935.

*Political considerations:* The design and construction of a new King County Passenger Only Ferry Terminal is part of a larger Washington State Ferries Colman Dock preservation project. The parties have been working collaboratively on this project for the past three years. The City of Seattle has been involved in planning this project with Washington State Ferries and King County. Seattle Department of Construction and Inspections (DCI) will be the building permit agency to the State for the entire project. The State and County have been working closely with the Seattle Design Commission in order to coordinate the Waterfront.

*Community considerations or partnerships:* Throughout the planning process, two separate community outreach meetings were held by Washington State Ferries with attendance from King County representatives; community members responded favorably to the proposed plan.

*Fiscal considerations:* The information contained in the fiscal note includes the annual lease cost and calculation using the inflation rates in the September 2015 Seattle CPI-U (Consumer Price Index for all Urban consumers) provided by the Office of Economic and Financial Analysis through year 2024. After that, a flat 3% inflation factor is used by the Facilities Management Division in calculating future inflated costs. The lease term is fifty years and there is an additional extension option for 25 years. The lease costs will begin after completion of the project which is projected to occur at the end of 2018 or early 2019. There was no net present value analysis completed because only one site was considered.

*Other considerations*: The construction agreement is being negotiated separately between the County and Washington State Ferries. The lease term commences when construction is completed and the City issues a certificate of occupancy.

*CIP/operational impacts:* The transaction to lease the tidelands will not have an impact on the capital improvement plan for the Marine Division. However, the Seattle Ferry Terminal capital project will have an impact on the timing of the lease because the lease begins after

construction is completed as forecast in late 2018/early 2019. As part of the 2019-2020 Biennial budget, the Marine Division will request appropriation to cover the cost of the lease, but ongoing maintenance costs for the new Terminal. A portion of the cost of maintaining the shared walkway will also be included. Determination of shared costs will be done at the time of negotiating the construction agreement.

*King County Strategic Plan impact:* This transaction supports the 2015 King County Strategic Plan guiding principle of Financial Sustainability and goal of Mobility. The King County Passenger Only Ferry provides transportation solutions meeting the County's Economic growth and built environment strategic plan goal by meeting the growing need for transportation services and facilities throughout the County. The Passenger Only Ferry operation ensures sound environmental stewardship in all aspects of its operations meeting the County's strategic objective of minimizing operational environmental footprint. The lease also supports the strategic plan's financially sustainable guiding principle.

*Equity and Social Justice impact:* In accordance with Real Property Asset Management Plan (RAMP) Strategy 2.0 and 24.0, FMD and the Department of Transportation reviewed this legislation for Equity and Social Justice (ESJ) impacts. The Marine Division, operators of the King County Passenger Only Ferry, has incorporated several of the County determinants of equity into their daily operations. Additionally, the walkway improvements will make the decking more stable, this change will improve the ferry riding experience for the mobility impaired. Since the passenger only ferry will be continuing to operate from the same location there aren't any anticipated equity and social justice impacts associated with this legislation.

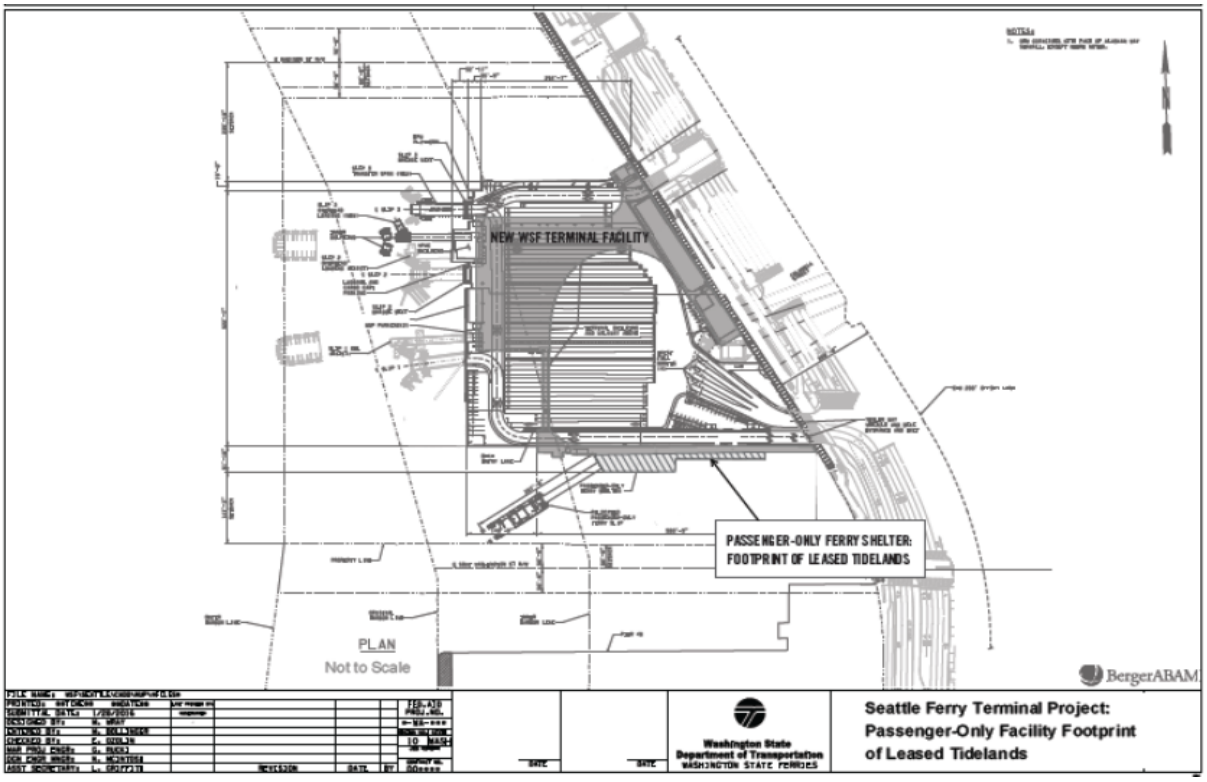
*Energy Efficiency impact:* The new King County Passenger Ferry Terminal design is being influenced by the King County Green Building Ordinance. An eco-charette was conducted during the 30% design phase and some of the identified energy efficiencies are being incorporated. Examples include rain water collection, energy efficient lighting, and a shelter that is naturally cooled using cross ventilation of ambient air.

## Lease Alternatives Analysis

*Summary:* A Seattle Waterfront siting study was conducted which looked at alternative docks along the Seattle waterfront from Pier 46 north to Pier 70. It was determined that the current location of the passenger only dock at Colman Dock provides the only available multi-modal connection for users of the system. Once it was determined that Pier 50 was the desired location, County staff negotiated to get the best price for this agreement. This was done by negotiating favorable terms and a discount per RCW 47.64.090 (3).

**Vicinity View Map**

**Project Level View**



ATTACHMENT 4

August 2, 2016

The Honorable Joe McDermott
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember McDermott:

This letter transmits an ordinance that will enable King County to lease tidelands at Pier 50, 801 Alaskan Way, Seattle, Washington from the Washington State Department of Transportation, Ferries Division (WSF), in support of the provision of King County operations and services.

This transaction is recommended per the rationale and considerations provided in the attached property summary.

Leasing of this property furthers the King County Strategic Plan guiding principle of Financial Sustainability and goal of Mobility.

Thank you for your consideration of this ordinance.

If you have any questions, please feel free to contact Anthony Wright, Director, Facilities Management Division at 206-477-9352.

Sincerely,

Dow Constantine
King County Executive

Enclosures

cc: King County Councilmembers
ATTN: Carolyn Busch, Chief of Staff
Anne Noris, Clerk of the Council
Carrie S. Cihak, Chief of Policy Development, King County Executive Office
Dwight Dively, Director, Office of Performance, Strategy and Budget
Caroline Whalen, County Administrative Officer, Department of Executive Services (DES)
Anthony Wright, Director, Facilities Management Division (FMD), DES
Hien Dung, Interim Manager, Real Estate Services, FMD, DES
Harold S. Taniguchi, Director, Department of Transportation (DOT)
Paul H. Brodeur, Director, Marine Division, DOT

# KING COUNTY FISCAL NOTE - *Property Leases and Sales*

## GENERAL TRANSACTION INFORMATION

| | | | |
|---|---|---|---|
| Ordinance/Motion: | | | |
| Title: | **Lease agreement for a new passenger-only ferry terminal at Seattle multimodal terminal, between Washington State Department of Transportation** | Transaction Duration: | 50 years yrs |
| Affected Agency/Agencies: | King County Department of Transportation Marine Division | Fair Market Value: | NA |
| Note Prepared By: | Evelyn Wise, Finance and Administration Ma Date Prepared: 03/04/16 | Legal Transaction Type: | Lease |
| Note Reviewed By: | Date Reviewed: | Fiscal Transaction Type: | stand alone ordinance |
| Description of Request: | Lease agreement for tidelands under passenger-only ferry terminal facility at Seattle multimodal terminal. | | |

## FINANCIAL IMPACTS

### Part 1 - Net Present Value Analysis Results

| | | | |
|---|---|---|---|
| **Net Present Value to King County (all impacts): ***** | NA | **Net Present Value to Primary Impacted Agency (customer of transaction): ***** | NA |

### Part 2 - Revenue and Expenditure Impacts

As of the preparation date of this fiscal note, the impact of the above legislation on the **financial affairs** of King County is *estimated* to be as indicated below:

**Revenue to:** [2,3,5]

| Appropriation Unit | Appr. Number | Department | Fund Number | Project Number | Revenue Account Code and Source/Description | Sum of Revenues Prior to 2015 | 2015 / 2016 | 2017 / 2018 | 2019 / 2020 | Sum of Outyear Impacts [2] |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | $ - | $ - | $ - | $ - | $ - |
| | | | | | | $ - | $ - | $ - | $ - | $ - |
| | | | | | | $ - | $ - | $ - | $ - | $ - |
| **TOTAL** | | | | | | **$ -** | **$ -** | **$ -** | **$ -** | **$ -** |

**Expenditures from:** [2,3,4,5]

| Appropriation Unit/Expenditure Type | Appr. Number | Department | Fund Number | Project Number | Expenditure Notes | Sum of Expenditures Prior to 2015 | 2015 / 2016 | 2017 / 2018 | 2019 / 2020 | Sum of Outyear Impacts [2] |
|---|---|---|---|---|---|---|---|---|---|---|
| Marine | A46250 | D46250 | 4591 | 1125189 | | | | | | |
| Real Estate Services Labor Costs | | | | | NA | $ - | $ - | $ - | $ - | $ - |
| King County Project Management | | | | | NA | $ - | $ - | $ - | $ - | $ - |
| Lease Payments/Associated O&M | | | | | | $ - | $ - | $ 7,007 | $ 14,570 | $ 760,495 |
| Service Costs (Appraisal, Title, Move) | | | | | NA | $ - | $ - | $ - | $ - | $ - |
| Tenant and Other Improvements | | | | | NA | $ - | $ - | $ - | $ - | $ - |
| 10% Art for General Fund Transactions | | | | | NA | $ - | $ - | $ - | $ - | $ - |
| Other Transaction Costs | | | | | NA | $ - | $ - | $ - | $ - | $ - |
| SUBTOTAL | | | | | | **$ -** | **$ -** | **$ 7,007** | **$ 14,570** | **$ 760,495** |
| | | | | | | | | | | |
| Real Estate Services Labor Costs | | | | | | $ - | $ - | $ - | $ - | $ - |
| King County Project Management | | | | | | $ - | $ - | $ - | $ - | $ - |
| Lease Payments/Associated O&M | | | | | | $ - | $ - | $ - | $ - | $ - |
| Service Costs (Appraisal, Title, Move) | | | | | | $ - | $ - | $ - | $ - | $ - |
| Tenant and Other Improvements | | | | | | $ - | $ - | $ - | $ - | $ - |
| 10% Art for General Fund Transactions | | | | | | $ - | $ - | $ - | $ - | $ - |
| Other Transaction Costs | | | | | | $ - | $ - | $ - | $ - | $ - |
| SUBTOTAL | | | | | | **$ -** | **$ -** | **$ -** | **$ -** | **$ -** |
| **TOTAL** | | | | | | **$ -** | **$ -** | **$ 7,007** | **$ 14,570** | **$ 760,495** |

## APPROPRIATION IMPACTS

As of the preparation date of this fiscal note, the impact of the above legislation on the **budget appropriation** of King County is *estimated* to be as indicated below: [1]

| Appropriation Unit | Appr. Number | Department | Fund Number | Project Number | Appropriation Notes | | 2015 / 2016 Appropriation Change | Total 6-Year CIP Outyear Planning Level Costs |
|---|---|---|---|---|---|---|---|---|
| | | | | | 0 | | $ - | $ - |
| | | | | | | | $ - | $ - |
| | | | | | | | $ - | $ - |
| **TOTAL** | | | | | | | **$ -** | **$ -** |

*Assumption and Additional Notes:*

*** An NPV analysis was not performed because only one site was considered.

1. If the expenditure impact equals or exceeds five percent of the fund expenditures, a copy of the most recent applicable appropriation unit financial plan is attached to this transmittal.
2. The sum of outyear impacts is provided for capital projects and agreements. This sum for revenue and expenditures includes all revenues/expenditures for the duration of the lease/other agreement or life of the capital investment.
3. This transaction does not require the use of fund balance or reallocated grant funding.
4. The transaction is backed by new revenue. The new revenue does not include grant revenue. The new revenue has not been received. The new revenue will be received by 2018 as part of the property tax levy that supports passenger-only ferry service
5. A detailed explanation of how the revenue/expenditure impacts were developed is provided below, including major assumptions made in developing the values presented in the fiscal note and other supporting data:

   This lease agreement is dependent on the contract agreement for the construction of the new passenger-only ferry terminal that has yet to be negotiated. The intent is that King County Marine Division pays for the construction of the terminal and will own the terminal. The costs associated with ongoing maintenance will be negotiated after the construction agreement is negotiated, and will cover the shared facility locations. King County Marine Division will own the facility itself, therefore Tenant and other improvements will be completed at the discretion of King County and will be paid for by King County as needed to maintain the facility in good working condition.

   The Initial Term of this Lease shall commence on the effective date of Commencement Notice and shall expire at 11:59 PM on December 31 of the calendar year that is fifty (50) years from the year in which WSF provides Commencement Notice as provided under Section 4.3.

   Rent formula and calculation. The rent formula shall be eight and one-half cents ($0.085) per square foot x square feet of Tidelands x seventy-five percent (0.75), reflecting 25% discount for public benefit per RCW 47.64.090(3). Using the current estimate of 9,160 sq.ft. of Tidelands, the calculation results in the following rent estimate: $583.95 per month or $7,007.40 per year.

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King County

# Metropolitan King County Council
# Budget and Fiscal Management Committee

## STAFF REPORT

| | | | |
|---|---|---|---|
| **Agenda Item:** | 10 | **Name:** | Wendy K. Soo Hoo<br>Greg Doss |
| **Proposed No.**: | 2016-0425 | **Date:** | August 24, 2016 |

## SUBJECT

Proposed Ordinance 2016-0425 relates to the King County Courthouse electrical distribution system and would make a supplemental appropriation of $11.6 million to the Major Maintenance Reserve Fund and declare an emergency.

## SUMMARY

Earlier this year, in response to a King County Council 2015/2016 budget proviso, the Facilities Management Division retained a consultant (Clark Design Group, PLLC) to conduct a building analysis of the King County Courthouse. According to Executive staff, the consultant's report identified several systems in need of repair and replacement, including electrical and low voltage systems, heating ventilation and air conditioning, and plumbing. Executive staff indicate that the electrical system "has been identified as a high priority and needs to be addressed immediately" based on a low probability of a catastrophic failure that could cause extensive damage.

The Executive transmitted an appropriations ordinance (Proposed Ordinance 2016-0425) on August 22, 2016, which includes a determination of emergency, to enable this work to proceed on an expedited basis.

## BACKGROUND

The Executive's Proposed 2015/2016 Biennial Budget included $1,226,750 for CIP project 1124472 – Courthouse System Revitalization. The project was intended to address the aging Courthouse infrastructure systems by beginning the process of identifying funding and phasing alternatives, as well as preparing as-built structural documentation. According to the Executive, this is a critical first step in preparation for developing a proposal for a comprehensive project which includes mechanical, electrical, plumbing and window-related work. The County Auditor has indicated that a rough order of magnitude cost estimate for project completion is within a range of $75 million to $300 million.

**Courthouse Revitalization Capital Project Budget Proviso:** The Council included a proviso on this project in the Adopted 2015/2016 Biennial Budget, calling for a report on

the Courthouse building systems, prior to deciding how to approach and fund the project:

*Of the appropriation for capital project 1124472, courthouse system revitalization, $500,000 shall not be expended or encumbered until the executive transmits a report on the King County Courthouse building systems and a motion that approves the report and the motion is passed by the council. The report shall include, but not be limited to:*

*A. A building alternative analysis;*
*B. A list of possible projects, reported by system or task;*
*C. The estimated costs for each possible project, reported by system or task;*
*D. A risk assessment and any risk mitigation plans for possible projects;*
*E. A prioritization for possible projects;*
*F. The estimated timelines for possible projects;*
*G. The status of locating as-built structural documentation;*
*H. A discussion of the historical significance of the building and how the historical designation could affect the project; and*
*I. Any work done to investigate or access state, federal or other funding sources in support of the project.*

Note that Proposed Motion 2016-0426 accepting a King County Courthouse Revitalization Building Systems Report, which includes the Clark Design Group report (the Clark Report), in response to the proviso was also transmitted on August 22, 2016. The proviso motion will be taken up at a later date.

## ANALYSIS

### Project Scope

Proposed Ordinance 2016-0425 would appropriate $11.6 million to support a capital project to replace the entire 480 volt electrical bus duct systems, including creating new electrical rooms stacked vertically through the building. The work would provide access to electrical room E213A, conduct arc flash assessment and a labeling program throughout the electrical system. The project would also replace 208 volt transformers and panels and install three plumbing chase work platforms.

According to the Executive, the project is necessary because the Clark Report identified repairs to the 480 volt electrical bus ducts and 208 volt panels that are immediately needed as they pose "a very high life safety risk to anyone performing maintenance operations and to building occupants."[1]

The report states that as electrical equipment ages, the insulation inside of it becomes brittle and "any motion or contact with the equipment can cause brittle insulation to break, which allows for electrical arcing (sparking) to occur, which ultimately can lead to explosions and/or fires."[2] According to the Clark Report, the two bus ducts, which run vertically through the entire height of the courthouse, are older than the expected 30 to

[1] The Clark Report, pg. 6. The Clark Report is included as part of Attachment A
[2] The Clark Report, pg. 71

40 year life expectancy. The Clark Report also describes the 208 volt panels and transformers as "dangerously old."[3]

Executive staff indicate that the probability of a major failure to occur is low, but cannot quantify a probability.

**Project Schedule**

According to an email sent by the Facilities Management Director on August 22, 2016 to all King County email users, the project is projected to be completed in a year, but the old electrical system could potentially be de-energized in approximately eight months.

**Cost Estimate & Fiscal Impact**

Based on an analysis from Rider Levett Bucknall, a cost consultancy firm, the estimated project cost is $11.6 million and it includes:

- $1.2 million in consultant design costs
- $8.9 million in construction cost (including costs for 100 people to be temporarily relocated at the Yesler Building)
- $1.0 million in project contingency
- $0.4 million in County project administration costs
- $0.1 million in administrative overhead

Note that the original Rider Levett Bucknall estimate included additional project elements resulting in a total cost of $16.6 million, but Facilities Management Division reduced the scope to include only the critical and immediately necessary project elements. This resulted in the lower estimated cost of $11.6 million.

The Executive plans to issue bonds to finance the project. The bonds would be issued in 2017. If necessary, the project may seek an interfund loan from the Executive Finance Committee later this year following a review of the Major Maintenance Reserve Fund balance and the planned project expenditure rate.

The fiscal note assumes 20-year financing at three percent, which yields a biennial General Fund debt service cost of $1.6 million.

**Mandatory Phased Appropriation Requirements**

Because the proposed project is anticipated to exceed $10 million (the request is for $11.6 million), the Executive is exercising authority granted in King County Code (KCC) 4A.130.020 to immediately designate, by letter, this project a mandatory phased appropriation (MPA) project. Though a declaration of emergency exempts this project from separate appropriation for each phase under KCC 4A.130.030(2)(a), the Executive's transmittal letter indicates support for quarterly reporting for this project.

[3] The Clark Report, pg. 71

**Requirements for an Emergency Determination**

Under Revised Code of Washington (RCW) 39.04.280 and KCC 2.93.080, the Executive has the authority to issue a determination of an emergency and waive competitive procurement requirements. The RCW defines "emergency" as "unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken."

Under KCC 2.93.080, in making the declaration, the executive is required to recite the facts constituting the emergency. Consistent with KCC, the Executive transmitted with Proposed Ordinance 2016-0425 a determination of emergency and waiver, signed on August 12, 2016 and titled "Executive Determination of Emergency and Waiver from Competitive Procurement and Solicitation Requirements for the King County Courthouse Electrical Distribution System."

Note that under KCC 2.93.080, the waiver of the competitive procurement requirements for contracts that exceed $250,000 are required to be forwarded to the clerk of the council no later than 10 a.m. the second business day after it is issued. Such a waiver shall continue to have force and effect until terminated by Executive order or Council action by ordinance or until it expires 10 calendar days after the contract is entered into. The Council may extend the waiver beyond the 10-day period.

Because the overall project cost would exceed the $250,000 threshold, the Executive may need to request an extension of the waiver from the Council. According to Executive staff: "The current plan is to issue a work order for preconstruction services in an amount that is less than the $250,000 threshold cited in KCC 2.93.080.B. We are still determining whether the remaining project work will be performed using one additional work order or more than one. If more than one work order is used, the executive will transmit a motion to council requesting an extension before the $250,000 threshold is exceeded to avoid having the waiver expire."

## ATTACHMENTS

1. Proposed Ordinance 2016-0425 and attachment
2. Transmittal Letter
3. Fiscal Note
4. Financial Plan
5. Determination of Emergency and Waiver
6. King County Courthouse Existing Interior Conditions Floor Plan

## INVITED

1. Tony Wright, Director, Facilities Management Division
2. Dwight Dively, Director, Office of Performance, Strategy and Budget

# KING COUNTY

## Signature Report

**August 23, 2016**

**Ordinance**

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

**Proposed No.** 2016-0425.1 **Sponsors** McDermott

AN ORDINANCE relating to the King County Courthouse electrical distribution system project; making a supplemental appropriation of $11,629,987 to the major maintenance reserve fund; and amending the 2015/2016 Budget Ordinance, Ordinance 17941, Section 129, as amended, and Ordinance 18289, Attachment A, as amended; and declaring an emergency.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. **Findings:**

A. The electrical distribution system in the King County Courthouse is a critical component of the building. When properly functioning, the system provides lighting and power that is needed for building operations. When properly functioning, the system provides a safe and usable environment to courthouse staff, elected officials, inmates and the public. If the system does not function properly, safety and use could be compromised.

B. During the Clark Design Group's review of courthouse building systems, the facilities management division received notification that the courthouse electrical distribution system poses a very high life safety risk to anyone performing maintenance operations and to building occupants. The facilities management division confirmed the

findings in the Clark Design Group report regarding the high life safety risk in August 2016. In response to that report, the executive made an emergency determination and issued a waiver of procurement procedures in order to expedite the process of getting the courthouse electrical distribution system replaced.

C. The cost of the overall project is estimated to be $11,629,987.

D. Funding for the courthouse electrical distribution replacement project will require making a supplemental appropriation of $11,629,987 to the major maintenance reserve fund.

SECTION 2. Ordinance 17941, Section 129, as amended, is hereby amended by adding thereto and inserting the following:

From the major maintenance reserve fund there is hereby appropriated and authorized to be disbursed the following amounts for the specific project identified in Attachment A to this ordinance.

| **Fund** | **Fund Name** | **2016** |
|---|---|---|
| 3421 | MAJOR MAINTENANCE RESERVE SUB | $11,629,987 |
| | **TOTAL GENERAL CIP** | **$11,629,987** |

SECTION 3. Attachment A to this ordinance hereby amends Attachment A to Ordinance 18289, as amended, by adding thereto and inserting therein the projects listed in Attachment A to this ordinance.

SECTION 4. This county council finds as a fact and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public peace,

health or safety or for the support of county government and its existing public institutions.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

_____

J. Joseph McDermott, Chair

ATTEST:

_____

Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, _____.

_____

Dow Constantine, County Executive

**Attachments:** A. General Government Capital Improvement Program

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**ATTACHMENT A GENERAL GOVERNMENT CAPITAL IMPROVEMENT PROGRAM (Attachment A Ordinance 17941, as amended)**

| Fund Title | Project | Project Name | 2015-2016 | 2017-2018 | 2019-2020 | Grand Total |
|---|---|---|---|---|---|---|
| **3421 - Major Maintenance Reserve Subfund** | | | | | | |
| | 1130085 | DES FMD KCCH ELECTRICAL DIST | 11,629,987 | | | 11,629,987 |
| **Grand Total** | | | 11,629,987 | - | - | 11,629,987 |

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ATTACHMENT 2

August 22, 2016

The Honorable Joe McDermott
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember McDermott:

This letter transmits an ordinance that would fund the immediate replacement of the existing electrical distribution system of the King County Courthouse (KCCH) based on the findings from an independent consultant, Clark Design Group, PLLC, that the electrical distribution system "poses a very high life safety risk to anyone performing maintenance operations and to building occupants." In light of this urgent situation, it is critical to move ahead as quickly as possible. I am therefore transmitting a proposed emergency ordinance to fund the accelerated construction for the KCCH electrical distribution system replacement.

The enclosed emergency response ordinance and Determination of Emergency will allow King County to quickly and appropriately respond to this matter. It is my intention to contract for this important time sensitive work on an emergency basis.

The most critical component at risk is the electrical distribution system of the building. This consists of electrical bus ducts which include two separate vertical distribution systems. These bus ducts, which run the entire height of the building, have been in operation more than twice the useful life that has been specified by the manufacturer. Although there is no imminent danger, the consultants determined there is a low probability of a catastrophic failure that could cause extensive damage.

A capital project with a proposed budget greater than $10 million is subject to a two-step process to determine whether it will be subject to mandatory phased appropriation (MPA) requirements associated with project risk. To expedite the MPA determination process I am exercising the authority granted to the Executive in KCC 4A.130.020 to immediately designate this project as an MPA project. Though a declaration of emergency exempts this project from separate appropriation for each phase, there is value in designating this as an MPA project to ensure quarterly reporting of the 2017 project construction phase and to

provide the applicable project data. The data will be provided according to a schedule developed in consultation with the Joint Advisory Group. The data and schedule will be transmitted to the County Council by the end of September 2016.

This legislation furthers the King County Strategic Plan guiding principle of aligning funding, policy and operational goals of King County government and the goal of ensuring that County government operates efficiently and effectively and is accountable to the public

Thank you for your consideration of this ordinance.

If you have any questions, please feel free to contact Anthony Wright, Director, Facilities Management Division at 206-477-9352.

Sincerely,

Dow Constantine
King County Executive

Enclosures

cc: King County Councilmembers
ATTN: Carolyn Busch, Chief of Staff
Anne Noris, Clerk of the Council
Carrie S. Cihak, Chief of Policy Development, King County Executive Office
Dwight Dively, Director, Office of Performance, Strategy and Budget
Caroline Whalen, County Administrative Officer, Department of Executive Services (DES)
Anthony Wright, Director, Facilities Management Division (FMD), DES
Jim Burt, Manager, Major Projects Unit, FMD, DES

**2015/2016 FISCAL NOTE**

ATTACHMENT 3

Ordinance/Motion:
Title: King County Courthouse Electrical Rehab
Affected Agency and/or Agencies: Courthouse Tenants/DES-FMD
Note Prepared By: Nick Carnevali, FMD
Date Prepared: 8/3/2016
Note Reviewed By: Sid Bender, PSB
Date Reviewed: 8/17/16

**Description of request:**

Implement replacement of entire electrical bus duct including creating new electrical rooms stacked vertically thru the building, provide access to electrical RM E213A, conduct arc flash assessment and labelling program throughout electrical system, replace 208v transformers and associated panels; install 3 plumbing chase work platforms, assumes completion of project 1121223 KCCH Panel Replacement would follow this project scope of work.

**Revenue to:**

| Agency | Fund Code | Revenue Source | 2015/2016 | 2017/2018 | 2019/2020 |
|---|---|---|---|---|---|
| DES-FMD MMRF Fund | 3421 | Bond Proceeds | 11,629,987 | 0 | 0 |
| LTGO Fund | | | 11,629,987 | | |
| | | | | | |
| | | | | | |
| TOTAL | | | **23,259,974** | **0** | **0** |

**Expenditures from:**

| Agency | Fund Code | Department | 2015/2016 | 2017/2018 | 2019/2020 |
|---|---|---|---|---|---|
| DES-FMD MMRF Fund | 3421 | DES | 11,629,987 | 0 | 0 |
| LTGO Fund | 8400 | FBOD | | 11,629,987 | |
| General Fund | 0010 | | | 1,563,436 | 1,563,436 |
| | | | | | |
| TOTAL | | | **11,629,987** | **13,193,423** | **1,563,436** |

**Expenditures by Categories**

| | 2015/2016 | 2017/2018 | 2019/2020 |
|---|---|---|---|
| Major Electrical rehab and repair | 11,629,987 | 0 | 0 |
| Debt Service Payments | | 1,563,436 | 1,563,436 |
| | | | |
| | | | |
| | | | |
| TOTAL | **11,629,987** | **1,563,436** | **1,563,436** |

**Does this legislation require a budget supplemental? Yes**

Notes and Assumptions:

The debt service payments are calculated using a 3% interest rate for a 20 year repayment period.

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## 2015-16 FINANCIAL PLAN
### MAJOR MAINTENANCE RESERVE FUND / 3421

**Period: JUN-2016** *Date: 8/18/2016*

| Category | 2013/2014 Actuals[1] | 2015/2016 Adopted Budget[2] | 2015/2016 Current Budget[3] | 2015/2016 Biennial-to-Date Actuals[4] | 2015/2016 Estimated[5] | 2017/2018 Projected[6] | 2019/2020 Projected[6] |
|---|---|---|---|---|---|---|---|
| **Beginning Fund Balance [5]** | **22,988,437** | **19,606,683** | **19,185,822** | **19,185,822** | **19,185,822** | **8,451,622** | **6,918,921** |
| **Revenues[7]** | | | | | | | |
| Investment Interest [A] | 231,947 | 160,000 | 160,000 | 159,682 | 319,364 | 328,945 | 338,814 |
| King Street Tenants | 924,480 | | | | | | |
| General Fund Contributions | 11,018,570 | 8,000,000 | 8,000,000 | 6,000,000 | 8,000,000 | 8,000,000 | 8,000,000 |
| KC Courthouse Bond Proceeds[B] | | | | | 11,629,987 | | |
| LTGO Bonds | 5,656,259 | | | 1,038,127 | 1,038,127 | | |
| Public Health Pooling (Clinics & Chinook) | 1,385,590 | 736,416 | 736,416 | 473,136 | 736,416 | 758,508 | 781,264 |
| Chinook Building (does not include DPH) | 614,205 | 395,522 | 395,522 | 378,254 | 395,522 | 407,388 | 419,609 |
| Goat Hill Parking Garage | 242,254 | 362,144 | 362,144 | 271,608 | 362,144 | 373,008 | 384,199 |
| Orcas Building | 236,461 | 548,226 | 548,226 | 411,170 | 548,226 | 564,673 | 581,613 |
| Earlington Bldg | 598,525 | 738,138 | 738,138 | 553,604 | 738,138 | 760,282 | 783,091 |
| Energy Efficiency Grant | 0 | | | | | | |
| Judgement Settlements | 31,678 | | | | | | |
| Other/Miscellaneous [C] | (73,055) | 599,980 | 599,980 | 6,889 | 6,889 | | |
| **Total Revenues** | **20,866,914** | **11,540,426** | **11,540,426** | **9,292,470** | **23,774,813** | **11,192,805** | **11,288,589** |
| **Expenditures[8]** | | | | | | | |
| Budget: Current Biennium [I] | (19,655,218) | (11,210,502) | (11,205,118) | (11,205,118) | (22,835,105) | (23,520,158) | (24,225,763) |
| Budget: Carryover from Prior Biennium [II] | (17,581,766) | (19,910,559) | (19,910,559) | (19,967,513) | (19,967,513) | (8,293,605) | (19,088,258) |
| Budget: Total | (37,236,984) | (31,121,061) | (31,115,677) | (31,172,631) | (42,802,618) | (31,813,763) | (43,314,021) |
| Budget: Unexpended at Year End [III] | 18,223,707 | 11,300,068 | 11,300,068 | 15,611,033 | 8,293,605 | 19,088,258 | 25,988,412 |
| **Total Expenditures** | **(19,013,277)** | **(19,820,993)** | **(19,815,609)** | **(15,561,598)** | **(34,509,013)** | **(12,725,505)** | **(17,325,608)** |
| **Other Fund Transactions [9]** | | | | | | | |
| Sub fund 3425 (interfund transfer) | (3,650,475) | - | - | - | - | - | - |
| Sub fund 3426 (interfund transfer) | (2,005,777) | - | - | | | - | - |
| **Total Other Fund Transaction** | **(5,656,252)** | **-** | **-** | **-** | **-** | **-** | **-** |
| **Ending Fund Balance** | 19,185,822 | 11,326,116 | 10,910,639 | 12,916,693 | 8,451,622 | 6,918,921 | 881,902 |
| **Reserves [10]** | | | | | | | |
| Expenditure Reserve(s) (Carryover) | (18,223,707) | (11,300,068) | (11,300,068) | (15,611,033) | (8,293,605) | (19,088,258) | (25,988,412) |
| Grant Contingencies | - | - | - | - | - | - | - |
| Proposed Project Closures in 2016 | - | - | - | - | - | - | - |
| Cash Flow Reserve(s) | - | - | - | - | - | - | - |
| **Total Reserves** | **(18,223,707)** | **(11,300,068)** | **(11,300,068)** | **(15,611,033)** | **(8,293,605)** | **(19,088,258)** | **(25,988,412)** |
| Reserve Shortfall | - | - | 389,429 | 2,694,340 | - | 12,169,336 | 25,106,510 |
| **Ending Undesignated Fund Balance** | **962,115** | **26,048** | **-** | **-** | **158,017** | **-** | **-** |

**Financial Plan Notes**

[1] 2013/2014 Actuals reflect year end information from EBS and are consistent with the Budgetary Fund Balance figures published by FBOD (Column B).

[2] 2015/2016 Adopted Budget is based on ordinance 17941 (Column C).

[3] 2015/2016 Current Budget is based on ordinance 17941 and 18239 (Column D/Row 24).

[4] 2015/2016 Biennial-to-Date Actuals reflect actual revenues and expenditures as of JUN-2016, using BI Publisher GL_RPRT_030 (Column E).

[5] 2015/2016 Estimated reflects updated revenue and expenditure based on 2015 actual (ADJ-2015) and 2016 estimates per PPM's (Column F).

[6] Out year projections assume revenue and expenditure growth of 3% and reflect the most recent budget, including the out year impact of supplementals.

[7] Revenue:

[A] -Investment Interest: Budget figures were under-estimated based on the data at the time of budget development (Row 9).

[B] -King County Courthouse Electrical Rehab project, 1130085, with a budget of $11,629,987, will be supported bond proceeds revenue.(Column F/Row 12).

[C] -Other Miscellaneous: During the 2015/16 budget development, it was questionable whether or not MMRF was going to be reimbursed for the 2011 LTGO Bond debt service payment that MMRF paid 100%, $599,980 was the initial estimated amount for 2015-2016 with the assumption of reimbursement from the GF. (Colur

[8] Expenditures

[I] - Budget: Current Biennium: The Actual amount is based on the 2015 budget load at JAN2015 which is higher than the approved budget because the disappropriated amounts were entered in EBS in Nov/Dec of 2014 (Column B & C/Row 25.

- King County Courthouse Electrical Rehab project 1130085 of $11,629,987 into 2016 Expenditure. (Column F/Row 25)

[II] - Budget: Carryover from Prior Biennium: The Actual & Estimated carry-over amount is the actual carry-over at the end of 2013-14 which includes the 2015 disappropriations that were entered in EBS in Nov/Dec 2014 (Column B & C/Row 26).

[III] - Budget: Unexpended at Year End: The Estimated amounts are based on the FMD's CPD spending plan (Column F/Row 28).

[9] Other fund transactions

-Other fund transactions: The sub funds 3425 and 3426 cash balances has been transferred/consolidated in full to fund 3421. (Column B/Row 32).

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King County

EXECUTIVE DETERMINATION OF EMERGENCY AND WAIVER FROM COMPETITIVE PROCUREMENT AND SOLICITATION REQUIREMENTS FOR THE KING COUNTY COURTHOUSE ELECTRICAL DISTRIBUTION SYSTEM

WHEREAS, the electrical distribution system in the King County Courthouse (KCCH) provides the electricity for the facility; and,

WHEREAS, the lighting and power are critical components of the electrical distribution system necessary for the building safety and operations for the occupants. When properly functioning, the electrical distribution system provides a safe and useable environment to KCCH employees, court staff, judges, elected officials, King County Correctional Facility (KCCF) staff, inmates, and the public. If the system does not function properly, the safety and use could be compromised; and,

WHEREAS, the Facilities Management Division (FMD) procured Clark Design Group, PLLC (Clark) to perform a comprehensive report on KCCH building systems, including the electrical distribution system, for transmittal to the County Council, in accordance with ordinance 18189, proviso 5; and,

WHEREAS, upon evaluating the KCCH electrical distribution system, Clark confirmed by report dated July 2016 (Clark Report), that key system components, the 480v bus ducts and 208v panels and associated transformers, have exceeded their life expectancy and pose a very high life safety risk to persons performing maintenance operations and to building occupants; and,

WHEREAS, the possibility of failure in the KCCH electrical distribution system and the potential life-safety impacts posed by such a failure, constitutes an unforeseen circumstance beyond the County's control that presents a real and immediate threat to the proper performance of an essential government facility, and will likely result in material loss or damage to property and injury to persons unless expeditious action is taken on the KCCH electrical distribution system; and,

WHEREAS, an emergency waiver of competitive bidding and formal solicitation requirements of state and county law is necessary to assure the timely procurement of design, construction and

other required services, materials and equipment necessary to prevent delay in completing the replacement of the electrical distribution system.

WHEREAS, Clark and its consultants have been procured for this project to perform the design work because of its expertise in designing electrical distribution systems, its familiarity with the KCCH building and its unique understanding of the current problems with the existing KCCH electrical distribution system.

WHEREAS, the general contractor will be chosen based on the contractor's past performance on projects with similar scope, scale and complexity. Facilities Management Division staff will review the general contractor's qualifications and will ensure that it is well qualified for the work and will be able to provide necessary bonding and insurance.

WHEREAS, the full costs of the KCCH electrical distribution system project is estimated to be $11,600,000 to cover all costs and expenses associated with design, construction and project management.

NOW THEREFORE THE KING COUNTY EXECUTIVE, DOW CONSTANTINE, HEREBY DETERMINES AS FOLLOWS:

SECTION 1

In accordance with RCW 39.04.280(3) and KCC 2.93.080 there is an emergency due to the life-safety risks posed by a failure of the KCCH electrical distribution system. As a result, immediate steps must be taken to address the real, immediate threat to the proper performance of essential government functions and to prevent material loss or damage to property and injury to persons.

SECTION 2

The requirements for competitive bidding and formal solicitation for the lease or purchase of tangible personal property or services, public works, and professional or technical services under Chapter 36.32 RCW, Chapter 39.80 RCW, and KCC chapters 4.04, 4A.100.070, 2.93, 12.16 and 12.18., and all applicable King County Executive policies and procedures are hereby waived with reference to any such contracts relating to the replacement of the KCCH electrical distribution system. . This waiver shall continue in full force and effect until all necessary contracts are executed, or until terminated by subsequent order of the King County Executive, action by the Metropolitan King County Council by ordinance, or as otherwise may be required by law.

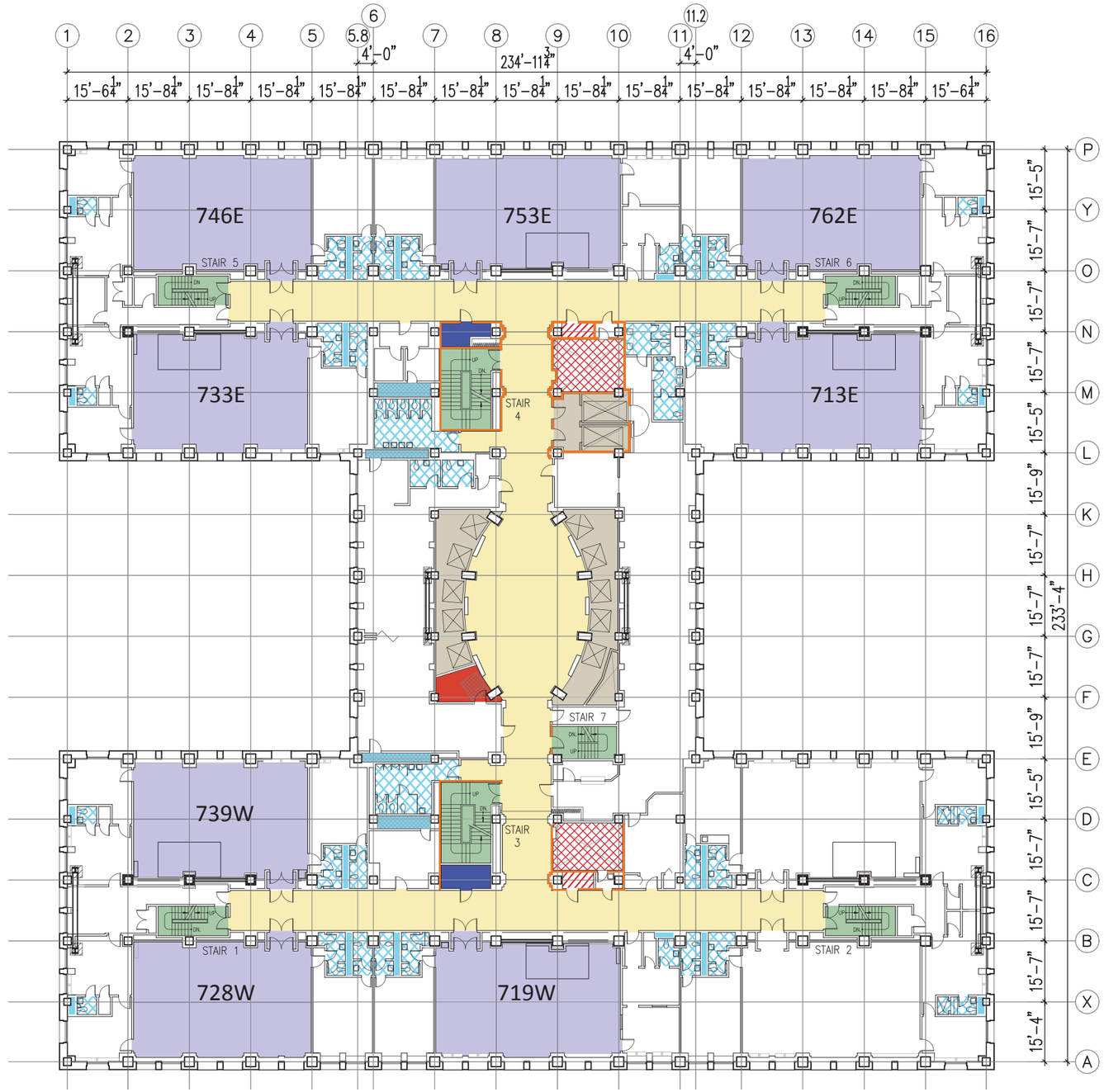
DATED this 12 day of AUGUST, 2016

Dow Constantine

DOW CONSTANTINE
King County Executive
State of Washington

# SECTION 2.1: EXISTING INTERIOR CONDITIONS






LEVEL 7

- Remaining clay tile walls at vertical stairs and elevators
- Vertical MEP shaft / chase
- Electrical distribution / rooms
- Elevator hoistway
- Stairs
- Vertical plumbing chase
- Restrooms
- Historic designated corridors 1987 & 1994
- Historic court rooms

Courtrooms:

713E: "Traditional Dark"
719W: "Traditional Light"
720W: "Traditional Light"
733E: "Traditional Dark"
739W: "Traditional Light"
746E: "Traditional Dark"
753E: "Traditional Dark"
762E: "Traditional Dark"

Note:
This refers to the color of the wood stain in the courtroom, as described in the historic designation memorandum of understanding.

- Intermediate distribution frame (IDF) room & vertical telecommunications riser
- Telecommunications & security equipment

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King County

# Metropolitan King County Council
# Budget and Fiscal Management Committee

## STAFF REPORT

| **Agenda Item:** | 11 | **Name:** | Mike Reed |
|---|---|---|---|
| **Proposed No.:** | 2016-0386 | **Date:** | August 24, 2016 |

**SUBJECT:**

AN ORDINANCE setting solid waste rates for 2017-2018.

**SUMMARY:**

This proposed ordinance as transmitted by the Executive would set the 2017-2018 Basic Fee for solid waste disposal at $137.75, up 14.6% from the current rate of $121.75. Increases are also proposed to the self-haul minimum fee—up from the current $19.22 per entry to 22.08 per entry, a 14.8% increase. Other increases include the Regional Direct Fee—up 13% to $117/ton; the Special Waste Fee—up 14% to $165/ton, and the Special Waste Extra Handling Fee, up 10% to $193/ton.

The previous rate increase was approved by Council in 2012, for the 2013-2014 period; a projected 2015-2016 rate increase was deferred, in light of challenging economic conditions and a number of related fiscal developments. Since the last rate increase, most of the participating cities in the regional solid waste system have executed extended agreements committing them to the system through 2040; the county has deferred plans for the construction of a Northeast station; and participants have discussed plans to manage service demand to avoid short term station queueing challenges. The 2010 Cedar Hills Site Development Plan is proceeding, with remaining disposal cells being developed for use. Tonnage appears to be returning slowly, though levels remain substantially below pre-recession levels, and a tonnage decline is anticipated for the coming biennium. The new Factoria Recycling and Transfer Station is open and operating, though the hazardous waste building has not yet been completed.

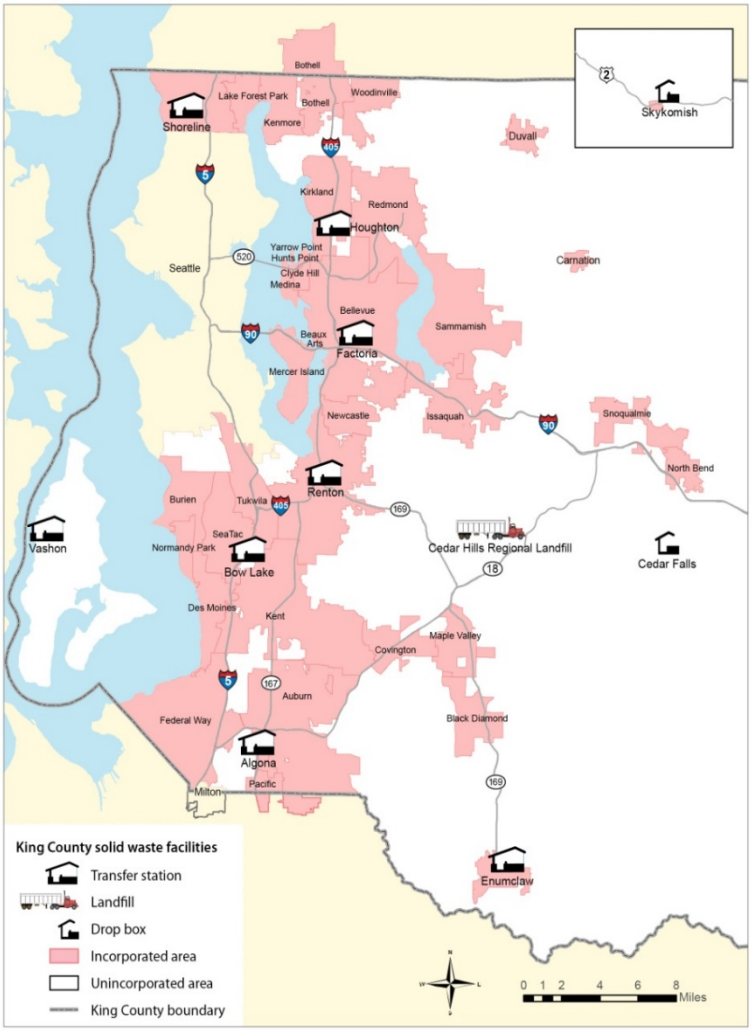
**BACKGROUND:**

**The Regional Solid Waste System**

The regional solid waste system is a cooperative, integrated system, with participation by 37 cities, solid waste haulers, and the County. King County receives solid waste at its eight transfer stations and two drop boxes from solid waste haulers, who collect it curbside from households in cities and in the unincorporated area. Cities manage solid waste

disposal within their jurisdictions, and contract with solid waste haulers, to provide service within the city[1].

Since the 1960s, the County has operated this network of transfer stations and drop boxes, now collectively receiving and processing over 800,000 tons of mixed municipal solid waste annually. These transfer stations, as well as drop boxes serving more remote locations, are distributed throughout the region, as shown on the graphic below:




A basic fee is charged to discharge waste at the transfer stations. The fee has been set at $120.17 per ton of waste since 2013. The proposed rate for 2017-2018 is $137.75. The basic fee and other rates are developed based on a rate study entitled Executive Proposed Solid Waste Disposal Fees for 2017-2018 ("rate study") (Attachment A to Proposed Ordinance 2016-0386).

The transfer stations and drop boxes also accept waste delivery from self-haulers—residents and small businesses who accumulate small loads of garbage and deliver it to

[1] RCW 35.21.120

transfer stations or drop boxes for disposal. The current rate of $19.22 per carload is proposed to increase to $22.08 per carload (tax and Moderate Risk Waste fee are added).

The Transfer System network receives and consolidates these waste loads, transfers them onto trailers and transports them by truck to the Cedar Hills Regional Landfill, a 920 acre facility located in Maple Valley, about 20 miles southeast of Seattle. The landfill is owned by King County. A rental fee is paid for its use for landfill purposes by the Solid Waste Fund to the County's General Fund. The site has been operating as a landfill since 1965. In 2010, the Council acted to modify the facility's Site Development Plan, resulting in the expansion of landfill capacity by 56 acres thereby extending its useful life from 2018 to 2025. The opening of a new "Area 8" will begin during this rate period. The Division has undertaken an update of the Site Development Plan, which is expected to recommend strategies for further extending the life of the landfill. The results of this review can have significant fiscal impacts: disposal at the Landfill is considered significantly less expensive than available alternatives, so the Council has approved policy to maximize the life of the landfill. Additionally, the Division, as required by federal law, is accumulating funding in the Landfill Reserve Fund for monitoring and maintaining the landfill for a minimum 30-year period following its closure. The date of that closure has implications for the amount of time available to accumulate the needed monitoring/maintenance funding—a later closure date results in lesser annual amounts needed to achieve funding targets.

Waste delivered from transfer stations to Cedar Hills is buried in "cells"—multi-acre disposal areas that are engineered to hold the waste permanently while managing the accumulated volumes to assure that leachate runoff and methane gas are appropriately captured and addressed. A limited number of waste haulers deliver waste directly to Cedar Hills; they pay a "regional direct" rate which is currently $103.50 per ton and proposed to be raised to $117 per ton.

**Transfer Station Network Upgrade**

The County has been working to upgrade the transfer network since the 2007 approval of the Solid Waste Transfer and Waste Management Plan, which provided for:

- Upgrading the Bow Lake and Factoria transfer stations in place;
- Replacing the Algona station with a new Southwest Recycling and Transfer Station at a site to be determined;
- Replacing the Houghton station with a new Northeast Recycling and Transfer Station at a site to be determined;
- Closing the Renton Transfer Station; and
- Retaining the Shoreline, Enumclaw and Vashon Recycling and Transfer Stations, which had been recently upgraded or constructed.

**System Developments Impacting Rates**

Since the 2012 approval of 2013-2014 rates, there has been extensive discussion of the proposed system upgrade. In noting a substantial drop in the volumes of tonnage being processed through the system—as well as decreases in future tonnage projections—the Council directed review of the proposed transfer system buildout. That review process focused on the proposed new Northeast transfer station. The resulting report addressed

potential options, including deferral of a new Northeast station, but noted potentially extensive queueing at the Factoria Recycling and Transfer Station if the Houghton Transfer Station, located in Kirkland, were closed and not replaced. The northeast service area is currently served by the Houghton Transfer Station, which processes about 160,000 tons annually. The Solid Waste Transfer and Waste Management Plan proposed closure of the Houghton station upon availability of replacement capacity; interim communications have focused on a closure date in the 2021-2023 period.

It is noted that the City of Bellevue, which generates about 8 to 10% of the annual system tonnage, has indicated plans to leave the system in 2028, at the end of the current interlocal agreement—removing about 60,000-70,000 tons from the Northeast King County portion of the system.

As a result of that initial review, Council recommended further review of the potential for strategies to manage the self-haul customer demand at the Factoria station, using techniques such as extended station hours, peak hour fee increases, bulky item collection, and similar strategies. The current rate proposal includes funding and staffing for testing a "demand management" pilot project.

Since the Council's 2012 consideration of the 2013-2014 rate proposal, most participant cities have signed extended and revised interlocal agreements committing them to the system through 2040, allowing for bond repayment terms extending over a longer period, and therefore at a more modest periodic rate. All of the transfer stations rebuilt or replaced through the upgrade process are expected to have life spans of at least 30 – 40 years.

Major system direction is established by the Comprehensive Solid Waste Management Plan. The last completed plan was prepared in 2001. An ongoing joint planning effort, involving the Solid Waste Division, the Metropolitan Solid Waste Advisory Committee, and the Solid Waste Advisory Committee, has approached, but not completed, an updated plan.

**Schedule of Proposed Fees**

Below are the existing and proposed fees recommended by Proposed Ordinance 2016-0386.

| | |
|---|---|
| Passenger cars | ~~$19.22~~ $22.08 per entry (14.8% increase) |
| Other Vehicles | ~~$120.17~~ $137.75 per ton (14.6% increase) |
| Charitable organizations | ~~$92.55~~ $106.07 per ton (14.6% increase) |
| Minimum | ~~$19.22~~ $22.08 per vehicle (14.8% increase) |
| Charitable organizations | ~~$15.08~~ $16.97 per entry (12.5% increase) |

Solid Waste Facilities Without Scales

| | |
|---|---|
| Compacted wastes | ~~$35.31~~ $39.95 per cubic yard (13.1% increase) |
| Uncompacted wastes | ~~$20.70~~ $23.42 per cubic yard (13.1% increase) |

| | | |
|---|---|---|
| Minimum charge | ~~$19.67~~ | $22.08 per vehicle (14.8% increase) |

Cedar Hlls disposal

| | | |
|---|---|---|
| Regional Direct | ~~$103.50~~ | $117.00 per ton (13% increase) |
| Other vehicles | ~~$121.75~~ | $137.75 per ton (14.6% increase) |

Special Waste

| | | |
|---|---|---|
| Special Waste fee | ~~$145.00~~ | $165.00 per ton (13.8% increase) |
| Special Waste fee Minimum charge | ~~$23.20~~ | $26.45 per entry (14% increase) |
| Special Waste fee Extra handling | ~~$175.00~~ | $193.00 per ton (10.3% increase) |
| Special Waste fee Extra handling-minimum charge | ~~$28.00~~ | $30.86 per entry (10.21% increase) |

**ANALYSIS**

For 2016, the current fee structure is expected to generate $104,865,887. The proposed increase described above would generate $116,461,232 in 2017, an 11% increase in revenue over 2016. Over 90% of the fee revenue is generated by the Basic Fee charged to commercial and self-haulers for waste acceptance at transfer stations. The increase in the Basic Fee, from $120.17 currently to $137.75 in 2017 and 2018, represents a 14.6% increase over the current rate.

System tonnage is anticipated to decline somewhat in 2017. Over the last two years, the North transfer station of the Seattle Public Utilities solid waste system has been closed for reconstruction; many self-haulers who ordinarily would use the Seattle North station have instead brought their loads to the County's First Northeast Recycling and Transfer Station in Shoreline. In 2013, the First Northeast station received 43,000 tons of waste; in 2015, it received 65,000 tons, a 51% increase. When the Seattle North construction project is completed in 2016, part or all of the Seattle North service population may return to the Seattle facility. The rate study prepared by the Division projects a First Northeast 2017 tonnage level of 52,000. System-wide, the rate study projects a decline in Basic Fee tons from 856,100 (2016) to 829,467 (2017).

The Executive notes that the propose rate, if approved, would place King County Basic Fee at a level within the general range of fees charged by major solid waste utilities within the state:

**Table 1. Proposed Fee compared to Peer Jurisdictions**

| Jurisdiction | Basic Fee[2] |
|---|---|
| Clark County | $87.56 |
| King County proposed | $137.75 |
| Pierce County | $145.84 |
| Seattle City | $145.00 |
| Snohomish County | $105.00 |
| Spokane County (includes city) | $101.00 |
| Thurston County | $119.00 |

The Executive has disaggregated the elements of the proposed increase, by dollars and by rate impact, in Table 1 below:

**Table 2. Components of the 2017-2018 Rate Increase**

| | 2017-18 Expenditures ($ in millions) | 2017-2018 Rate Impact ($ per ton) | New FTEs/TLTs required |
|---|---|---|---|
| Current Basic Fee | | $120.17 | |
| | | | |
| **Sustain Current Services** | | | |
| Cover Inflationary Increases | $12.5 M | $5.49 | 10.25 / 0 |
| Debt Service for New Transfer Stations | $7.1 M | $3.10 | |
| Replace Aging Equipment | $ 6.8 M | $2.98 | |
| Fortify Cedar Hills Landfill Reserve Fund | $3.6 M | $1.59 | |
| Maintain Closed Landfills | $2.5 M | $1.07 | |
| *Subtotal Sustain Current Services* | *$32.5 M* | *$14.23* | *10.25 / 0* |
| | | | |
| **Ensure Service Reliability** | $3.6 M | $1.58 | 1 / 3 |
| | | | |
| **Address County Strategic Priorities** | $1.1 M | $0.46 | 1 / 0 |
| | | | |
| **Position for the Future** | $2.0 M | $0.88 | 0 / 10 |
| | | | |
| Adjustment for Increased Recycling Rate | $0.7 M | $0.43 | |
| | | | |
| **Total** | | **$137.75** | **12.25 / 13** |

[2] As of 2016

In sum, the recommended rate increase would support 12.25 new FTEs, primarily to "sustain current services" and 13 new TLTs, primarily to "position for the future". These additional positions would likely be proposed to be added in the Executive's proposed 2017/2018 biennial budget.

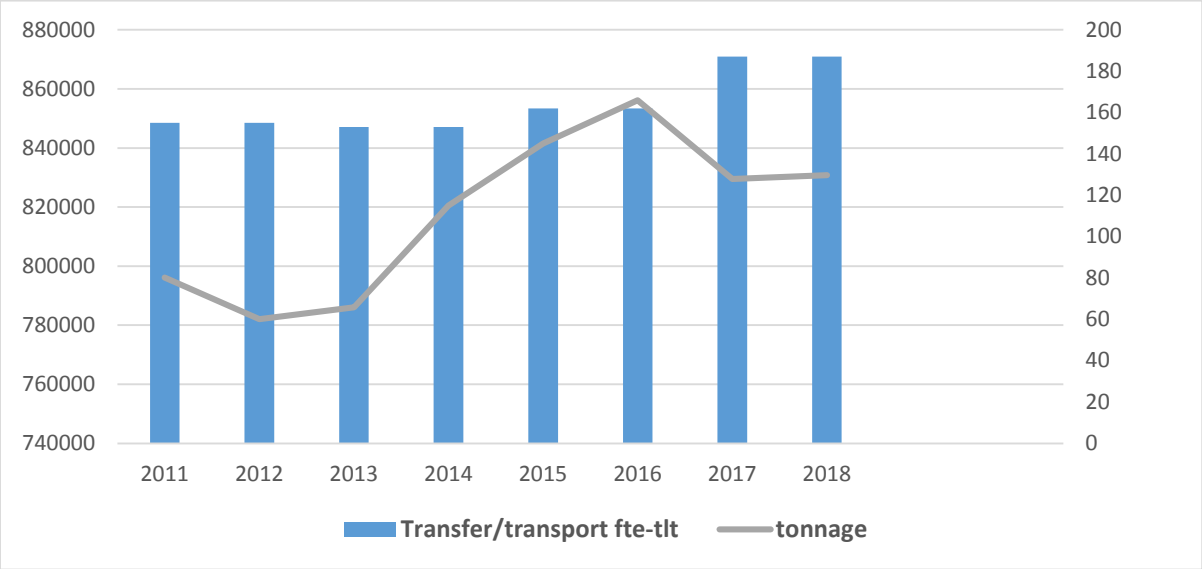
In describing the proposed new FTEs, the rate study defines four major categories of expenditure: Sustain Current Services; Replace Aging Equipment; Fortify Cedar Hills Landfill Reserve Fund; and Maintain Closed Landfills.

Sustain Current Services

A number of the increased expenditures in this category will be familiar to the Council. In response to a proviso, the Executive, earlier this year, provided a report on closed landfills, noting that six landfills for which the County has responsibility are beyond their minimum monitoring date—but that there are continuing needs for managing environmental systems at the landfills, and the State Department of Ecology has not indicated any near-term date for termination of monitoring responsibility. This appears to represent a mandate for continuing expenditures to manage these custodial facilities.

This category also describes the need to pay for inflationary increases, and to replace aging equipment. It further refers to the need to pay for FTEs required to process increased tonnage at transfer stations. Specifically, the study refers to 10.25 new positions to "provide additional support at transfer stations and for transportation services to respond to increased solid waste tonnage, new station design, and expanded recycling services." However, as the table below demonstrates, system tonnage is anticipated to decline over the coming biennium:

**Table 3. Growth of Transportation and Transfer Staff v. System Tonnage**
(2017-2018 staffing based on proposed rate)




Transfer staff are those located at system transfer stations, responsible for cashiering, operating waste-moving equipment, assisting customers, and similar functions. Transportation staff drive loaded tractor/trailers from transfer stations to Cedar Hills. This table notes that, while tonnage is expected to decline in the coming biennium, the

proposed fee would support an increase in staff intended to manage that declining waste flow.

Resource Recovery

The Rate Study does not provide specifics regarding the functions of the 10.25 new FTEs associated with the "Sustain Current Services" category. Staff will inquire further regarding the function of these positions, and specifically whether some may be additional "resource recovery" positions. In the 2015-2016 budget, the Executive requested, and the Council approved, 9 new positions designated to sort through waste piles at transfer stations, pulling out recyclable wood, metal and cardboard. These positions were to be located at First Northeast, Enumclaw and Bow Lake transfer stations. Questions were raised at the time regarding the cost-benefit of these positions, and Council proviso'd the budget with a requirement for consideration of a "self-haul surcharge" as an alternative approach to attaining progress in self-haul recycling and resource recovery. Such a surcharge would be placed on self-haulers who choose not to sort their loads. Commercial haulers deliver loads from residences and businesses that have largely been pre-sorted at the curbside; this suggests that residents and businesses, who utilize and pay for separate curbside collection of recyclables, would be asked to further pay for sorting waste piles at the transfer stations. About 80% of the transfer station volumes are the pre-sorted household/business volumes; the remainder are self-haul volumes that are often not pre-sorted.

Staff is seeking further information as to the specific functions of the proposed additional transfer station staff.

Transportation Services

The rate study also refers to additional support for "transportation services", as noted. In early discussions regarding the transfer station upgrade project, one of the key reasons offered for constructing new transfer stations was the placement of "compactors" that would compress waste loads for placement in trailers bound for Cedar Hills, with the expectation of substantial reduction in the numbers of tractor/trailer trips required from transfer stations. The Factoria Recycling and Transfer Station, largely completed, is making operational use of the new compactor at the station; June 2016 numbers show a 10% increase in tonnage over June 2015, but a 17% decline in numbers of loads leaving for Cedar Hills from that transfer station, from 533 to 443 trips. A similar decline was seen upon the completion of the Bow Lake Recycling and Transfer Station several years ago.

In light of these considerations, staff analysis is continuing on the need for additional transfer station/transportation staff, as well as rate levels for self-haul.

Self-Haul/Recycling

Self-haulers include clients who generate waste in different ways, including residents with large loads who are doing a major clean-up project, or who may not subscribe to curbside service; landscapers; home rehabilitation contractors; and others. According to the most recent waste monitoring survey,[3] 11% of visitors to transfer station indicate that it is cheaper, or it saves them money. Thirty-two percent of self-haul customers report that they do not subscribe to curbside garbage service at home.[4] Concurrently, self-haulers

[3] http://your.kingcounty.gov/solidwaste/about/documents/waste-characterization-study-2011.pdf

[4] http://your.kingcounty.gov/solidwaste/about/documents/waste-characterization-study-2011.pdf p38

are among the lowest recycling waste generators; in 2011, they generated 208,815 tons of garbage, of which 9,630 tons were recycled (4.6%). Meanwhile, single family residents generated 376,537 tons of garbage in 2011, of which 248,727 were recycled (66%)[5].

The Executive is proposing increasing self-haul fees from $19.22 to $22.08 per entry (plus tax/MHW fee)—an increase of 14.8%. This increased rate will continue to leave the self-haul fee below that of local jurisdictions, except Snohomish County. Seattle's minimum self-haul fee is $30; Pierce County's minimum fee is $26.73 (plus tax). Snohomish County's self-haul fee is $20, which includes tax. Concurrently, many self-haul users of King County transfer facilities do not live in jurisdictions that are system participants. According to the Transfer Plan Review Final Report[6], 10% of Bow Lake weekend users are Seattle residents (Seattle is not a participant in the regional system); 61% of First Northeast (Shoreline) weekday users are Seattle residents (some proportion may return to the Seattle system upon completion of the Seattle North station, though Seattle minimum fees there are substantially higher, and cues may be longer); and 9% of First Northeast weekday users are from Snohomish County.

These circumstances raise questions as to whether the proposed self-haul rate is comparatively low, resulting in system inflow of an expensive user type, at a time when the Division is facing potential queueing challenges at selected facilities. It also raises questions as to whether there are ways to encourage greater recycling, by incenting those in low-recycling user categories to make use of high-recycling service types.

Construction/Demolition

The Council has recently approved legislation to increase recycling at construction/demolition designated facilities (2015 Ordinance 18166). The Solid Waste Division website currently lists an increased number of designated facilities where construction/demolition debris may be delivered. While fees vary according to load, minimum fees listed range from $20 to $25 per visit. Recycling at construction/demolition designated facilities is considered substantially higher than self-haul recycling rates: as an example, the Cascade Recycling Center, one of the Division's designated facilities, indicates that less than 5% of the material that comes into the center is disposed as garbage.[7] According to the 2011 Waste Characterization Report[8], as of the date of that report, construction and demolition materials represented 19% of transfer station loads surveyed. With the implementation of the new Construction/Demolition ordinance, dump trucks and dumping trailers may not bring construction/demolition materials to county transfer stations; however, pickup truck loads are still accepted. These circumstances raise the question of whether there will be a continuing pattern of using county transfer facilities by those bringing construction/demolition debris, whether this represents a significant diversion from designated construction/demolition processing facilities, and whether there are means to encourage use of those designated facilities by small generators of construction and demolition debris.

Staff analysis is continuing regarding the relationship of self haul fees to station utilization and recycling rates.

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[5] http://your.kingcounty.gov/solidwaste/about/Planning/documents/2013-swd-comp-plan.pdf p3-19
[6] https://your.kingcounty.gov/solidwaste/about/Planning/documents/transfer-plan-review-part-2-report-final.pdf
[7] http://wmnorthwest.com/cascaderecycling/index.html
[8] http://your.kingcounty.gov/solidwaste/about/documents/waste-characterization-study-2011.pdf p4

Demand Management Pilot

As noted earlier, this proposed rate adjustment supports a demand management project intended to assess strategies to limit the extent of queueing, primarily at the Factoria Recycling and Transfer Station. This project is a follow-on to system discussions regarding potential wait-time impacts at the Factoria station, in the instance that the Houghton Transfer Station were closed and not replaced. The rate study indicates that the demonstration project is anticipated for 2018.

However, there are uncertainties regarding the project. As noted by the rate study, there is a question as to whether the review will involve a closure of the Houghton station during implementation. Station closure would clearly be disruptive to current facility users, both commercial and self-haulers. Certainly, discussions and outreach to the affected users would be required. Without a facility closure, however, it is unclear how the agency could assess the effectiveness of various alternatives, in terms of the choices of Houghton users to access alternative service options—as well as potential queueing impacts on next-closest transfer stations.

The rate study indicates that ten TLTs will be assigned to the demand management pilot program. Discussion of the actual function of these staff is limited; it is indicated that temporary staff would be added to assist customers at the Shoreline station. Presumably, these additional staff would be intended to mitigate impacts of additional queueing times at Shoreline, by helping to move customers more quickly through the unloading process. It is noted that the Executive is projecting reduced self-haul usage at Shoreline with the opening of the Seattle North station. The Rate Study notes that the self-haul fee at Factoria would be increased, and operating hours would be extended. The fee increase should not require additional staffing, though the extended operating hours may. Staff is seeking more information on the utilization of these staff.

The demand management pilot will either A) demonstrate the viability of demand management strategies, or B) fail to demonstrate their viability. If the strategies are not proven viable, the region would need to assess its options, including whether to proceed with a North Recycling and Transfer Station, or how long to continue serving the disposal needs of the Houghton service area with the existing station.

By way of context, it is important to note the concerns of the County Auditor in the 2011 Performance Audit of Solid Waste Transfer Station Capital Projects. The Auditor expressed concern about the potential for "overbuilding" the transfer network upgrade:

> "An additional risk is that current rate payers could be financing more infrastructure than would be needed in the future, especially if cities drop out of the system after 2028 when the current interlocal agreement with the 37 city partners to the County's solid waste system expires." [9]

Since the 2011 Performance Audit, all but five of the city participants in the system have signed extended agreements, through 2040, as noted earlier.

[9] ttp://www.kingcounty.gov/~/media/operations/auditor/documents/2011Documents/SWD_Report_Final.ashx?la=en

As noted above, the South County project will have taken over a decade to site, design, permit, construct and open. A siting process in northeast King County may encounter obstacles as well. Opponents of various site options are likely to challenge the wisdom and expense of the project, in light of the pending departure from the system of five cities from the northeast region in 2028, reducing Factoria tonnage by perhaps half. The Rate Study indicates that the demonstration project will run for 12 months, beginning in 2018.

Landfill Reserve Fund

Staff has previously noted an opportunity for additional rate savings that was identified in the County Auditor's 2011 Performance Audit, having to do with the investment strategy of the Landfill Reserve Fund. The Audit noted,

> "Finally, as previously noted, part of the Landfill Reserve Fund (LRF) balance has an investment horizon extending to the year 2058. Nevertheless, the fund is invested in the same investment pool as other funds, whose overall liquidity objectives and needs are shorter term, for example, less than one year. It may be to the benefit of the Landfill Reserve Fund to have an alternative investment strategy. As an example, increasing the real (before inflation) rate of return on the LRF balance by a full one-percent could result in lowering the tipping fee by $.87 per ton in 2012. At the estimated 826,000 tons of waste for 2012, this would translate into a savings to rate payers of $717,000."

This LRF investment strategy revision has not yet been completed, though the Division has pursued a strategy review. Implementation of this recommendation during the 2017-2018 biennium has the potential to generate additional revenue for the Division. The Executive's proposed rate does not assume implementation of this recommendation in 2017/2018 – implementation of the recommendation would have the potential to generate additional revenue for the Division. Council may want to consider inquiring of the Executive as to the status of this policy review, and encourage expeditious completion. Staff inquiry on this matter is continuing.

Debt Service for New Transfer Stations

The 2012 Rate Study, in support of the approved 2013-2015 rate proposal, discussed the projected repayment of bonded indebtedness that the Division then anticipated. At the time, there were a number of conditions that have since changed. The Council has directed a deferral in expenditures for the North Recycling and Transfer Station, pending demonstration of need; the Executive has included funding for a demand management pilot in this proposed rate. Additionally, in 2012, there was an expectation of further progress in the replacement of the Algona Transfer Station with a new South Recycling and Transfer Station.

**Table 4. 2012 Rate Study: Anticipated Station Upgrade Project Schedule**

| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|---|---|
| Bow Lake | open | | | | | | |
| Factoria | Design and permit | construction | | open | | | |
| South County | Siting | Design and permit | | Construction | | | |
| Northeast | siting | | Design and permit | | construction | | open |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Algona | | | | | | close | |
| Houghton | | | | | | | close |
| Renton | | | | | | Close or modify operations | |

However, progress in siting the South County facility has been delayed. After an extended effort to move forward in siting the facility, in February of this year, the Division issued a new "Notice of Availability of Draft EIS". A final EIS is anticipated for October of 2016. It is not clear that siting decisions will be completed this year, or precisely when design and permitting efforts, and subsequent construction activity--will begin. Initial project expenditures for the South County project began in about 2008, according to the 2006 rate study. By the time of completion, it is likely that the project would have taken over a decade from start to finish.

**Table 5. 2012 Rate Study: Anticipated Transfer Station Upgrade Project Schedule**

| Comparison of Projected Northeast and South County Transfer Station Expenditures, 2012 v. 2016 | | | | | |
|---|---|---|---|---|---|
| | 2016 | 2017 | 2018 | 2019 | 2020 |
| Northeast 2012 | 3,991,918 | 7,441,963 | 22,436,238 | 24,124,598 | 7,622,063 |
| Northeast 2016 | 0 | 0 | 0 | 0 | 0 |
| South County 2012 | 22,068,323 | 23,737,848 | 7,636,261 | | |
| South County 2016 | 798,000 | 2,509,510 | 6,275,223 | 6,441,625 | 34,153,561 |

The outcome of the process described above has been a delay in project expenditures, and in the case of Northeast, a deferral pending demonstration of need. As a result, anticipated bond sales have been delayed, and bond repayment has been rescheduled.

In addition to the rescheduling described above, most participating cities in the system have executed an extended and amended Interlocal Agreement committing to the regional solid waste system, continuing through 2040. This has had the effect of allowing bond sales that may be repaid over several decades, rather than having to be repaid by 2028, reducing the required level of annual payments.

The table below demonstrates the projected bond repayment schedule systemwide, anticipated in 2012, compared to the bond repayment schedule as currently projected. In 2018, for example, the difference between the amount that had been projected for repayment, and the amount currently anticipated, is $14,414,424.

**Table 6. Payments on Bonded Indebtedness: 2012 Projections v 2016 Projections**

| | 2016 | 2017 | 2018 | 2019 | 2020 |
|---|---|---|---|---|---|
| **2012 Rate Study** | 21,704,322 | 24,753,779 | 28,014,087 | 30,710,638 | 31,481,491 |
| **2016 Rate Study** | 11,478,095 | 13,732,413 | 13,599,663 | 13,602,163 | 16,478,047 |

Staff is seeking further information on this issue.

Cedar Hills

The Rate Study recommends $3.6 million to "Fortify the Cedar Hills Landfill Reserve Fund". One function of the Landfill Reserve Fund is to accumulate funding necessary to support monitoring and maintenance activities at the landfill for a 30-year period after its closure date. Over the last few years, the anticipated closure date has been moved progressively further into the future, as waste volume projections have declined compared to earlier projections, and as landfill settlement patterns have become more defined. The agency has referred to closure dates of 2028 until recently.

For the first time, the current rate study reverses the trend of recent years, and identifies a closure date of 2027. This is noteworthy, in that it allows fewer years to accumulate needed post-closure maintenance/monitoring funding.

In the 2015-2016 budget, the Council approved an update to the 2010 Cedar Hills Site Development Plan. That Plan had established county policy to acknowledge an in-county landfill as the least expensive disposal option, and to extend the life of the landfill to the extent possible. The Revised Site Development Plan was anticipated at the end of December 2015, later projected at July, 2016. The intent of the Revised Plan was to recommend strategies to further extend the life of the landfill; the rate study refers to "cost-effective capacity through 2040."

Staff is inquiring as to the status of the Revised Site Development Plan, and the impact of a more limited, rather than extended, period during which to accumulate necessary post-closure monitoring/maintenance funding. The Council may want to consider whether to support a Landfill Reserve Fund increase that assumes a 2027 closure date, in the context of an anticipated recommendation to extend the closure date, pursuant to a report anticipated soon.

**Timing**

The proposed rate would become effective in January 2017. Cities incorporate the rate adjustment into their rates; the Executive seeks to allow them a 3-month period to accomplish the adjustment before the start of 2017. Additionally Solid waste haulers, who pay the basic rate for deposit of waste at transfer stations, adjust their monthly rates paid by homeowners for residential collection based on this basic rate. For the unincorporated area, such residential collection rates require approval by the Washington Utilities and Transportation Commission, therefore requiring action by the Council at least 90 days in advance to allow necessary WUTC review time before the January effective date. If the Council's action were delayed beyond September, the new rate would not be able to go into effect at the start of the year.

**ATTACHMENTS**

1. Proposed Ordinance/Motion 2016-0386
    a. Attachment A: Executive Proposed Solid Waste Disposal Fees for 2017-2018 (and its attachments)
2. Fiscal Note
3. Transmittal Letter

**INVITED**

Meg Moorehead, Strategy, Communications & Performance Manager, Solid Waste Division, Department of Natural Resources and Parks

# KING COUNTY

## Signature Report

**August 22, 2016**

**Ordinance**

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

**Proposed No.** 2016-0386.1 **Sponsors** Upthegrove

AN ORDINANCE relating to solid waste fees charged at recycling and transfer facilities and at the Cedar Hills regional landfill; and amending Ordinance 12586, Section 2, as amended, and K.C.C. 10.12.021.

STATEMENT OF FACTS:

1. The solid waste division of the department of natural resources and parks provides essential public services that protect human health, the environment, and the quality of life in our region.

2. The solid waste division operates the Cedar Hills regional landfill, eight transfer stations, and two drop boxes. It also provides innovative programs to help customers recycle and prevent waste.

3. The solid waste division is an enterprise fund, supporting almost all (ninety-five percent) of its services with a basic fee charged for each ton of municipal solid waste received at county facilities.

4. The solid waste basic fee for 2013-2014 took effect on January 1, 2013, with a further increase scheduled for the 2015-2016 rate period.

5. By achieving efficiencies and refocusing priorities, the division made the two-year rate last four years, so that customers will pay twenty-two

million dollars less in 2015 and 2016 than if fees had increased as scheduled.

6. A fee increase can no longer be deferred if the solid waste division is to sustain current services, repay debt on previously approved transfer station projects, reinforce service reliability, and test demand management methods at transfer stations.

7. The proposed new basic fee is less than the 2017 fee projected in the last rate proposal and in line with rates charged by comparable solid waste service providers in the region.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. A. This ordinance proposes changes to the fees currently charged for solid waste disposal at solid waste transfer stations and drop boxes and at the Cedar Hills regional landfill.

B. These fees are established and assessed pursuant to RCW 36.58.040, RCW 70.93.070 and K.C.C. 10.08.040.

SECTION 2. Ordinance 12586, Section 2, as amended, and K.C.C. 10.12.021 are each hereby amended as follows:

A. All persons using county-operated solid waste transfer stations and drop boxes shall pay the service fees in the following schedules:

1. Solid waste disposal:

| | |
|---|---|
| Passenger cars | $((~~19.22~~)) 22.08 per entry |
| Other vehicles | $((~~120.17~~)) 137.75 per ton |
| Charitable organizations | $((~~92.55~~)) 106.07 per ton |

| | |
|---|---|
| Minimum | $((~~19.22~~)) 22.08 per vehicle |
| Charitable organizations, minimum charge | $((~~15.08~~)) 16.97 per entry |

2. Deposit of source-separated yard waste at yard waste collection areas, clean wood at clean wood collection areas, or any combination thereof:

| | |
|---|---|
| Passenger cars | $12.00 per entry |
| Other vehicles | $75.00 per ton |
| Minimum charge | $12.00 per vehicle |

3. Deposit of white goods at white goods collection areas:

| | |
|---|---|
| White goods without regulated refrigerants | $10.00 per unit |
| White goods with regulated refrigerants | $30.00 per unit |

B. Service fees for the use of solid waste facilities without scales shall be based upon the cubic yard or fraction thereof as follows:

1. Solid waste disposal:

| | |
|---|---|
| Passenger cars | $((~~19.67~~)) 22.08 per entry |
| Other vehicles: | |
| Compacted wastes | $((~~35.31~~)) 39.95 per cubic yard |
| Uncompacted wastes | $((~~20.70~~)) 23.42 per cubic yard |
| Minimum charge | $((~~19.67~~)) 22.08 per vehicle |

2. Deposit of source-separated yard waste at yard waste collection areas, clean wood at clean wood collection areas, or any combination thereof:

| | |
|---|---|
| Passenger cars | $12.00 per entry |
| Other vehicles: | |
| Compacted wastes | $21.75 per cubic yard |

| | |
|---|---|
| Uncompacted wastes | $12.75 per cubic yard |
| Minimum charge | $12.00 per vehicle |

C. Service fees at the Cedar Hills regional landfill shall be:

| | |
|---|---|
| Cedar Hills Regional Direct | $((~~103.50~~)) 117.00 per ton |
| Other vehicles | $((~~121.75~~)) 137.75 per ton |

Disposal by other vehicles is at the discretion of the division director.

D. A moderate-risk waste surcharge shall be added to all solid waste disposed by nonsolid waste collection entities using county operated solid waste facilities. The fee schedule is as follows:

1. For facilities with scales:

| | |
|---|---|
| Self-haulers | $4.73 per ton |
| Minimum charge | $1.81 per entry |
| Passenger cars | $1.81 per entry |

2. For facilities without scales:

| | |
|---|---|
| Compacted | $1.04 per cubic yard |
| Uncompacted | $0.59 per cubic yard |
| Minimum charge | $1.81 per entry |
| Passenger cars | $1.81 per entry |

E. As determined by the division director, a special waste fee shall be charged for special waste including asbestos-containing waste material and other wastes requiring clearances in accordance with King County Board of Health Code Title 10 or rules adopted by the department.

| | |
|---|---|
| Special waste fee | $((~~145.00)) 165.00~~ per ton |

| | |
|---|---|
| Special waste fee minimum charge | $((~~23.20)~~) 26.45 per entry |
| Special waste fee, extra handling | $((~~175.00~~)) 193.00 per ton |
| Special waste fee, extra handling minimum charge | $((~~28.00)~~) 30.86 per entry |

F. In the absence of exact weights or measurements, the estimate of the solid waste division director is binding upon the user.

G. The solid waste division director may establish fees for handling and processing of recyclable materials for which no other fee has been established

by ordinance. Consistent with WRR-1, WRR-2, WWR-4 and WRR-36, the fees need not recover the full cost of handling and processing.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

_____

J. Joseph McDermott, Chair

ATTEST:

_____

Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, _____.

_____

Dow Constantine, County Executive

**Attachments:** A. Executive Proposed Solid Waste Disposal Fees for 2017-2018

# Executive Proposed Solid Waste Disposal Fees for 2017-2018

June 30, 2016

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# Executive Proposed Solid Waste Disposal Fees for 2017 and 2018

## Executive Summary

The King County Solid Waste Division operates eight transfer stations, the Cedar Hills regional landfill, and waste prevention and recycling programs for the unincorporated area and 37 partner cities. The division is proposing an increase in its basic rate (tipping fee) from $120.17 to $137.75 per ton for 2017 and 2018. Other King County solid waste rates and fees are unchanged except for those set as a percent of the basic rate. The system wide average effect on single-family curbside customers would be about $0.94 per month, representing a five percent increase on a $20 monthly bill, which is in the mid-range of bills charged in partner cities and the unincorporated area.

The current rate was adopted for 2013-2014, with an increase scheduled for 2015-2016. While the impacts of the recent recession were reverberating through the economy, the Solid Waste Division pursued efficiencies and deferred facility maintenance and equipment replacement to make the two-year rate last four years, and give the economy and consumers time to more robustly and sustainably recover. Had rates increased as planned in 2015, customers would have paid $22 million more during the 2015-2016 biennium. The cost of current services has increased over the past four years and further deferral of investments in equipment and operations would have significant adverse impacts to the solid waste system. The proposed 2017-2018 rate will provide revenue needed to sustain current services, help catch-up on deferred system investments, and adapt to a rapidly changing industry.

The new rate will primarily fund the increased cost of current services, including waste transfer, disposal, and waste prevention and recycling programs, while maintaining fundamental support services, such as human resources, finance, and system-wide planning conducted in conjunction with partner cities. The rate also repays new debt for construction of previously approved new transfer stations at Factoria and South County.

In addition to sustaining current services, new spending is proposed to:

- **Enhance service reliability** including upgrading the transfer station cashiering system, improving wastewater systems at Cedar Hills to ensure continued regulatory compliance, education costs and operational changes required to implement new recycling requirements for transfer station self-haulers, and completing new development in Area 8 to extend the life of Cedar Hills.
- **Implement the Equity and Social Justice (ESJ) Initiative and the Strategic Climate Action Plan** through the “Recicla Más. ¡Es Facilísmo!” program, installing Spanish language signs at transfer stations and establishing an opportunity fund for

staff-generated actions to advance ESJ goals. Initiatives like piloting compressed natural gas/diesel hybrid technology within the division fleet support the goals of the Strategic Climate Action Plan.

- **Position for the Future** by conducting a demand management pilot project in 2018 to test changes to services, hours, and prices at existing transfer stations. If the demand management pilot program meets its goals, it could alleviate the pressure to build new transfer stations or alternatively, reduce the costs of a new station currently estimated at $97 million, reducing future rate increases.

The proposed 2017-2018 basic fee of $137.75 per ton is slightly lower than the $140.00 per ton fee projected for 2017 in the last rate proposal. It is also in line with rates for comparable solid waste providers in the region – lower than Pierce County, but higher than Snohomish County.

## Introduction

King County has provided reliable, environmentally responsible solid waste services for fifty years. Since introducing recycling programs in the 1980s, King County has been a leader in diverting waste from the landfill with residents and businesses recycling 54 percent of their waste in 2013, the last year for which State-collected data is available. The *2015 Strategic Climate Action Plan* set higher goals – striving for a recycling rate of 70 percent by 2020 as a crucial step toward the long-term goal of zero waste of resources by 2030.

Interlocal agreements require the division to provide disposal for signatory cities through 2040, yet low-cost capacity at the Cedar Hills Regional Landfill (Cedar Hills) is finite. The adopted 2001 *Comprehensive Solid Waste Management Plan* (Comp Plan) states, "the policy of King County shall be to monitor and analyze conditions impacting the appropriateness, feasibility, and timing of waste export on a continuous basis." The 2006 *Solid Waste Transfer and Waste Management Plan* calls for waste to be exported when Cedar Hills reaches capacity and for the division to maximize the capacity of Cedar Hills "subject to environmental constraints, relative costs to operate, and stakeholder interests." Development of Cedar Hills Area 8, approved in the *2010 Cedar Hills Project Program Plan*, provides capacity into 2027. Cost-effective capacity through 2040 could be provided through development beyond Area 8.

After avoiding a previously planned rate increase for 2015-2016, the division is proposing a rate increase effective January 1, 2017, to continue providing safe, sustainable, and environmentally sound management of the region's solid waste, and to reach the county's goals for recycling. Under this proposal, the basic fee would increase from $120.17 per ton to $137.75 per ton for the two-year period of 2017 and 2018, which is consistent with the rate forecast in 2012. The system-wide average effect on single-family curbside customers would be about $0.94 per month, representing a five percent increase on a $20 monthly bill, which is in the mid-range of bills charged in partner cities and the unincorporated area.

## Proposed Fees

The following fees are proposed to change on January 1, 2017:

- **Basic Fee:** A fee charged to commercial curbside collection companies and to residential and business self-haulers who bring solid waste to division transfer facilities. The basic fee accounts for more than 95 percent of revenues. The division proposes an increase in the basic fee from $120.17 to $137.75 per ton for 2017 and 2018.

  As a consequence of the increase in the basic fee, the other fees that are meaningfully impacted by the increase in the basic fee are the Regional Direct

Fee, the Special Waste Fee, and Special Waste Extra Handling Fee. Collectively, these fees make up approximately one percent of total revenue.

- **Regional Direct Fee:** A discounted fee charged to commercial collection companies that haul solid waste to Cedar Hills from their own facilities, thus bypassing division transfer stations. The fee is approximately 85 percent of the basic fee; this fee will increase by approximately 13 percent, to $117 per ton.

- **Special Waste Fee:** Special wastes are non-hazardous waste materials that require special handling and/or record-keeping. Special waste must be cleared through the division's waste clearance program. The special waste fee will increase by approximately 14 percent to $165 per ton.

- **Special Waste Extra Handling Fee**: Some special wastes, such as asbestos, are more expensive to manage due to handling and record-keeping requirements beyond the waste clearance process. The special waste extra handling fee will increase by 10 percent to $193 per ton.

All other King County solid waste rates and fees will be unchanged. **Table 1** compares current and proposed fees charged by the division.

**Table 1: Comparison of current and proposed tipping fees**

| | Last Change | Current Fee ($) | Proposed Fee ($) | Change in Fee ($) | Percent Change |
|---|---|---|---|---|---|
| **Basic** | **2013** | **120.17** | **137.75** | **17.58** | **15%** |
| **Regional Direct** | **2013** | **103.50** | **117.00** | **13.50** | **13%** |
| **Yard Waste and Clean Wood** | **2013** | **75.00** | **75. 00** | **---** | **---** |
| **Special Waste** | **2013** | **145.00** | **165.00** | **20.00** | **14%** |
| **Special Waste - extra handling** | **2013** | **175.00** | **193.00** | **18.00** | **10%** |
| **Appliances CFC** | **2013** | **30.00** | **30.00** | **---** | **---** |
| **Appliances Non-CFC** | **2013** | **10.00** | **10.00** | **---** | **---** |
| **Unsecured loads** | **2013** | **25.00** | **25.00** | **---** | **---** |

The proposed 2017-2018 rate of $137.75 per ton is lower than projected in the last rate proposal (**Figure 1**). It is in line with rates for comparable solid waste providers in the region – lower than Pierce County and Seattle, but higher than Snohomish County (**Table *2***).

**Figure 2: 2017-2018 Rate proposal compared to 2013-2014 rate proposal projections**

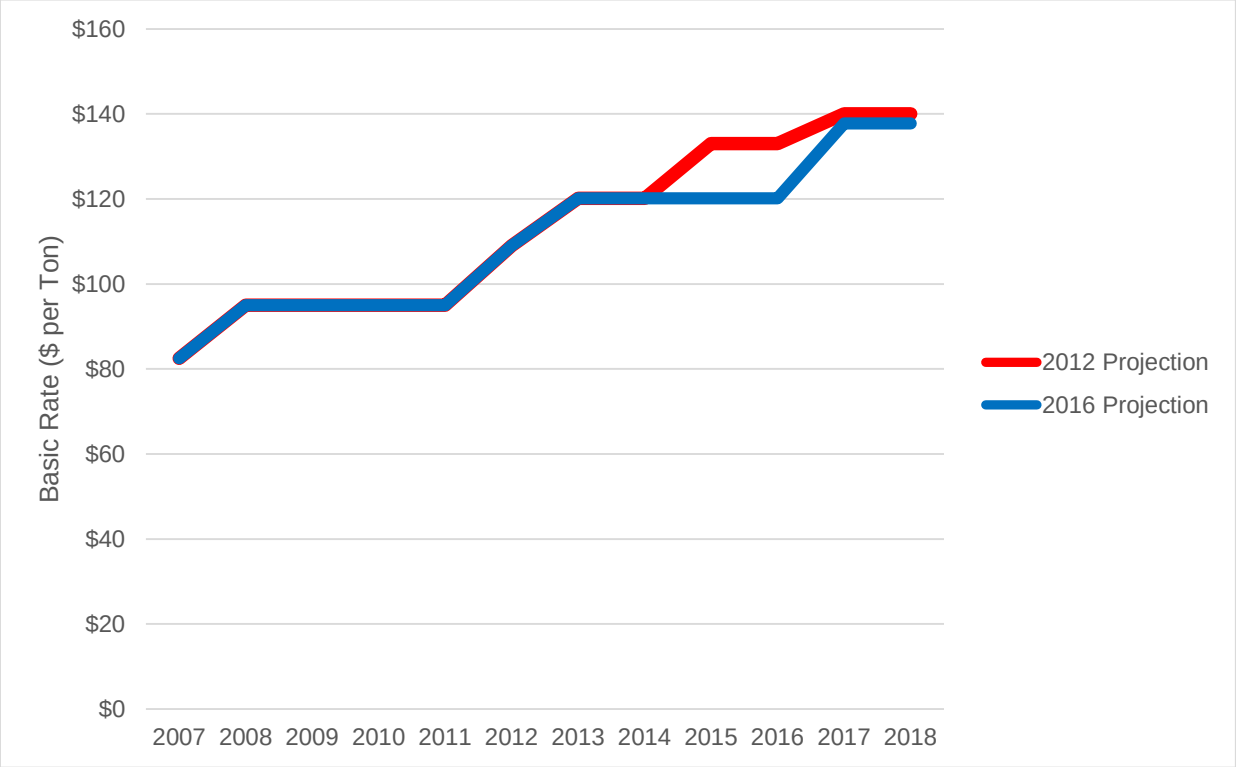


**Table 2: Proposed King County solid waste fee compared to peer jurisdictions**

| Jurisdiction | Basic Fee[1] |
|---|---|
| Clark County | $87.56 |
| King County proposed | $137.75 |
| Pierce County | $145.84 |
| Seattle City | $145.00 |
| Snohomish County | $105.00 |
| Spokane County (includes city) | $101.00 |
| Thurston County | $119.00 |

[1] As of 2016

## Financial Context

The division uses an enterprise fund, managing nearly all of its expenses with revenues earned through fees (called tipping fees) paid for disposal of waste at its transfer facilities and Cedar Hills. Services supported by the fees include:

- Transfer - Build and operate convenient and efficient transfer stations and drop boxes where many small loads of waste and recyclables are combined into larger loads. Transport waste from stations to Cedar Hills.
- Disposal - Develop and operate Cedar Hills where more than 880,000 tons of solid waste is disposed each year and landfill gas is used to produce energy and fuel. Monitor and maintain seven closed landfills to meet regulatory requirements.
- Recycling - Conduct waste prevention and recycling programs for curbside customers and at transfer stations to protect the environment and quality of life.
- Support Services - Meet customer needs and provide support functions needed to operate the solid waste system including human resources, finance, and system-wide planning.

Beginning in late 2007, a nationwide financial crisis triggered a precipitous, years-long decline in the amount of waste being disposed. Tonnage and rate revenue declined substantially, resulting in service reductions including suspension of recycling services at transfer stations, delaying regular facility maintenance, and deferring equipment replacement, in a bid to reduce expenses and mitigate a need to increase rates.

A rate increase that partially restored service and maintenance levels was adopted for 2013-2014, with a second increase planned for 2015-2016. By pursuing further efficiencies, the division was able to manage a seven percent increase in waste tonnage, wage and services inflation, and new debt service for transfer station construction without the planned 2015-2016 rate increase. Had rates increased as planned in 2015, customers would have paid $22 million more during the 2015-2016 biennium. A fee increase can no longer be deferred if the division is to sustain its current services, enhance service reliability, and keep up with a rapidly changing industry.

Additional revenue from the fee increase will sustain current services, ensure service reliability, fund county strategic priorities, and position the division for the future. The rate proposal also accounts for the County's increasing recycling rate which is projected to reduce solid waste disposal tons and associated disposal fees. **Table 3** summarizes the projected spending, per ton rate impact, and new required positions related to the rate proposal. In total, the rate proposal will increase the basic fee by $17.58 per ton from $120.17 to $137.75 with approximately 80 percent of the rate increase directed to fund the rising costs of current services.

**Table 3: Components of 2017-2018 Rate Increase**

| | 2017-18 Expenditures ($ in millions) | 2017-2018 Rate Impact ($ per ton) | New FTEs/TLTs required |
|---|---|---|---|
| Current Basic Fee | | $120.17 | |
| | | | |
| **Sustain Current Services** | | | |
| Cover Inflationary Increases | $12.5 M | $5.49 | 10.25 / 0 |
| Debt Service for New Transfer Stations | $7.1 M | $3.10 | |
| Replace Aging Equipment | $ 6.8 M | $2.98 | |
| Fortify Cedar Hills Landfill Reserve Fund | $3.6 M | $1.59 | |
| Maintain Closed Landfills | $2.5 M | $1.07 | |
| *Subtotal Sustain Current Services* | *$32.5 M* | *$14.23* | *10.25 / 0* |
| | | | |
| **Ensure Service Reliability** | $3.6 M | $1.58 | 1 / 3 |
| | | | |
| **Address County Strategic Priorities** | $1.1 M | $0.46 | 1 / 0 |
| | | | |
| **Position for the Future** | $2.0 M | $0.88 | 0 / 10 |
| | | | |
| Adjustment for Increased Recycling Rate | $0.7 M | $0.43 | |
| | | | |
| **Total** | | **$137.75** | **12.25 / 13** |

The new spending categories within the 2017-2018 rate proposal include:

**Sustain Current Services** by funding current services and their increased cost including waste disposal at the Cedar Hills Regional Landfill, operation of eight transfer stations and two drop boxes, maintenance of closed landfills, waste prevention and recycling programs, and paying for support services (such as human resources, finance, and system wide planning) that are fundamental to system operations. Functions and projects include:

- **Cover Inflationary Increases.** Pay primarily for inflationary increases in division activities, rent, taxes, insurance, FTEs required to process increased tonnage and other factors.
- **Debt Service for New Transfer Stations** including the new Factoria transfer station, the planned South County transfer station, and other projects. Construction of new recycling and transfer stations is financed through General Obligation (GO) bonds. The new Factoria and South County stations will be under development during the 2017-2018 rate period, in accordance with the 2006 Solid Waste Transfer Plan. No funding is allocated for a new Northeast Station, which remains an option for 2019 or beyond.

- **Replace Aging Equipment.** Begin to catch up on replacing equipment through the Capital Equipment Recovery Fund. The rate proposal will allow the division to accelerate replacement of equipment to normal life-cycles, reduce ongoing maintenance costs, and improve efficiency of the waste management system.
- **Fortify Cedar Hills Landfill Reserve Fund.** Increase the contribution to pay for landfill capacity to meet disposal needs into 2027, and maintain sufficient balances to meet regulatory requirements. As approved in the *2010 Cedar Hills Site Development Plan*, new disposal capacity called Area 8 is being developed. To cover increased landfill development costs associated with development of Area 8 and to maintain reserve funding requirements, contributions to the Landfill Reserve Fund need to increase from the amount in the last rate proposal.
- **Maintain Closed Landfills.** Pay for ongoing monitoring and maintenance of 7 closed landfills to meet regulatory requirements. Current federal and state regulations prescribe a strict monitoring and maintenance regime for up to 30 years after a landfill closes. Funds for monitoring and maintenance during the regulatory period must be set aside in the landfill Post-Closure Maintenance Fund (PCMF). Six of the seven closed landfills that the division monitors and maintains are beyond the regulatory period during which funds must be set aside in a separate fund. However, pollutants at those sites still exceed levels at which monitoring can be discontinued. There is no known date when monitoring and maintenance will no longer be necessary. Funds to monitor and maintain closed landfills that are beyond their regulatory period are included as an ongoing operational cost and are increased from the last rate proposal

**Ensure Service Reliability** by funding upgrades to the transfer station cashiering system; new rate structure to sustain revenue while recycling rates increase; improving wastewater systems at Cedar Hills to ensure continued regulatory compliance; purchasing an additional tipper; and other means.

**Address County Strategic Priorities** by funding efforts to implement Equity and Social Justice (opportunity fund); Best Run Government (employee engagement and business planning); and Strategic Climate Action Plan (compressed natural gas pilot project study) initiatives.

**Position for the Future** by funding a transfer station demand management pilot program in 2018 to explore methods for reducing customer wait times, encouraging use of stations during off-peak hours, and shifting use to less busy stations.

Demand management strives to make better use of existing transfer stations by moving customers more swiftly through the station or reducing the number of customers in a station at one time. Analytical models have been developed to explore methods for reducing customer wait times, encouraging use of stations during off-peak hours, and

shifting use to less busy stations. The proposed rate includes a 2018 demand management pilot project to test the practical effectiveness of the modeled actions at urban transfer stations. If the demand management pilot program meets its end goals, it could alleviate the pressure to build new transfer stations or, alternatively, reduce the costs of new facilities currently estimated at $97 million, reducing future rate increases.

Consistent with the modeling results of a 2015 transfer station study, the scope of the demand management pilot program focuses on the Factoria and Shoreline Recycling and Transfer Stations. The pilot project would run for 12 months beginning in 2018. During the pilot project, the per-ton fee for self-haulers at the Factoria station would be increased during peak hours on weekdays and on weekends. The current assumed peak hours are a four-hour period between 11 a.m. and 3 p.m. Operating hours would be extended on weekdays until 10 p.m. and on weekends until 7:30 p.m.. Additionally, temporary staff would be added to assist customers at the Shoreline station. The use of the Houghton station during the pilot remains under evaluation.

The Metropolitan Solid Waste Management Advisory Committee (MSWMAC) suggested that demand management be tested at all urban stations for a 12-month period to provide an equitable distribution of potential impacts of the pilot measures to the County solid waste system users. While the proposed scope for the pilot project will not affect all transfer stations, it is designed to provide information on equity, service levels and effectiveness that may be incorporated at other stations in the future. Adding additional stations to the pilot is possible, however, it would present a significant cost increase to the study and may not add significant benefit to the ability to evaluate the measures.

Revenue from peak pricing was not included in this rate proposal due to the uncertainty of the pilot results at this time. Following the conclusion of the pilot in 2018, the division will evaluate the effectiveness of demand management and consider including peak pricing revenue in future rate proposals.

### Additional Regular and Temporary Positions

The proposed rate increase will fund 12.25 FTEs and 13 temporary TLT positions for a total of 25.25 new positions in 2017-2018. Many of the new positions (10 TLTs) will be assigned to the demand management pilot program. An additional 10.25 positions will provide additional support at transfer stations and for transportation services to respond to increased solid waste tonnage, new station design and expanded recycling services. Two FTE positions and one TLT position would support new stormwater engineering requirements, county strategic priorities related to improved employee engagement and business planning, and the division's planned rate restructure. Two TLT positions will be added to manage the post-closure landfills and Cedar Hills landfill capital projects.

## Determining the Rate

The basic fee is calculated using the tonnage forecast, projected costs, projections of revenue from all sources (including the fund balance), and fund balance requirements. The rate model comprises five economic and financial components:

- Tonnage
- Landfill Reserve Fund
- Construction
- Capital Equipment Recovery Program
- Operating Fund

Fees are calculated to ensure that revenues are sufficient to reliably:

- Cover the cost of operations and services,
- Fund capital investment projects and landfill closure and maintenance, and
- Maintain a target Operating Fund balance.

The division's expenditures over the rate period are estimated, including operating and support service costs and transfers to reserve funds. Anticipated revenues from all non-fee sources, such as grants, interest income, landfill gas sales, and available fund balance are subtracted from the total expenditures to arrive at the fee revenue that will be needed to support the system over the rate period. That amount is divided by the forecasted tonnage to determine a per-ton basic fee. Other fees are determined using both the basic fee as a foundation and factors specific to the fee categories. The fee is then adjusted to account for non-tip fee revenue and use of available fund balance for a final basic fee.

Financial Assumptions

Key financial assumptions in the division's rate model include inflation, interest, and the potential date of closure for Cedar Hills. Forecasts for inflation are used in the rate model to help estimate future operational and capital costs, while forecasts for interest earnings are used to calculate revenue that will be earned on fund balances. For more information, see http://www.kingcounty.gov/business/Forecasting/Forecasts.aspx.

**Table 4: Financial Assumptions**

Projected Wage and Services Inflation (OEFA March 2016 CPI-U Forecast)

| 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 to 2040 |
|---|---|---|---|---|---|---|---|---|---|
| 2.41% | 2.71% | 2.72% | 3.01% | 3.06% | 3.04% | 2.98% | 2.96% | 2.91% | 2.50% |

Projected Investment Pool Nominal Rate of Return (OEFA March 2016 CPI-U Forecast)

| 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 to 2040 |
|---|---|---|---|---|---|---|---|---|---|
| 0.80% | 1.10% | 1.52% | 2.07% | 2.50% | 2.83% | 3.08% | 3.28% | 3.44% | 3.00% |

The closure date for Cedar Hills determines how much time is available to collect the required funds in the LRF for thirty years of post-closure maintenance. Under current policy, Cedar Hills will close in 2027.

Tonnage Forecast

A fundamental input to the rate model is the projected amount of waste that will be disposed at division facilities during the rate period. The tonnage forecast predicts waste generation over a 20-year period. The forecast relies on established statistical relationships between waste generation and economic and demographic variables that affect it, such as population, employment rates, and income. Although 2016 has started strong, tonnage is expected to decrease when the City of Seattle reopens its North Transfer and Recycling facility sometime this year. Over time, increased waste generation will replace tonnage lost to the Seattle system, returning to current levels by 2019 (Table 1, Appendix A).

Increases in the recycling rate (forecast to reach 57 percent by 2018) will slow increases in waste tonnage. Resource recovery (recycling that takes place after waste is delivered to division transfer stations) is expected to increase dramatically as new recycling and transfer stations are built with the ability to handle more recyclable materials and station-based resource recovery is expanded. Increased curbside recycling is expected in response to new programs. Appendix A describes the tonnage forecasting process and gives the tonnage forecast through 2036.

**Table 5: 2017-2018 tonnage forecast by site**

| Transfer Station | 2017 | 2018 |
|---|---|---|
| **Factoria** | 122,230 | 122,424 |
| **Houghton** | 153,495 | 153,740 |
| **Renton** | 66,049 | 66,154 |
| **Algona** | 143,138 | 143,367 |
| **Bow Lake** | 244,459 | 244,849 |
| **Shoreline** | 52,098 | 52,181 |
| **Enumclaw** | 21,593 | 21,627 |
| **Vashon** | 7,328 | 7,340 |
| **Cedar Falls Drop Box** | 3,811 | 3,817 |

| | | |
|---|---|---|
| **Skykomish**[2] | 1,100 | 1,100 |
| **Subtotal** | **810,467** | **811,759** |
| **Cedar Hills Regional Direct** | | |
| **Regional Direct** | 6,500 | 6,500 |
| **Special Waste** | 1,500 | 1,500 |
| **Other Waste** | 19,000 | 19,000 |
| **Subtotal** | 27,000 | 27,000 |
| **Total Disposed** | **837,467** | **838,759** |
| **Yard waste (transferred to a composting facility)** | 13,500 | 16,500 |

Revenue Projections

The division generates about 95 percent of its revenues from tipping fees collected at its transfer facilities and Cedar Hills. Most of the remaining five percent is received from the Local Hazardous Waste Management Program (LHWMP), which pays for the handling of household hazardous waste. Other minor revenue sources include:

- Interest earned on fund balances,
- Income from rental properties,
- Fees for construction and demolition waste,
- Revenue from the sale of recyclable materials received at division transfer facilities,
- Fees on recyclables collected in unincorporated areas,
- Grants to help clean up litter and illegal dumping and to support waste prevention and recycling,
- Revenue from the sale of landfill gas from Cedar Hills.

Revenue from most sources can vary considerably due to economic and market conditions.

[2] Solid waste collected at the Skykomish drop box is transported to the Houghton transfer station for disposal. Projected tons for Skykomish are shown for illustrative purposes, but are counted in the Houghton tonnage figures.

Expenditure Projections

The division's annual spending over the planning horizon is estimated based on operational factors as well as forecasts for inflation, which are consistent with other County agencies. Expenditures can be divided into broad categories: operating costs, recycling programs, support service costs, debt service, and transfers to other funds.

*Operating Costs: Disposal and Transfer*

Operating costs, the day-to-day expenses for transfer, transport, and landfill operations, constitute the majority of all division spending. Maintenance of equipment and facilities, management of landfill gas and wastewater, business and occupation (B&O) tax, and Cedar Hills' rent are also included here.

*Recycling*

This includes grants to the cities and other division waste prevention and recycling programs.

*Support Services*

This cost category includes functions that support direct services, such as engineering, finance, management, and system-wide planning.

*Debt Service*

Debt service is the payment of interest and principal on bonds and loans. GO bonds backed by the full faith and credit of the county's General Fund have been issued to pay for development of major transfer facility capital projects. It is anticipated that with approval of the King County Council, GO bonds will continue to be issued for transfer facility capital projects. More information on the Capital Improvement Program is provided in Appendix C: Capital Improvement Program. Capital projects at Cedar Hills are not funded through debt financing, but through the LRF.

*Transfers to Other Funds*

Transfers from the Solid Waste Operating Fund to reserve funds were established to ensure that the division can meet future expenses, including those mandated by law. Contributions to reserve funds are routinely evaluated to ensure that they are adequate to meet short- and long-term needs. Paying into reserve funds stabilizes the impact of certain expenses on rates by spreading the costs over a longer time period and ensures that customers who use the system pay the entire cost of disposal. The four reserve funds are discussed below.

*Construction Fund*

The division deposits bond proceeds and contributions from the operating fund into the construction fund to finance new construction and major maintenance of properties owned by the division. Contributions from the operating fund reduce the need to borrow.

*Capital Equipment Recovery Program*

The CERP is codified in KCC 4.08.280. Its purpose is to provide adequate resources for replacement and major maintenance of solid waste rolling stock (primarily hauling trucks

and trailers) and compactors. New equipment is purchased from the operating fund, but after the initial purchase, replacements are funded from the CERP.

By accumulating funds in the CERP, the division ensures that it is able to cover the variable expenditures that come with replacing needed equipment even while revenue fluctuates. Contributions to the CERP are calculated by projecting future replacement costs, salvage values, and equipment life. Contributions are adjusted to reflect changes in facilities and operations that affect equipment needs. The contributions earn interest in an account until needed. The CERP is discussed in detail in Appendix E: Capital Equipment Recovery Program.

*Landfill Reserve Fund*

The LRF, codified in KCC 4.08.045, covers the costs of four major accounts maintained for Cedar Hills.

- The *new area development account* covers the costs for planning, designing, permitting, and building new disposal areas, ensuring sufficient funds for these capital projects.
- The *facility improvements account* covers a wide range of capital investments required to sustain landfill infrastructure and operations, such as the landfill gas and wastewater systems.
- Mandated by federal law, the *closure account* covers the cost of closing operating areas (cells) within the landfill that have reached capacity.
- The *post-closure maintenance account*, mandated by federal law, accumulates funds for 30 years of post-closure maintenance of Cedar Hills.

*Post-Closure Maintenance Fund*

In accordance with federal regulation 40 CFR 258.61, the PCMF pays for the maintenance and environmental monitoring of closed and custodial landfills in the county for thirty years after closure. Custodial landfills beyond their mandated post-closure period continue to be monitored and maintained through this fund until pollution levels drop below mandated levels. Once Cedar Hills closes, the balance of the LRF will be transferred to the PCM for Cedar Hills' 30-year closure care period.

<u>Target Fund Balance</u>

The current policy is to retain an average balance in the operating fund sufficient to cover 30 days of direct operating costs.

# Appendix A: Tonnage Forecast Through 2036

Short-term Forecasting

Since 2007, there has been greater uncertainty and unpredictability in variables that inform the division's short-term (up to five years) forecast. The division's short-term forecasting method involves:

- Monitoring daily solid waste tons delivered to the division's facilities.
- Monitoring regional and state-wide economic forecasts (Dick Conway, King County economic forecast, Washington State Economic and Revenue Forecast Council).
- Monitoring state-wide tax revenue streams, particularly in the home improvement sector, furniture store sales, clothing sector, and other key markets.
- Communicating with other jurisdictions about trends in their service areas.

The information gained through these measures is used to forecast short-term tonnage and subsequent revenues for use in critical budgeting, expenditure control, and management of capital projects over the three-to-five year period. By the end of the 2017-2018 budget cycle there will be enough post-recession data to adjust the forecasting model to reflect any long-term changes resulting from the recession.

Long-term Forecasting

The planning forecast model to predict solid waste generation over the long-term (six to 20 years) relies on established statistical relationships between waste generation and various economic and demographic variables that affect it, such as:

- Population in the service area
- Employment rates
- Household size (persons/household)
- Per capita income (adjusted for inflation)

For the long-term planning forecast the following trends are expected:

- Population is expected to grow at a rate of 0.9 percent per year. Population growth is directly correlated with increased waste generation.
- Employment is expected to increase by 1.3 percent per year. Increased employment is generally accompanied by an increase in consumption and waste generation.
- Household size is expected to decrease by 0.3 percent per year. Since "household," regardless of the number of residents, implies a certain minimum level of maintenance, mail, purchasing, etc. A decrease in household size tends to increase waste generation per capita.
- Per capita income is expected to increase by 1.8 percent per year. As with employment activity, increases in income typically lead to an increase in spending, hence more consumption and more waste generation.

For additional information on long-term forecasting, see 2000 King County Comprehensive Solid Waste Management Plan, Technical Appendix (vol. I).

In response to the King County Auditor's report recommendations (2015), the division conducted sensitivity analyses around key assumptions that affect the long-term forecast trends, including changes to the recycling rate projection.

The tonnage forecast is developed in two steps, with waste disposal and waste diversion calculated separately. In the first step, an econometric model is used to relate historical data for waste disposal and recycling to past demographic and economic trends in the region. Once these relationships are established, the model can be used to project future waste generation based on expected trends over the planning period. This produces a baseline disposal forecast, which assumes that the percentage of waste recycled remains constant.

In the second step, goals for waste prevention and recycling are used to calculate how much additional material is expected to be diverted from disposal given the same demographic and economic trends. This information is then used to adjust the baseline forecast. Recycling data are provided by the curbside collection companies, the division's own transfer facilities, and annual surveys by the Washington State Department of Ecology. Table 1-A shows the tonnage forecast through 2036 (as of February 17, 2016).

**Table 1-A Tonnage Forecast Through 2036**

| Year | Basic Fee Tons | Regional Direct | Special Waste | Tons Disposed | Yard Waste | Total System Tons |
|---|---|---|---|---|---|---|
| 2015 | 861,621 | 6,384 | 1,797 | 869,802 | 11,723 | 881,525 |
| 2016 | 856,100 | 6,500 | 1,500 | 864,100 | 12,000 | 876,100 |
| 2017 | 829,467 | 6,500 | 1,500 | 837,467 | 13,500 | 850,967 |
| 2018 | 830,759 | 6,500 | 1,500 | 838,759 | 16,500 | 855,259 |
| 2019 | 853,700 | 6,500 | 1,500 | 861,700 | 16,500 | 878,200 |
| 2020 | 892,440 | 6,500 | 1,500 | 900,440 | 16,500 | 916,940 |
| 2021 | 923,737 | 6,500 | 1,500 | 931,737 | 16,500 | 948,237 |
| 2022 | 955,775 | 6,500 | 2,000 | 964,275 | 16,500 | 980,775 |
| 2023 | 984,579 | 6,500 | 2,000 | 993,079 | 16,500 | 1,009,579 |
| 2024 | 1,012,137 | 7,000 | 2,000 | 1,021,137 | 16,500 | 1,037,637 |
| 2025 | 1,037,527 | 7,000 | 2,000 | 1,046,527 | 16,500 | 1,063,027 |
| 2026 | 1,058,236 | 7,000 | 2,000 | 1,067,236 | 16,500 | 1,083,736 |
| 2027 | 1,079,391 | 7,000 | 2,000 | 1,088,391 | 16,500 | 1,104,891 |
| 2028 | 1,095,594 | 7,000 | 2,000 | 1,104,594 | 16,500 | 1,121,094 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 2029 | 1,084,134 | 7,000 | 2,000 | 1,093,134 | 16,500 | 1,109,634 |
| 2030 | 1,053,320 | 7,000 | 2,500 | 1,062,820 | 16,500 | 1,079,320 |
| 2031 | 1,067,169 | 7,000 | 2,500 | 1,076,669 | 16,500 | 1,093,169 |
| 2032 | 1,088,121 | 8,000 | 2,500 | 1,098,621 | 16,500 | 1,115,121 |
| 2033 | 1,104,791 | 8,000 | 2,500 | 1,115,291 | 16,500 | 1,131,791 |
| 2034 | 1,121,604 | 8,000 | 2,500 | 1,132,104 | 16,500 | 1,148,604 |
| 2035 | 1,138,603 | 8,000 | 2,500 | 1,149,103 | 16,500 | 1,165,603 |
| 2036 | 1,155,889 | 8,000 | 2,500 | 1,166,389 | 16,500 | 1,182,889 |

# Appendix B: Rate Model Through 2036

| | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|---|---|---|
| **Basic Fee** | **120.17** | **120.17** | **137.75** | **137.75** | **142.00** | **142.00** | **145.00** |
| **Total System Tons** | 881,525 | 876,100 | 850,967 | 855,259 | 878,200 | 916,940 | 948,237 |
| **Revenues** | | | | | | | |
| Disposal Fees | 105,553,760 | 104,865,887 | 116,461,232 | 116,889,485 | 123,957,116 | 129,454,499 | 136,759,235 |
| Interest Earnings | 177,968 | 262,350 | 238,837 | 214,029 | 241,587 | 275,460 | 284,859 |
| Grants | 250,000 | 250,000 | 213,000 | 213,000 | 215,897 | 219,146 | 222,499 |
| Landfill Gas | 1,873,000 | 1,873,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 |
| Recycling | 563,024 | 403,024 | - | - | - | - | - |
| Rental Incomes | 716,790 | 1,372,440 | 620,873 | 625,783 | 625,783 | 625,783 | 644,932 |
| C&D | 50,000 | 200,000 | 677,195 | 696,157 | 696,157 | 696,157 | 717,459 |
| Other Revenue | 107,023 | 107,023 | 385,000 | 385,000 | 395,472 | 407,376 | 419,841 |
| **Total Revenue** | **109,291,564** | **109,333,723** | **119,596,137** | **120,023,453** | **127,132,012** | **132,678,421** | **140,048,825** |
| **Operating Expenditures** | | | | | | | |
| Public Health Transfer | 948,084 | 941,869 | 912,839 | 914,247 | 964,801 | 1,008,176 | 1,075,139 |
| Capital program debt service | 8,774,601 | 11,478,095 | 13,732,413 | 13,599,663 | 13,602,163 | 16,478,047 | 16,623,547 |
| Landfill Reserve Fund | 12,458,793 | 14,484,649 | 25,073,066 | 15,505,430 | 16,362,804 | 17,613,100 | 18,782,980 |
| Capital Equipment Recovery Program | 3,500,000 | 3,500,000 | 6,900,000 | 6,900,000 | 6,900,000 | 6,900,000 | 6,300,000 |
| Construction Fund | | | 3,000,000 | - | - | - | 1,000,000 |
| Cedar Hills Rent | 2,885,000 | 2,928,000 | 2,972,000 | 3,017,000 | 3,062,000 | 3,108,000 | 3,155,000 |
| Post-closure Reserve Fund | - | - | 1,225,000 | 1,225,000 | 1,258,320 | 1,296,195 | 1,335,859 |
| City mitigation | | | 22,080 | 22,715 | 460,680 | 496,572 | 530,104 |
| CHRLF Environmental Liability Policy | | | 405,000 | 415,976 | 427,290 | 440,151 | 453,620 |
| Overhead / Fund Management | 2,304,974 | 9,652,579 | 10,460,983 | 10,694,476 | 10,985,366 | 11,316,025 | 11,662,295 |
| SWD Admin / SW Directors Office | 7,032,331 | 939,001 | 981,631 | 1,011,080 | 1,041,412 | 1,072,655 | 1,104,834 |
| Human Resources | | 1,054,460 | 1,079,872 | 1,109,137 | 1,139,306 | 1,173,599 | 1,209,511 |
| Legal Support | 452,014 | 552,014 | 565,318 | 580,638 | 596,431 | 614,384 | 633,184 |
| P&C / Strategy, Comms & Performance | 1,915,097 | 2,650,906 | 3,356,678 | 3,305,803 | 3,395,721 | 3,497,932 | 3,604,969 |
| Finance & IT / Enterprise Services | 7,357,412 | 3,801,335 | 4,121,544 | 4,233,238 | 4,348,382 | 4,479,268 | 4,616,334 |
| Contract Management | | 435,984 | 446,491 | 458,591 | 471,065 | 485,244 | 500,092 |
| Project Management | | 1,501,875 | 1,538,070 | 1,579,752 | 1,622,721 | 1,671,565 | 1,722,715 |
| Recycling & Environmental Services | 6,216,649 | 7,483,135 | 8,082,818 | 8,226,862 | 8,450,633 | 8,704,997 | 8,971,369 |
| WPR City Grants | 1,136,309 | 1,138,228 | 1,165,659 | 1,197,249 | 1,229,814 | 1,266,831 | 1,305,596 |
| Engineering / Facility Engineering & Science | 5,986,644 | 2,868,993 | 3,474,749 | 3,568,914 | 3,665,989 | 3,776,335 | 3,891,891 |
| Transfer & Transport Operations | 28,863,355 | 28,626,769 | 30,576,547 | 33,255,171 | 34,159,712 | 35,187,919 | 36,264,669 |
| Disposal Operations | 14,162,058 | 13,288,032 | 14,919,654 | 14,290,022 | 14,678,711 | 15,120,540 | 15,583,229 |
| Waste Export | | | | | | | |
| B & O Tax | 1,583,306 | 1,572,988 | 1,746,918 | 1,753,342 | 1,859,357 | 1,941,817 | 2,051,389 |
| **Total SWD Cost** | **105,576,628** | **108,898,912** | **136,759,330** | **126,864,306** | **130,682,676** | **137,649,353** | **142,378,327** |
| Ending Fund Balance | 36,663,779 | 38,555,692 | 22,984,586 | 17,790,008 | 15,930,452 | 12,701,529 | 12,167,329 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Target Fund Balance (30-day reserve) | 7,287,925 | 7,308,323 | 8,068,237 | 8,284,481 | 8,517,547 | 8,976,833 | 9,223,662 |
| | **2022** | **2023** | **2024** | **2025** | **2026** | **2027** | **2028** |
| **Basic Fee** | **145.00** | **149.00** | **149.00** | **151.00** | **151.00** | **153.00** | **153.00** |
| **Total System Tons** | 980,775 | 1,009,579 | 1,037,637 | 1,063,027 | 1,083,736 | 1,104,891 | 1,121,094 |
| **Revenues** | | | | | | | |
| Disposal Fees | 141,481,399 | 149,658,613 | 153,855,332 | 159,750,921 | 164,226,746 | 169,661,758 | 172,130,568 |
| Interest Earnings | 274,116 | 279,021 | 285,593 | 347,898 | 451,890 | 606,518 | 502,313 |
| Grants | 225,881 | 229,247 | 232,639 | 236,024 | 238,975 | 241,962 | 244,986 |
| Landfill Gas | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 |
| Recycling | - | - | - | - | - | - | - |
| Rental Incomes | 664,538 | 684,341 | 704,598 | 725,101 | | | |
| C&D | 739,270 | 761,300 | 783,835 | 806,645 | 826,811 | 847,481 | 868,668 |
| Other Revenue | 432,605 | 445,496 | 458,683 | 472,031 | 483,831 | 495,927 | 508,325 |
| **Total Revenue** | **144,817,809** | **153,058,018** | **157,320,680** | **163,338,620** | **167,228,252** | **172,853,645** | **175,254,860** |
| **Operating Expenditures** | | | | | | | |
| Public Health Transfer | 1,112,686 | 1,180,072 | 1,213,413 | 1,279,772 | 1,305,096 | 1,364,241 | 1,384,550 |
| Capital program debt service | 19,491,156 | 19,499,706 | 19,508,581 | 19,429,831 | 19,422,081 | 19,422,031 | 16,409,481 |
| Landfill Reserve Fund | 20,029,860 | 21,242,895 | 22,489,637 | 23,719,550 | 24,793,643 | 19,876,189 | |
| Capital Equipment Recovery Program | 6,300,000 | 6,100,000 | 6,100,000 | 4,100,000 | 4,100,000 | 4,100,000 | 4,100,000 |
| Construction Fund | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 |
| Cedar Hills Rent | 3,202,000 | 3,250,000 | 3,299,000 | 3,287,583 | | | |
| Post-closure Reserve Fund | 1,376,469 | 1,417,488 | 1,459,446 | 1,501,915 | 1,539,463 | 1,577,950 | 1,617,399 |
| City mitigation | 565,562 | 266,659 | 387,912 | 409,214 | 431,455 | 451,008 | 469,165 |
| CHRLF Environmental Liability Policy | 467,410 | 481,339 | 495,587 | 510,008 | 522,758 | 535,827 | 549,223 |
| Overhead / Fund Management | 12,016,829 | 12,374,931 | 12,741,229 | 13,111,998 | 13,439,798 | 13,775,793 | 14,120,188 |
| SWD Admin / SW Directors Office | 1,137,979 | 1,172,119 | 1,207,282 | 1,243,501 | 1,280,806 | 1,319,230 | 1,358,807 |
| Human Resources 720129 | 1,246,280 | 1,283,419 | 1,321,408 | 1,359,861 | 1,393,858 | 1,428,704 | 1,464,422 |
| Legal Support | 652,432 | 671,875 | 691,762 | 711,893 | 729,690 | 747,932 | 766,631 |
| Strategy, Comms. & Performance | 3,714,560 | 3,825,253 | 3,938,481 | 4,053,091 | 4,154,418 | 4,258,278 | 4,364,735 |
| Enterprise Services | 4,756,671 | 4,898,419 | 5,043,413 | 5,190,176 | 5,319,930 | 5,452,929 | 5,589,252 |
| Contract Management | 515,295 | 530,651 | 546,358 | 562,257 | 576,314 | 590,721 | 605,490 |
| Project Management | 1,775,085 | 1,827,983 | 1,882,091 | 1,936,860 | 1,985,282 | 2,034,914 | 2,085,787 |
| Recycling & Environmental Services | 9,244,099 | 9,519,573 | 9,801,353 | 10,086,572 | 10,338,736 | 10,597,205 | 10,862,135 |
| WPR City Grants | 1,345,286 | 1,385,376 | 1,426,383 | 1,467,891 | 1,504,588 | 1,542,203 | 1,580,758 |
| Facility Engineering & Science | 4,010,205 | 4,129,709 | 4,251,948 | 4,375,680 | 4,485,072 | 4,597,198 | 4,712,128 |
| Transfer & Transport Operations | 37,367,115 | 38,480,655 | 39,619,683 | 40,772,615 | 41,791,931 | 42,836,729 | 43,907,647 |
| Disposal Operations | 16,056,959 | 16,535,456 | 17,024,906 | 17,520,330 | 17,958,339 | 14,116,735 | |
| Waste Export | | | | | | 14,911,346 | 66,547,864 |
| B & O Tax | 2,122,221 | 2,244,879 | 2,307,830 | 2,396,264 | 2,463,401 | 2,544,926 | 2,581,959 |
| **Total SWD Costs** | **149,506,160** | **153,318,457** | **157,757,701** | **160,026,863** | **160,536,660** | **169,082,090** | **186,077,619** |
| Ending Fund Balance | 9,328,848 | 9,068,409 | 8,631,388 | 11,943,145 | 18,634,737 | 22,406,293 | 11,583,534 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Target Fund Balance (30-day reserve) | 9,696,448 | 9,913,417 | 10,165,332 | 10,401,843 | 10,346,453 | 11,441,028 | 14,462,632 |

| | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | 2035 | 2036 |
|---|---|---|---|---|---|---|---|---|
| **Basic Fee** | **169.00** | **169.00** | **171.00** | **171.00** | **180.00** | **180.00** | **184.00** | **184.00** |
| **Total System Tons** | 1,109,634 | 1,079,320 | 1,093,169 | 1,115,121 | 1,131,791 | 1,148,604 | 1,165,603 | 1,182,889 |
| **Revenues** | | | | | | | | |
| Disposal Fees | 188,185,336 | 183,191,383 | 193,200,441 | 197,204,416 | 204,717,287 | 207,734,031 | 216,636,683 | 219,862,659 |
| Interest Earnings | 404,496 | 425,401 | 413,457 | 445,906 | 477,937 | 495,113 | 523,174 | 559,696 |
| Grants | 248,049 | 251,149 | 254,289 | 257,467 | 260,686 | 263,944 | 267,243 | 270,584 |
| Landfill Gas | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 |
| Recycling | - | - | - | - | - | - | - | - |
| Rental Incomes | | | | | | | | |
| C&D | 890,385 | 912,644 | 935,460 | 958,847 | 982,818 | 1,007,388 | 1,032,573 | 1,058,387 |
| Other Revenue | 521,033 | 534,059 | 547,411 | 561,096 | 575,123 | 589,501 | 604,239 | 619,345 |
| **Total Revenue** | **191,249,299** | **186,314,636** | **196,351,058** | **200,427,732** | **208,013,850** | **211,089,978** | **220,063,913** | **223,370,672** |
| **Operating Expenditures** | | | | | | | | |
| Public Health Transfer | 1,404,441 | 1,365,494 | 1,417,868 | 1,446,777 | 1,505,448 | 1,528,143 | 1,589,866 | 1,613,782 |
| Capital program debt service | 15,707,431 | 15,707,331 | 15,706,681 | 15,704,681 | 15,706,646 | 15,705,471 | 14,564,311 | 14,565,791 |
| Landfill Reserve Fund | | | | | | | | |
| Capital Equipment Recovery Program | 2,200,000 | 2,200,000 | 2,200,000 | 2,200,000 | 2,300,000 | 2,300,000 | 2,300,000 | 2,300,000 |
| Construction Fund | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 | 1,500,000 | 1,500,000 |
| Cedar Hills Rent | | | | | | | | |
| Post-closure Reserve Fund | 1,657,834 | 1,699,279 | 1,741,761 | 1,785,305 | 1,829,938 | 1,875,687 | 1,922,579 | 1,970,643 |
| City mitigation | 475,905 | 474,275 | 492,466 | 515,070 | 535,957 | 557,638 | 580,161 | 603,611 |
| CHRLF Environmental Liability Policy | 562,954 | 577,027 | 591,453 | 606,239 | 621,395 | 636,930 | 652,854 | 669,175 |
| Overhead / Fund Management | 14,473,193 | 14,835,023 | 15,205,898 | 15,586,046 | 15,975,697 | 16,375,089 | 16,784,466 | 17,204,078 |
| SWD Admin / SW Directors Office | 1,399,571 | 1,441,558 | 1,484,805 | 1,529,349 | 1,575,229 | 1,622,486 | 1,671,161 | 1,721,296 |
| Human Resources 720129 | 1,501,032 | 1,538,558 | 1,577,022 | 1,616,448 | 1,656,859 | 1,698,280 | 1,740,737 | 1,784,256 |
| Legal Support | 785,796 | 805,441 | 825,577 | 846,217 | 867,372 | 889,057 | 911,283 | 934,065 |
| Strategy, Comms. & Performance | 4,473,854 | 4,585,700 | 4,700,343 | 4,817,851 | 4,938,298 | 5,061,755 | 5,188,299 | 5,318,006 |
| Enterprise Services | 5,728,983 | 5,872,208 | 6,019,013 | 6,169,488 | 6,323,725 | 6,481,818 | 6,643,864 | 6,809,961 |
| Contract Management | 620,627 | 636,142 | 652,046 | 668,347 | 685,056 | 702,182 | 719,737 | 737,730 |
| Project Management | 2,137,931 | 2,191,380 | 2,246,164 | 2,302,318 | 2,359,876 | 2,418,873 | 2,479,345 | 2,541,328 |
| Recycling & Environmental Services | 11,133,688 | 11,412,030 | 11,697,331 | 11,989,764 | 12,289,509 | 12,596,746 | 12,911,665 | 13,234,457 |
| WPR City Grants | 1,620,277 | 1,660,784 | 1,702,303 | 1,744,861 | 1,788,482 | 1,833,194 | 1,879,024 | 1,926,000 |
| Facility Engineering & Science | 4,829,932 | 4,950,680 | 5,074,447 | 5,201,308 | 5,331,341 | 5,464,624 | 5,601,240 | 5,741,271 |
| Transfer & Transport Operations | 45,005,338 | 46,130,472 | 47,283,734 | 48,465,827 | 49,677,473 | 50,919,410 | 52,192,395 | 53,497,205 |
| Disposal Operations | | | | | | | | |
| Waste Export | 67,503,885 | 67,272,713 | 69,853,001 | 73,059,195 | 76,021,934 | 79,097,163 | 82,291,984 | 85,618,153 |
| B & O Tax | 2,822,780 | 2,747,871 | 2,898,007 | 2,958,066 | 3,070,759 | 3,116,010 | 3,249,550 | 3,297,940 |
| **Total SWD Costs** | **187,045,451** | **189,103,966** | **194,369,920** | **200,213,159** | **206,060,995** | **211,880,558** | **217,374,521** | **223,588,747** |
| Ending Fund Balance | 15,787,382 | 12,998,052 | 14,979,190 | 15,193,763 | 17,146,618 | 16,356,039 | 19,045,431 | 18,827,355 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Target Fund Balance (30-day reserve) | 14,689,249 | 14,853,995 | 15,274,670 | 15,744,525 | 16,203,892 | 16,671,906 | 17,068,643 | 17,568,566 |

# Appendix C: Capital Improvement Program

Summary

The Capital Improvement Program (CIP) funded by this rate continues implementation of the transfer system renovation plan as set forth in the collaboratively developed *2006 Solid Waste Transfer and Waste Management Plan* (*Transfer Plan*), which was approved by the King County Council in 2007. Since 2007, the division has altered the sizing and timing of projects due to tonnage changes and with consideration of potential rate impacts. Following the 2014 *Transfer Plan Review Part II* recommendations, the rate assumes no spending for a new Northeast Recycling and Transfer Station, which remains an option for 2019 and beyond. The division will examine demand management as a strategy to further minimize the need for CIP projects (Appendix D: Demand Management.

Background

The division works with its advisory committees to determine how best to modernize the transfer system. As part of this process, the division completed construction of new recycling and transfer stations at Shoreline and at Bow Lake. These newer facilities provide more services while processing greater volumes of waste with less traffic congestion, easily accommodating modern garbage trucks and safely separating commercial traffic from self-haul customers. Flexible design ensures adaptability to changes in regional waste generation and in the solid waste industry for decades to come. The buildings achieved the highest possible rating for environmental design and construction – LEED Platinum.

The remaining urban transfer stations, built in the 1960s, are outdated and operating over capacity. The region has experienced major population growth. Commercial collection trucks are larger, making it difficult and inefficient to safely unload them at older transfer stations. Space constraints limit the number of recycling containers and the range of materials that each site can accommodate, resulting in disposal of recyclable materials like yard waste.

The division recently completed a resource recovery pilot project to remove recyclables from targeted garbage loads at the Shoreline Recycling and Transfer Station. Results indicate resource recovery is a cost-effective method for improving the recycling rate and making efficient use of the transfer stations. The division has expanded the resource recovery pilot to the Bow Lake and Enumclaw stations and will plan for integrating larger-scale resource recovery into the county system. Resource recovery at division facilities may not be enough to meet county goals and may require consideration of a dedicated new facility. The division and its partners are still evaluating how much new transfer capacity to build versus modifying service options and using existing stations more intensively.

Ongoing work of the CIP includes:

Factoria: The newly completed main recycling and transfer building at Factoria has begun operations. Deconstruction of the old transfer building will follow in 2016, with

project completion in 2017 with the opening of a new Household Hazardous Waste collection building.

South County: Environmental review under SEPA is ongoing for potential sites for the new facility.

The CIP also includes smaller projects, such as the removal of creosote pilings from the Duwamish River at the division's Harbor Island property, modernization of the environmental controls at the Duvall closed landfill, and replacement of stormwater pumps at Cedar Hills that are nearing the end of their useful life.

## Table 1-C Capital Improvement Program - Revenues, expenditures, and fund balances

| | *2016* | *2017* | *2018* | *2019* | *2020* | *2021* | *2022* | *2023* | *2024* |
|---|---|---|---|---|---|---|---|---|---|
| *Interest earnings rate* | 0.70% | 0.80% | 1.10% | 1.52% | 2.07% | 2.50% | 2.83% | 3.08% | 3.28% |
| *inflation* | 2.12% | 2.41% | 2.71% | 2.72% | 3.01% | 3.06% | 3.04% | 2.98% | 2.96% |
| *cumulative inflation* | 2.12% | 4.53% | 7.24% | 9.96% | 12.97% | 16.03% | 19.07% | 22.05% | 25.01% |
| | | | | | | | | | |
| *Beginning fund balance* | 36,957,193 | 16,779,970 | 33,674,623 | 29,366,836 | 22,641,637 | 28,141,546 | (8,037,706) | 11,368,177 | 12,484,003 |
| *Revenues* | | | | | | | | | |
| *Operating fund transfer* | | 3,000,000 | - | - | - | 1,000,000 | 1,000,000 | 1,000,000 | 1,000,000 |
| *Interest earned* | 187,424 | 201,014 | 344,831 | 392,283 | 520,222 | 248,196 | 46,469 | 361,753 | 421,723 |
| *Borrowing - Bonds* | - | 32,000,000 | - | - | 40,000,000 | - | 40,000,000 | | |
| *Other revenue* | | | 8,000,000 | | | | | | |
| Total | *187,424* | *35,201,014* | *8,344,831* | *392,283* | *40,520,222* | *1,248,196* | *41,046,469* | *1,361,753* | *1,421,723* |
| | | | | | | | | | |
| *Expenditures (with applied inflation or cumulative inflation)* | | | | | | | | | |
| *Bow Lake* | $12,538 | - | - | - | - | - | - | | |
| *Factoria* | 16,942,959 | 11,935,935 | 919,750 | 156,812 | - | - | - | - | - |
| *South County* | 798,000 | 2,509,510 | 6,275,223 | 6,441,625 | 34,153,561 | 36,260,929 | 19,583,648 | - | |
| *Northeast* | | | | | | | | | |
| *Cedar Falls* | 257,375 | 602,205 | - | - | - | - | - | | |
| *Harbor Island* | 370,000 | 213,346 | 3,035,216 | - | - | - | - | | |
| *Algona deconstruction* | - | - | - | - | 22,620 | 297,064 | 1,818,126 | - | |
| *Other projects (placeholder after 2022)* | 631,775 | 309,000 | 318,270 | 218,545 | 225,102 | 231,855 | 238,810 | 245,927 | 253,206 |
| *Closed/custodial LF projects* | 1,352,000 | 2,736,365 | 2,104,159 | 300,500 | 619,030 | 637,601 | - | - | |
| Total | *20,364,647* | *18,306,361* | *12,652,619* | *7,117,482* | *35,020,313* | *37,427,448* | *21,640,585* | *245,927* | *253,206* |
| | | | | | | | | | |
| ***Ending fund balance*** | **16,779,970** | **33,674,623** | **29,366,836** | **22,641,637** | **28,141,546** | **(8,037,706)** | **11,368,177** | **12,484,003** | **13,652,519** |

# Appendix D: Capital Equipment Recovery Program

The division's CERP model applies life-cycle costing considerations to the division's capital equipment and is used to determine the timing of asset replacement. The CERP fund was codified in 1981 (KCC 4.08.280) to ensure the timely and economical replacement of equipment. The fund serves three main purposes:

- Accumulate the financial resources for the replacement of the division's rolling stock and stationary compactors on a timely and cost-effective basis;
- Stabilize the monetary effects of equipment purchases on the operating fund; and
- Provide stability in the operating budget against the effects of dramatic tonnage decreases.

CERP Inventory

By code, the CERP fund explicitly includes the division's "rolling stock and stationary compactors." However, since the establishment of the CERP fund, business practice and equipment technology have advanced and the division's capital equipment now includes significant fixed assets that are not "rolling stock" or "stationary compactors," but that do have direct operational use, such as power units for the landfill tippers. These major assets are included in the CERP model.

CERP Fund

New equipment is purchased from the division's operating fund. After the initial acquisition, an annual contribution is made to the CERP fund for the eventual replacement or major overhaul in lieu of replacement. All auction, salvage, and buyback income from disposal of division equipment is treated as CERP fund revenue.

CERP Fund Contributions

For each CERP inventory asset, an annual payment to the CERP fund is calculated based on assumptions about the asset's life and net future replacement cost (total estimated replacement cost minus estimated salvage/trade-in/buyback income). These annual payments ensure that adequate funds are available to purchase the replacement for that piece of equipment in the scheduled year.

Funding Policy

Since 2012, the division has based contributions to the CERP on a four-year average of the estimated replacement value of equipment due to be replaced within that timeframe. The estimated replacement value is adjusted for capitalized repairs and factors for inflation and salvage value. The fund balance is maintained between 15 percent and 20 percent of total CERP inventory replacement value. Contributions rise and fall based on expected expenditures, which would increase by 75 percent in 2017 if the division is to bring all capital equipment back into normal lifecycles.

Budgeting

Budget planning for equipment purchases, rebuilds, and replacements occurs early each year. Since the 2007, the division has deferred CERP spending wherever possible, a strategy that is no longer sustainable.

Budget planning for CERP is primarily focused on plans for the following year's budget request. However, it may include the review of purchase plans for the current year's adopted budget and a look ahead to the purchase of some items that can require up to two years' lead-time.

The initial purchase of a new asset (expansion of fleet or new type that is not replacing an outgoing asset) and all equipment repair costs are paid from the operating fund. CERP only pays to replace or rebuild existing equipment.

Life-Cycle Costing Model

The model used for life-cycle costing analysis is a Mean Annual Cost Equivalent (MACE) model, based on one published by the American Public Works Association.

The main components of the SWD MACE Model are:

- Interest rate and inflation assumptions
- Purchase/In-Service dates
- Estimated lifespan
- Estimated salvage values
- Repair and maintenance costs
- Meter readings

Interest and inflation rates are obtained from King County's Office of Economic and Financial Analysis (OEFA). All other equipment data is obtained from the division's CCG Faster database. The use of the CCG Faster software, and therefore accumulation of equipment history data, began in February 2003. Cost and usage data of equipment acquired and placed in service prior to this date, which represents 48 percent of the total inventory, is not represented.

MACE Model Function

The goal of using MACE in the economics of equipment replacement is to minimize the total costs of ownership. MACE considers the alternative-use or time value of money; a dollar spent ten years from now is not equivalent to a dollar spent today. This permits comparisons of alternatives that cover multiple time frames; it reduces expenditures over time to values which can be easily compared. For example, discounting permits comparison of a two-year replacement cycle with a four-year cycle.

This model is focused on yearly periods and because of the discount factor, it can be used for mileage or hour usage if these are converted to time equivalents.

The best estimates available are incorporated in the use of this model.

NOTE: MACER means the mean annual cost equivalent for replacement period R. See formula below.

$$MACE_R = \left[ P - \frac{S_R}{(1+i)^R} + \sum_{t=1}^{R} \frac{X_t}{(1+i)^t} \right] \left[ \frac{i\,(1+i)^R}{(1+i)^R - 1} \right]$$

where: i = discount rate

P = purchase price at t=0

t = year (numeral indicator)

S = resale or salvage value

R = year of replacement

X = sum of the year's costs (excluding depreciation, alternative cost of capital and inflation)

Asset Life Expectancies

An asset's life expectancy is based on the Original Equipment Manufacturer (OEM) suggested life, which is then adjusted for the division's working conditions and consideration of MACE for that asset. For example, a long-haul tractor's OEM suggested life is one million miles for normal usage. However, the division's use of this type of vehicle is short-haul with heavy urban traffic, plus regular off-road driving at Cedar Hills. Based on assessment of the model for life-cycle costs and actual annual usage of 40,000 miles, the division's life expectance for long-haul tractors is about 400,000 miles or 10 years.

Some assets may be rebuilt, which will extend their life beyond the OEM suggested life. For example, the original life expectation for a bulldozer is 10,000 hours or 60 months; the expected life extension for a power train overhaul is 10,000 hours, or an additional 60 months. Other assets expected to have an extended life after rebuild work are excavators, refuse trailers, pre-load compactors, and hydraulic power units for tippers. Rebuilding a piece of equipment a second time has not proven cost-effective for extending useful life and, as a result, the division is resetting many of the units to historical replacement schedules.

CERP Process

The division's CERP manual documents processes, procedure, and definitions. The figure below summarizes the process for inventory purchase and replacement.

**Figure 1-E: CERP Inventory Purchase and Replacement Process**

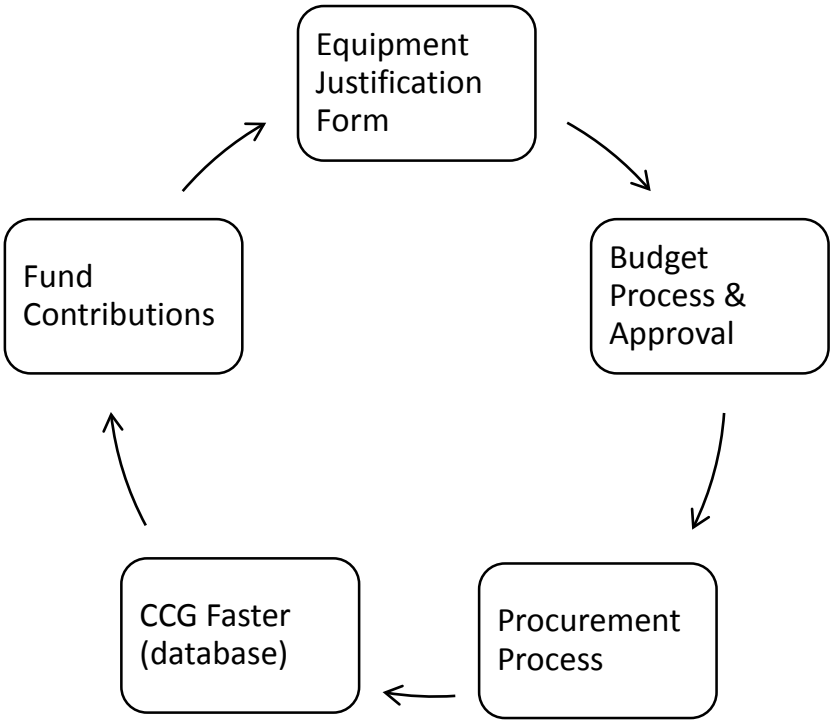

**Table 1-F. Average per ton contribution by account 2017**

| | |
|---|---|
| New area development | $ 5.92 |
| Facility improvements | $ 2.08 |
| Closure | $ 6.52 |
| Post-closure | $ 3.48 |
| **Total** | **$ 18.00** |

**Table 2-F. Total landfill reserve fund**

| Year | Status | Cedar Hills Disposal Tonnage | Revenue[3] | Expenditures | Year-end Balance |
|---|---|---|---|---|---|
| 2016 | budgeted | 864,100 | 14,088,081 | 28,444,784 | 26,810,229 |
| 2017 | forecast | 837,467 | 24,623,584 | 18,761,050 | 32,672,763 |
| 2018 | forecast | 838,759 | 14,679,617 | 20,910,302 | 26,442,078 |
| 2019 | forecast | 861,700 | 15,223,682 | 8,902,236 | 32,763,524 |
| 2020 | forecast | 900,440 | 16,042,937 | 27,210,281 | 21,596,180 |
| 2021 | forecast | 931,737 | 16,721,827 | 14,285,831 | 24,032,177 |
| 2022 | forecast | 964,275 | 17,390,982 | 6,161,766 | 35,261,393 |
| 2023 | forecast | 993,079 | 18,039,143 | 5,756,383 | 47,544,153 |
| 2024 | forecast | 1,021,137 | 18,717,799 | 2,336,518 | 63,925,435 |
| 2025 | forecast | 1,046,527 | 19,389,916 | 4,614,283 | 78,701,068 |
| 2026 | forecast | 1,067,236 | 19,878,382 | 4,862,757 | 93,716,693 |
| 2027 | forecast | 834,698 | 15,783,188 | 7,599,598 | 101,900,283 |
| 2028 | closing | | 700,749 | 21,177,244 | 81,423,789 |
| 2029 | closed | | 610,936 | 309,285 | 81,725,440[4] |

[3] Interest revenue is based on the King County Auditor's report recommendation (2011).
[4] Ending balance will be transferred to the Post-Closure Maintenance Fund for ongoing monitoring and maintenance.

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**2017/2018 FISCAL NOTE**

ATTACHMENT 2

Ordinance/Motion: 2016-XXXX
Title: 2017-2018 Solid Waste Rate Proposal
Affected Agency and/or Agencies: Solid Waste Division, Department of Natural Resources and Parks
Note Prepared By: Eben Sutton, Enterprise Services Manager, Solid Waste Division
Date Prepared: July 13, 2016
Note Reviewed By: John Walsh, Budget Analyst, Performance, Strategy and Budget
Date Reviewed: July 14, 2016

**Description of request:**

This proposal would allow the Solid Waste Division to increase disposal fees for the two-year period from 2017 to 2018. The Solid Waste Division has not had increased rates to the majority of fees since the current rate went into effect on January 1, 2013. All proposed rate increases would be implemented on January 1, 2017 if adopted. The rates are comparable with solid waste providers in the region.

**Revenue to:**

| Agency | Fund Code | Revenue Source | 2017/2018 | 2019/2020 | 2020/2021 |
|---|---|---|---|---|---|
| Solid Waste Division | 000004040 | 34371 - Disposal Fees | 29,422,268 | 38,931,001 | 47,615,675 |
| | | | | | |
| | | | | | |
| | | | | | |
| TOTAL | | | **29,422,268** | **38,931,001** | **47,615,675** |

**Expenditures from:**

| Agency | Fund Code | Department | 2017/2018 | 2019/2020 | 2020/2021 |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| TOTAL | | | **0** | **0** | **0** |

**Expenditures by Categories**

| | 2017/2018 | 2019/2020 | 2020/2021 |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| TOTAL | **0** | **0** | **0** |

**Does this legislation require a budget supplemental?** **No**

Notes and Assumptions: **Revenues:** Under the proposal, the Basic Fee for disposal of municipal solid waste would increase from $120.17 to $137.75 per ton, the Regional Direct Fee would increase from $103.50 to $117.00 per ton, the Yard Waste Fee would remain at $75.00 per ton, the Special Waste Fee would increase from $145.00 to $165.00 per ton, and the Special Waste Extra Handling fee would increase from $175.00 to $193.00 per ton effective January 1, 2017.

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ATTACHMENT 3

July 18, 2016

The Honorable Joe McDermott
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember McDermott:

This letter transmits an ordinance that will increase the King County Solid Waste Division basic fee for the disposal of municipal solid waste for the first time since 2013. The proposed fee is lower than was originally projected in the last rate plan for 2017-2018; the average effect on single-family curbside customers would be about $0.94 cents per month, representing a five percent increase on a $20 monthly bill. The Executive Proposed Solid Waste Disposal Fees for 2017-2018 document is attached.

The proposed basic fee of $137.75 per ton will enable the division to sustain current services, repay debt for previously approved transfer station projects, reinforce service reliability, and conduct a transfer station demand management pilot project.

Specifically, the ordinance will accomplish the following:

- Fund the increased cost of current services including waste transfer and transport, continued operation and new development at the Cedar Hills landfill, implementation of waste prevention and recycling programs, and payment for central support services such as human resources, finance, and systemwide planning;
- Repay general obligation bonds for construction of previously approved new transfer stations at Factoria and South County;
- Continue reliable service delivery by upgrading the transfer station cashiering system, improving wastewater systems at Cedar Hills Regional Landfill, and adding recycling requirements for transfer station self-haulers;
- Conduct a demand management pilot project in 2018 to test whether changes to services, hours, and prices at existing transfer stations can meet customer needs while avoiding capital investments for a new Northeast transfer station.

The legislation also furthers the goals of key County plans and initiatives as follows:

- The legislation furthers the King County Strategic Plan goal of Environmental Sustainability by providing safe, reliable, and environmentally responsible disposal of solid waste in compliance with federal, state, and local regulations.
- The legislation furthers the Strategic Plan Financial Stewardship goal by enabling the division to make changes, such as transfer station efficiencies and extending the life of the landfill, which will keep rates lower for all customers over the long-term.
- The legislation furthers the Strategic Climate Action Plan goal of achieving a 70 percent recycling rate by improving recycling requirements for transfer station self-haulers and continuing a pilot project to test compressed natural gas trucks in the division's fleet.

The Department of Natural Resources and Parks has briefed the Metropolitan Solid Waste Management Advisory Committee and the Solid Waste Advisory Committee on the legislation.

Thank you for considering this ordinance. This important legislation will enable the Solid Waste Division to continue to provide safe, reliable, efficient, and environmentally sustainable solid waste transfer and disposal service to ratepayers.

If you have any questions about this ordinance, please contact Pat D. McLaughlin, Division Director of the Solid Waste Division of the Department of Natural Resources and Parks, at 206-477-4501.

Sincerely,

Dow Constantine
King County Executive

Enclosures

cc: King County Councilmembers
ATTN: Carolyn Busch, Chief of Staff
Anne Noris, Clerk of the Council
Carrie S. Cihak, Chief of Policy Development, King County Executive Office
Dwight Dively, Director, Office of Performance, Strategy and Budget
Christie True, Director, Department of Natural Resources and Parks (DNRP)
Pat D. McLaughlin, Division Director, Solid Waste Division, DNRP