

PORT OF BREMERTON
BOARD OF COMMISSIONERS
REGULAR BUSINESS MEETING

A G E N D A

September 12, 2023
10:00 AM

Bill Mahan Conference Room
Port Administration Offices
Bremerton Nat'l Airport Terminal Bldg
8850 SW State Hwy 3, Bremerton

The Port of Bremerton Board of Commissioners have resumed in-person meetings but are maintaining the option for the public to participate remotely as well. The public is invited to view and/or participate in the hybrid meeting by attending in person or through one of the following options:

- To stream online only (via BKAT feed, with no interaction possible):
<https://bremerton.vod.castus.tv/vod/?live=ch1&nav=live>
- To join the online Zoom meeting: <https://us02web.zoom.us/j/3359030010>
- For audio only; dial 1.253.215.8782; Meeting ID: 335 903 0010

Call to Order

Pledge of Allegiance

Approval of Agenda

Consent Items

All matters listed under Consent Items have been distributed to each member of the Commission for reading and study, are considered to be routine, and will be enacted by one motion of the Commission with no separate discussion. If separate discussion is desired, that item may be removed from the Consent Items and placed under Action Items by request.

- A. Minutes of the regular business meeting of August 22, 2023.
- B. Payment of checks #901939 and #85156 through #85185 and #E01624 through #E01635 from the General Fund for \$41,808.19.

Payment of checks #901940 through #901943 and #901944 and #901945 through #901946 and #901947 through #901951 and #85186 through #85212 and #E01636 through #E01651 and #901952 through #901955 and #901956 and #901957 and #901958 through #901960 from the General Fund for \$268,923.41. Void Checks #82677, 83382, 83589.

Information Items

1. City of Bremerton Comp Plan, Market Study, and Infrastructure – Garrett Jackson, City Planning Manager

Citizen Comments: *Open to the public for comment. Speakers are asked to keep their comments to less than 3 minutes. Please feel free to submit further comments in writing to the Clerk of the Board (gingerw@portofbremerton.org).*

Action Items

1. Department of Natural Resources (DNR) Aquatic Lands Lease Agreement No. 20-B09891
2. Resolution 2023-04 authorizing a Washington State Recreation and Conservation Office (RCO) Local Parks Maintenance (LPM) Grant Application for the Port of Bremerton Marina Park at Port Orchard

Staff Reports

Commission Reports / New Business

Executive Session *(if necessary)*

Adjournment

Regular business and other meetings that may be attended by members of the Board

<u>Date</u>	<u>Time</u>	<u>Meeting</u>
09/12	10:00 am	*Hybrid Commission Regular Business Meeting
09/21	10:00 am	Kitsap Regional Coordinating Council (KRCC) Executive Committee
09/19	2:30 pm	Kitsap Economic Development Alliance (KEDA) Board Meeting
09/19	4:30 pm	*KEDA 40 th Anniversary Celebration
09/26	6:00 pm	*Hybrid Commission Regular Business Meeting

Meetings are subject to change or cancellation

**Denotes events in which two (2) or more Commissioners may attend*

PORT OF BREMERTON
BOARD OF COMMISSIONERS
REGULAR BUSINESS MEETING

MINUTES

August 22, 2023
6:00 PM

Bill Mahan Conference Room
Port Administration Offices
Bremerton Nat'l Airport Terminal Bldg
8850 SW State Hwy 3, Bremerton
Remote Option via Zoom

Commissioners and Staff Present

Commissioners
Axel Strakeljahn
Gary Anderson
Cary Bozeman

Staff Members
Jim Rothlin
Arne Bakker
Jeremiah Wiley
James Weaver
James Goodman
Monroe Whitman IV
Ginger Waye
Stephanie Frame
Anne Montgomery, Atty

Call to Order

President Strakeljahn called the meeting to order at 6:05 PM and led the Pledge of Allegiance.

Approval of Agenda

It was moved by BOZEMAN, seconded by ANDERSON to:

Approve the Agenda as presented.

MOTION CARRIES, 3-0

Consent Items

- A. Minutes of the regular business meeting of August 8, 2023.
- B. Payment of checks #E01609 and #85128 through #85132 and #E01610 through #E01613 and #901922 through #901923 from the General Fund for \$153,336.92.
Payment of checks #E01614 and #901924 through #901930 and #85133 through #85155 and #E01615 through #E01622 and #901931 through #901934 and #901935 through #901938 and #E01623 from the General Fund for \$111,667.46.

It was moved by BOZEMAN, seconded by ANDERSON to:

Approve the Consent Items as presented.

MOTION CARRIES, 3-0

Information Items

1. Wastewater Sewer Rate Study Preliminary Findings – Steve Donovan, Donovan Enterprises

Introduced by Chief Operations Officer Arne Bakker, Mr. Donovan provided a PowerPoint presentation and led discussion on the Port's wastewater system cost of service providing detail on direct operating expenses estimated at double the revenue; current conditions of wastewater operations; five-year forecast of future conditions; customer profiles/metered water consumption; monthly sewer rate forecasts; and policy considerations. It was noted that if the Port wants to keep control of wastewater operations, rates will need to be substantially increased to be sustainable. It was also noted that there is potential to turn the system over to the City of Bremerton who has the core competency for this type of operation.

There was full discussion with the Board including comments from Ned Lever, City Engineer, on the City's current wastewater planning for 2024 and the potential for a regional wastewater system that would include the industrial park. In order for the city to move forward with a feasibility study on that system, they need the Port to agree to support the study and to consider transferring the system to the City if the Port determines it would be in the best interest of the Port and its tenants.

2. Kitsap Economic Development Alliance (KEDA) Update – Joe Morrison, Executive Director

Mr. Morrison provided background on KEDA's ONE Kitsap, their 5-year strategic plan, and detailed their proposed deliverables over the next two years. There was full discussion by the Board on deliverables related to the Port which included comments by Al Doeve, KEDA consultant.

Some Board points on how KEDA could support the Port included being site selectors; getting involved in ferry discussions; and to provide insight as to who wants to come to the Port, their needs, and how we can accommodate them.

Citizen Comments - None

Action Items

1. Resolution 2023-03 adopting a Public Records Disclosure Policy
Presented by Ginger Waye, Executive Assistant & Public Records Officer

Following presentation and after questions were addressed;

It was moved by BOZEMAN, seconded by STRAKELJAHN to:

Approve Resolution 2023-03 adopting policies and procedures for public records disclosure.

MOTION CARRIES, 3-0

2. Lease Agreement with Ecological Land Services, Inc.
Presented by Arne Bakker, Chief Operations Officer

Following presentation;

It was moved by STRAKELJAHN, seconded by ANDERSON to:

Approve the terminal building office lease agreement with Ecological Land Services, Inc. for a period of five (5) years with two (2) options of two (2) years each.

MOTION CARRIES, 3-0

3. Acceptance of Federal Aviation Administration (FAA) Grant for AIP 3-53-0007-032-2023 – National Environmental Policy Act (NEPA) Environmental Assessment (EA) for Airport Eastside Development
Presented by Monroe Whitman IV, Airport Manager

Following presentation and after questions were addressed;

It was moved by BOZEMAN, seconded by STRAKELJAHN to:

Accept the Federal Aviation Administration (FAA) grant in the amount of \$913,745 for the 2023 National Environmental Policy Act (NEPA) Project for Eastside Development and authorize the CEO to execute the grant agreement.

MOTION CARRIES, 3-0

4. Professional Services Agreement with DOWL for the National Environmental Policy Act (NEPA) Environmental Assessment (EA) for Airport Eastside Development Project
Presented by Monroe Whitman IV, Airport Manager

Following presentation and after questions were addressed;

It was moved by STRAKELJAHN, seconded by BOZEMAN to:

Approve the Professional Services Agreement with DOWL for the National Environmental Policy Act (NEPA) Airport Eastside Environmental Assessment and authorize the CEO to execute the Agreement.

MOTION CARRIES, 3-0

5. Memorandum of Agreement (MOA) with City of Port Orchard for Port Orchard Marina Parking

Presented by James Weaver, Director of Marine Facilities

Following presentation and after questions were addressed;

It was moved by ANDERSON, seconded by BOZEMAN to:

Approve the Memorandum of Agreement for waterfront parking with the City of Port Orchard and authorize the CEO to execute the Agreement.

MOTION CARRIES, 3-0

Staff Reports

Jim Rothlin, Chief Executive Officer

- Provided highlights of the following events:
 - Wings Over Washington Airshow at the airport
 - The CRUZ car show in downtown Port Orchard
- A tour of the Port Orchard Marina breakwater was provided to Pacific Northwest Waterways Association. That organization plays a key role in the Port getting a voice in Washington DC.
- The Port's 2023 summer newsletter will be released this week.
- Media Intern Nathan Berry has completed his internship. He made good strides in updating the Port's website with those updates being released in the near future.
- The "Save the Date" has been distributed for the Port's Community Meeting to be held on October 4, 2023.

Commission Reports / New Business

Commissioner Bozeman

- Completed his 49th and final "Conversation with a Community Leader" broadcast today with Bremerton-Kitsap Access Television (BKAT). This time, the table was turned and he was the interviewee with County Commissioner Katie Walters being the interviewer.
- Had an opportunity to go to the Marvin Willian Community Center in Bremerton and saw first-hand the large homeless camp next to the Center. He noted that affordable housing continues to be an issue.
- Announced his wife, Kerri, will have a booth at the upcoming 2023 Manette Fest (September 9, 10:00AM-4:00PM).
- Spoke to the concern for the fires in places such as Maui and Spokane and suggested the Port have a conversation about how to be prepared for that type of disaster.

Commissioner Anderson

- Noted that Quality Coatings based in Port Orchard is putting together an effort to send supplies to the fire-ravaged areas of Maui; contact them to donate. To donate cash, contact Port Orchard Rotary.
- Attended the Airshow which was well-organized and a lot of fun. Would like to keep rolling with this event in the future.

Commissioner Strakeljahn

- Attended the following:
 - Crosby Days Logging Festival in Holly
 - CRUZ Car Show in Port Orchard
 - Wings over Washington Airshow
 - Gorst Coalition executive meeting
 - A tour of the Amazon distribution center next to the airport and was impressed with their efficiency and electrification of vehicles.

Executive Session - None

Adjournment

There being no further business before the Board, the meeting was adjourned at 8:20 p.m.

Submitted,

Approved,

Jim Rothlin
Chief Executive Officer
September 7, 2023

Cary Bozeman
Commission Secretary
September 12, 2023

PORT OF BREMERTON **AGENDA SUMMARY**

Agenda Item No: Action Item #1
Subject: Lease Renewal with Department of Natural Resources
Exhibits: DNR Lease No. 20-B09891
Prepared By: James Weaver, Director of Marine Facilities
Meeting Date: September 12, 2023

Summary:

The Port of Bremerton waterfront parcels for the Port Orchard and Bremerton Marinas both include aquatic and upland land leases from the Washington State Department of Natural Resources. Approval of the DNR leases allows the Port to continue to operate marinas, parks, and parking lots on state owned property. This Lease renewal for DNR Lease No. 20-B09891 is for a term of twelve (12) years. The lease area is described as East Port Orchard and includes the upland parcel east of Harrison Avenue and the parking areas near the Port Orchard Marina Park.

Fiscal Impact:

The DNR lease agreement rate is calculated by the State and escalates each year based upon State data and similar leases throughout Puget Sound. The most recent annual lease rate for DNR Lease #20-B09891 was \$30,992.77.

Strategic Purpose:

This action conforms with the Port's strategic plan in Goal 5. Continue to maintain the Port's strong connection with the community and support its unique quality of life.

Recommendation:

Recommendation is to approve the DNR lease renewal for DNR Lease #20-B09891

Motion for Consideration:

Move to approve the Washington Department of Natural Resources lease renewal agreement #20-B09891 and authorize the CEO to execute the agreement.

When recorded, return to:
Port of Bremerton
8850 SW State Hwy 3
Bremerton, WA 98312



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

AQUATIC LANDS LEASE

Lease No. 20-B09891

Grantor: Washington State Department of Natural Resources
Grantee(s): Port of Bremerton
Legal Description: Govt. Lot. 4 (SE1/4 NE1/4), Section 26, Township 24 North, Range 1 East, W.M.
Complete Legal Description on Page 35
Auditor Reference Number(s): 201103010135
Assessor's Property Tax Parcel or Account Number: Not Applicable
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this lease: 4028-001-001-0007

THIS LEASE is between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and PORT OF BREMERTON, a municipal corporation ("Tenant").

BACKGROUND

Tenant desires to lease a portion of the aquatic lands commonly known as east end of Port Orchard waterfront, which tidelands located in Kitsap County, Washington, from State, and State desires to lease the Property to Tenant pursuant to the terms and conditions of this Lease. State has authority to enter into this Lease under Chapter 43.12, Chapter 43.30 and Title 79 of the Revised Code of Washington (RCW).

THEREFORE, the Parties agree as follows:

SECTION 1 PROPERTY

1.1 Property Defined.

- (a) State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the “Property”).
- (b) This Lease is subject to all valid interests of third parties noted in the records of Kitsap County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.
- (c) This Lease does not include a right to harvest, collect, or damage natural resources, including aquatic life or living plants; water rights; mineral rights; or a right to excavate or withdraw sand, gravel, or other valuable materials.
- (d) State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not interfere unreasonably with the Permitted Use.

1.2 Survey and Property Descriptions.

- (a) Tenant warrants that the record of survey referenced in Exhibit A includes a true and accurate description of the Property boundaries, and the location of the Improvements existing on the Property. Tenant’s obligation to provide a true and accurate description of the Property boundaries, and the location of the Improvements existing on the Property is a material term of this Lease.
- (b) Unless State has given Grantee written authorization to use such lands, Tenant’s use or occupancy of any state-owned aquatic lands outside the Property boundaries is a material breach of this Lease and State may seek remedies under Section 14 of this Lease in addition to any other remedies afforded by law or equity or otherwise.

1.3 Inspection. State makes no representation regarding the condition of the Property, Improvements located on the Property, the suitability of the Property for Tenant’s Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property, or the existence of hazardous substances on the Property. Tenant inspected the Property and accepts it “AS IS.”

SECTION 2 USE

2.1 Permitted Use. Tenant shall use the Property for:

Parking lot, bulkhead, and boardwalk

(the “Permitted Use”), and for no other purpose. Exhibit B includes additional details about the Permitted Use, the Property, and Improvements, and additional obligations on Tenant. The Permitted Use of this Lease shall not be changed or modified without the written consent of State, which shall be at State’s sole discretion.

2.2 Restrictions on Permitted Use and Operations. The following limitations and requirements apply to the Property and adjacent state-owned aquatic land. Tenant’s compliance with the following does not limit Tenant’s liability under any other provision of this Lease or the law.

- (a) Tenant shall not cause or permit:
 - (1) Damage to land or natural resources,
 - (2) Waste, or
 - (3) Deposit of material, unless approved by State in writing. This prohibition includes, but is not limited to, deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.
- (b) Nothing in this Lease shall be interpreted as an authorization to dredge the Property.
- (c) If pressure washing or cleaning any equipment, machinery, or floating or fixed structures, Tenant shall avoid scouring the substrate and damaging any aquatic land and vegetation. Tenant shall also comply with the following limitations:
 - (1) If equipment contains or is covered with petroleum based products: (1) Tenant shall not pressure wash such equipment in or over the water and (2) all wash water must be contained and taken to an approved treatment facility.
 - (2) Tenant shall collect or sweep up non-organic debris accumulations on structures resulting from pressure washing and properly dispose of such debris in an upland location.
 - (3) Tenant shall pressure wash using only clean water. Tenant shall not use or add to the pressure washing unit any detergents or other cleaning agents.
 - (4) Tenant shall pressure wash painted structures using appropriate filter fabric to control and contain paint particles generated by the pressure washing.
- (d) Tenant shall not construct new bulkheads or place new hard bank armoring.

2.3 Conformance with Laws. Tenant shall keep current and comply with all conditions and terms of permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Tenant’s use or occupancy of the Property.

2.4 Liens and Encumbrances. Unless expressly authorized by State in writing, Tenant shall keep the Property free and clear of liens or encumbrances arising from the Permitted Use or Tenant’s occupancy of the Property.

2.5 Residential Uses Prohibited. Residential uses, as defined by WAC 332-30-106(62), are not permitted on the Property.

SECTION 3 TERM

3.1 Term Defined. The term of this Lease is Twelve (12) years, beginning on the 1st day of September, 2023 (the “Commencement Date”), and ending on the 31st day of August, 2035 (the “Termination Date”), unless terminated sooner under the terms of this Lease (the “Term”). Whenever the phrase “termination of this Lease” or “termination of the Lease” is used in this Lease, it shall refer to the ending, termination, cancellation, or expiration of the Lease.

3.2 Renewal of the Lease. This Lease does not provide a right of renewal. Tenant may apply for a new lease, which State has discretion to grant or deny. Tenant must apply for a new lease at least one (1) year prior to the Termination Date.

3.3 End of Term.

- (a) Removal of Improvements and Personal Property: Prior to the termination of this Lease, Tenant shall remove Improvements and Personal Property in accordance with Section 7.
- (b) Restoration of Property:
 - (1) Prior to the termination of this Lease, Tenant shall restore the Property to its condition before the installation of any Improvements on the Property.
 - (2) This restoration is to be done at Tenant’s expense and to the satisfaction of State. Restoration of the Property is considered to be Work, as described in Section 7 of the Lease. Tenant’s plans for restoring the Property shall be submitted to State for prior approval in accordance with Section 7 of this Lease.
 - (3) If Tenant fails to restore the condition of the Property as required by this Paragraph, State may take steps reasonably necessary to remedy Tenant’s failure. Upon demand by State, Tenant shall pay all costs of State’s remedy, including but not limited to the costs of removing and disposing of material deposited on the Property, lost revenue resulting from the condition of the Property, and administrative costs associated with State’s remedy.
- (c) Vacation of Property: Upon the termination of this Lease, Tenant shall cease all operations on and use of the Property and surrender the Property to State.

3.4 Holdover.

- (a) If Tenant remains in possession of the Property after the Termination Date, and State has not notified Tenant that Tenant must vacate the Property, in the absence of a new lease agreement between State and Tenant, the following terms apply: Tenant’s occupancy will be a month-to-month tenancy, on terms identical to the terms of this Lease, except that either Party may terminate the tenancy on thirty (30) days’ written notice. The month-to-month occupancy will not be an extension or renewal of the Term.
 - (1) The monthly rent during the month-to-month tenancy will be the same rent that would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms.

- (2) Payment of more than the monthly rent will not be construed to create a periodic tenancy longer than month-to-month. If Tenant pays more than the monthly rent and State provides notice to vacate the property, State shall refund the amount of excess payment remaining after the Tenant ceases occupation of the Property.
- (b) If State notifies Tenant to vacate the Property and Tenant fails to do so within the time set forth in the notice, Tenant will be a trespasser and shall owe State all amounts due under RCW 79.02.300 or other applicable laws.

SECTION 4 RENT

4.1 Annual Rent.

- (a) The Annual Rent is based on the use classification of Tenant's Permitted Use of the Property and the square footage of each use classification, as set forth in Exhibit A.
- (b) Until adjusted as set forth below, Tenant shall pay to State an annual rent of Twenty-Nine Thousand Five Hundred Forty-One Dollars and Fifty-Two Cents (\$29,541.52), consisting of Twenty-Nine Thousand Five Hundred Forty-One Dollars and Fifty-Two Cents (\$29,541.52) related to the nonwater-dependent rent.
- (c) The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), is due and payable in full on or before the Commencement Date and on or before the same date of each year thereafter. Any payment not paid by State's close of business on the date due is past due.
- (d) Public Use and Access. This Lease allows for free or reduced rent for areas that meet the requirements of RCW 79.105.230 and WAC 332-30-131. If Tenant's use of these areas cease to meet the requirements for free or reduced rent in RCW 79.105.230 and WAC 332-30-131, State will charge Tenant water-dependent rent for using these areas.

4.2 Payment Place. Tenant shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

4.3 Adjustment Based on Change in Use Classification. Neither the use classification, nor the square footage of a use classification, shall be changed without the prior written consent of State. If the use classification or the square footage of a use classification is changed, the Annual Rent shall be adjusted based on the revised use classification or square footage of each use classification.

4.4 Rent Adjustment Procedures.

- (a) Notice of Rent Adjustment. State shall provide notice of adjustments to the Annual Rent allowed under Paragraphs 4.5(b) and 4.6(b) to Tenant in writing no later than ninety (90) days after the anniversary date of the Commencement Date.
- (b) Procedures on Failure to make Timely Adjustment. If State fails to provide the notice required in Paragraph 4.4(a), State shall not collect the adjustment amount for the year in which State failed to provide notice. Upon providing notice of

adjustment, State may adjust and prospectively bill Annual Rent as if missed or waived adjustments had been implemented at the proper interval. This includes the implementation of any inflation adjustment.

4.5 Rent Adjustments for Water-Dependent Uses.

- (a) Inflation Adjustment. State shall adjust water-dependent rent annually pursuant to RCW 79.105.200-.360, except in those years in which State revalues the rent under Paragraph 4.5(b) below. This adjustment will be effective on the anniversary of the Commencement Date.
- (b) Revaluation of Rent. At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the water-dependent Annual Rent in accordance with RCW 79.105.200-.360.
- (c) Rent Cap. State shall increase rent incrementally in compliance with RCW 79.105.260 as follows: If application of the statutory rent formula for water-dependent uses would result in an increase in the rent attributable to such uses of more than fifty percent (50%) in any one year, State shall limit the actual increase implemented in such year to fifty percent (50%) of the then-existing rent. In subsequent, successive years, State shall increase the rental amount incrementally until State implements the full amount of increase as determined by the statutory rent formula.]

4.6 Rent Adjustments for Nonwater-Dependent Uses.

- (a) Inflation Adjustment. State shall adjust nonwater-dependent rent annually on the Commencement Date, except in those years in which State revalues the rent under Paragraph 4.6(b) below. Adjustment is based on the percentage rate of change in the previous fiscal year's Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, for the Seattle-Tacoma-Bellevue Metropolitan Statistical Area, All Urban Consumers, all items 1982-84 = 100. If publication of the Consumer Price Index is discontinued, State shall use a reliable governmental or other nonpartisan publication evaluating the information used in determining the Consumer Price Index.
- (b) Revaluation of Rent. At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the nonwater-dependent Annual Rent to reflect the then-current fair market rent.

SECTION 5 OTHER EXPENSES

5.1 Utilities. Tenant shall pay all fees charged for utilities required or needed by the Permitted Use.

5.2 Taxes and Assessments. Tenant shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges applicable or attributable to the Property, Tenant's leasehold interest, the Improvements, or Tenant's use and enjoyment of the Property.

5.3 Right to Contest. If in good faith, Tenant may contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against loss or liability resulting from such contest.

5.4 Proof of Payment. If required by State, Tenant shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Lease requires Tenant to pay.

5.5 Failure to Pay. If Tenant fails to pay any of the amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Failure to Pay Rent. If Tenant fails to pay rent when due under this Lease, State may seek remedies under Section 14 as well as late charges and interest as provided in this Section 6.

6.2 Late Charge. If State does not receive full rent payment within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the unpaid amount or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

6.3 Interest Penalty for Past Due Rent and Other Sums Owed.

- (a) Tenant shall pay interest on the past due rent at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Rent not paid by the close of business on the due date will begin accruing interest the day after the due date.
- (b) If State pays or advances any amounts for or on behalf of Tenant, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance. This includes, but is not limited to, State's payment of taxes, assessments, insurance premiums, costs of removal and disposal of materials or Improvements under any provision of this Lease, or other amounts not paid when due.

6.4 Referral to Collection Agency and Collection Agency Fees. If State does not receive full payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Tenant shall pay collection agency fees in addition to the unpaid amount.

6.5 No Accord and Satisfaction. If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

6.6 No Counterclaim, Setoff, or Abatement of Rent. Except as expressly set forth elsewhere in this Lease, Tenant shall pay rent and all other sums payable by Tenant without the requirement that State provide prior notice or demand. Tenant's payment is not subject to counterclaim, setoff, deduction, defense or abatement.

SECTION 7 IMPROVEMENTS, PERSONAL PROPERTY, AND WORK

7.1 Improvements Defined.

- (a) "Improvements," consistent with RCW 79.105 through 79.140, are additions within, upon, or attached to the land. Improvements include, but are not limited to, fill, structures, bulkheads, docks, pilings, and other fixtures.
- (b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property, adjacent state-owned aquatic lands, or Improvements or (2) diminishing the value or utility of the Property, adjacent state-owned aquatic lands or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by the State of Washington. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Tenant.
- (d) "Tenant-Owned Improvements" are Improvements authorized by State and (1) made by Tenant, (2) acquired by Tenant from the prior tenant, (3) made by subtenants on the Property, or (4) acquired by a subtenant from Tenant or a prior subtenant or tenant.
- (e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Tenant that do not conform to plans submitted to and approved by State.
- (f) "Improvements Owned by Others" are Improvements owned by others (not including Tenant or a subtenant) with a right to occupy or use the Property.

7.2 Existing Improvements. On the Commencement Date, the following Tenant-Owned Improvements are located on the Property: bulkhead, paved parking areas, parking islands, and boardwalk with fencing.

7.3 Construction, Major Repair, Modification, and Other Work.

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, and removal of Improvements (collectively "Work").
- (b) Except in an emergency, Tenant shall not conduct Work without State's prior written consent. Tenant shall obtain State's prior written consent as follows:
 - (1) Tenant shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Tenant and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Tenant shall submit plans and specifications to State at least ninety (90) days before commencement of Work.
 - (2) State may deny consent if State determines that denial is in the best interest of the State of Washington or if the proposed Work does not

comply with Paragraphs 7.4 and 11.3. State may impose additional conditions intended to protect and preserve the Property or adjacent state-owned aquatic lands.

- (3) State will not approve plans to construct new Improvements or expand existing Improvements in or over habitats designated by State as important habitat, including, but not limited to: native aquatic vegetation, commercial geoduck tracts, forage fish spawning areas, and salmon critical habitat. Tenant shall confirm location of important habitat on Property, if any, with State before submitting plans and specifications in accordance with Paragraph 7.3.
- (c) Tenant shall immediately notify State of emergency Work. Upon State's request, Tenant shall provide State with as-built plans and specifications of emergency Work.
- (d) Tenant shall not commence or authorize Work until Tenant or Tenant's contractor has:
 - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Tenant or Tenant's contractor shall maintain the performance and payment bond until the costs of the Work, including all laborers and material persons, are paid in full.
 - (2) Obtained all required permits.
- (e) Before completing Work, Tenant shall remove all debris and restore the Property to an orderly and safe condition. If Work is for removal of Improvements at End of Term, Tenant shall restore the Property in accordance with Paragraph 3.3, End of Term.
- (f) Upon completing Work, Tenant shall promptly provide State with as-built plans and specifications. State may also require Tenant to obtain an updated record of survey showing the Property boundaries and the as-built location of all Improvements on the Property.
- (g) State shall not charge rent for authorized Improvements installed by Tenant on the Property during the Term, but State may charge rent for such Improvements when and if Tenant or successor obtains a subsequent use authorization for the Property and State has waived the requirement for removal of Improvements as provided in Paragraph 7.5.

7.4 Standards for Work.

- (a) Applicability of Standards for Work.
 - (1) The standards for Work in Paragraph 7.4(b) apply to Work commenced in the five year period following the Commencement Date. Work commences when State approves plans and specifications.
 - (2) If Tenant commences Work five years or more after the Commencement Date, Tenant shall comply with State's current standards for Work.
 - (3) If Tenant commences Work five (5) or more years after the Commencement Date, Tenant shall ascertain State's current standards for Work as follows:

- (i) Before submitting plans and specifications for State's approval as required by Paragraph 7.3 of the Lease, Tenant shall request State to provide Tenant with State's current standards for Work on state-owned aquatic lands.
 - (ii) Within thirty (30) days of receiving Tenant's request, State shall provide Tenant with State's current standards for Work, which will be effective for the purpose of State's approval of Tenant's proposed Work, provided Tenant submits plans and specifications for State's approval within two (2) years of Tenant's request for standards.
 - (iii) If State does not timely provide State's current standards upon Tenant's request, the standards for Work under Paragraph 7.4(b) apply to Tenant's Work provided Tenant submits plans and specifications as required by Paragraph 7.3 within two (2) years of Tenant's request for State's current standards for Work.
 - (iv) If Tenant fails to (1) make a request for State's current standards for Work or (2) timely submit plans and specifications to State after receiving State's current standards for Work, Tenant shall, at Tenant's sole expense, make changes in plans or Work necessary to conform to State's current standards for Work upon State's demand.
- (b) The following standards for Work apply to Work commenced in the five-year period following the Commencement Date:
- (1) Tenant shall only conduct in-water Work during time periods authorized for such work under WAC 220-660-330, Authorized Work Times in Saltwater Areas, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW), United States Fish and Wildlife Service (USFWS), or National Marine Fisheries Service (NMFS).
 - (2) Where Work is in or within 200 feet of spawning habitat for Surf Smelt (*Hypomesus pretiosus*) or Sand Lance (*Ammodytes hexapterus*), Tenant shall construct all new or expansions to existing Improvements to avoid:
 - (i) removal of shoreline vegetation within the Property that provides shading to the upper intertidal zone,
 - (ii) changes in typical spawning behavior,
 - (iii) destruction or disturbance of spawning substrate or aquatic vegetation used for spawning, and
 - (iv) interruption of existing sediment transport mechanisms such as longshore current or wave energy.

7.5 Tenant-Owned Improvements.

- (a) Removal of Tenant-Owned Improvements upon termination.
 - (1) Tenant shall remove Tenant-Owned Improvements in accordance with Paragraph 7.3 upon the termination of the Lease unless State waives the requirement for removal.
 - (2) Tenant-Owned Improvements remaining on the Property after the termination of the Lease shall become State-Owned Improvements

without payment by State, unless State elects otherwise. State may refuse or waive ownership.

- (3) If Tenant-Owned Improvements remain on the Property after the termination of the Lease without State's consent, State may remove all Improvements and Tenant shall pay State's costs.
- (b) Conditions Under Which State May Waive Removal of Tenant-Owned Improvements.
- (1) State may waive removal of any Tenant-Owned Improvements whenever State determines that it is in the best interests of the State of Washington, and regardless of whether Tenant enters into a new Lease for the Property.
 - (2) If Tenant enters into a new Lease for the Property, State may waive requirement to remove Tenant-Owned Improvements. State also may consent to Tenant's continued ownership of Tenant-Owned Improvements.
 - (3) If Tenant does not enter into a new Lease for the Property, State may waive requirement to remove Tenant-Owned Improvements upon consideration of a timely request from Tenant, as follows:
 - (i) Tenant shall submit its request to leave Tenant-Owned Improvements to State at least one (1) year before the Termination Date.
 - (ii) State, within ninety (90) days of receiving Tenant's request, will notify Tenant whether State consents to any Tenant-Owned Improvements remaining. State has no obligation to grant consent.
 - (iii) State's failure to respond to Tenant's request to leave Improvements within ninety (90) days is a denial of the request.
- (c) Tenant's Obligations if State Waives Removal.
- (1) For any Tenant-Owned Improvements that State has waived the requirement for removal, Tenant shall not remove such Tenant-Owned Improvements.
 - (2) For any Tenant-Owned Improvements that State has waived the requirement for removal, Tenant shall maintain such Tenant-Owned Improvements in accordance with this Lease until the termination of the Lease. Tenant is liable to State for cost of repair if Tenant causes or allows damage to Tenant-Owned Improvements State has designated to remain.

7.6 Unauthorized Improvements.

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) The placement of Unauthorized Improvements on the Property is a default of the Lease. State may require removal of any or all Unauthorized Improvements. If State requires removal of Unauthorized Improvements and if Tenant fails to remove the Unauthorized Improvements, State may remove the Unauthorized Improvements and Tenant shall pay for the cost of removal and disposal.
- (c) In addition to requiring removal of Unauthorized Improvements, State may charge Tenant a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of

installation or construction until the time the Unauthorized Improvements are removed.

- (d) If State consents to Unauthorized Improvements remaining on the Property, upon State's consent, the Unauthorized Improvements will be treated as Tenant-Owned Improvements and the removal and ownership of such Improvements shall be governed by Paragraph 7.5. If State consents to the Unauthorized Improvements remaining on the Property, State may charge a use fee that is sixty percent (60%) higher than the full market value of the use of the land for the Unauthorized Improvements from the time of installation or construction until State consents.

7.7 Personal Property.

- (a) Tenant retains ownership of Personal Property unless Tenant and State agree otherwise in writing.
- (b) Tenant shall remove Personal Property from the Property by the termination of the Lease. Tenant is liable for damage to the Property and any Improvements that may result from removal of Personal Property.
- (c) State may sell or dispose of all Personal Property left on the Property after the termination of the Lease.
 - (1) If State conducts a sale of Personal Property, State shall first apply proceeds to State's costs of removing the Personal Property, State's costs in conducting the sale, and any other payment due from Tenant to State. State shall pay the remainder, if any, to the Tenant. Tenant shall be liable for any costs of removing the Personal Property and conducting the sale that exceed the proceeds received by State.
 - (2) If State disposes of Personal Property, Tenant shall pay for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).
- (c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the utmost care required under RCW 70A.305.040(3)(a)(iii) of the Washington State Model Toxics Control Act.
- (d) "Tenant and affiliates" when used in this Section 8 means Tenant or Tenant's subtenants, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Property with the Tenant's permission.

- (e) “Liabilities” as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys’ fees and disbursements), penalties, or judgments.

8.2 General Conditions.

- (a) Tenant’s obligations under this Section 8 extend to the area in, on, under, or above:
 - (1) The Property; and
 - (2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.
 - (1) Tenant shall exercise the utmost care with respect to Hazardous Substances.
 - (2) Tenant shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

8.3 Current Conditions and Duty to Investigate.

- (a) State makes no representation about the condition of the Property or adjacent state-owned aquatic lands. Hazardous Substances may exist in, on, under, or above the Property or adjacent state-owned aquatic lands.
- (b) This Lease does not impose a duty on State to conduct investigations or supply information to Tenant about Hazardous Substances.
- (c) Tenant is responsible for conducting all appropriate inquiry and gathering sufficient information about the existence, scope, and location of Hazardous Substances on or near the Property necessary for Tenant to meet Tenant’s obligations under this Lease and utilize the Property for the Permitted Use.

8.4 Use of Hazardous Substances.

- (a) Tenant and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Tenant shall not undertake, or allow others to undertake by Tenant’s permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.
- (c) If use of Hazardous Substances related to Tenant’s Permitted Use or Tenant’s use or occupancy of the Property results in violation of law:
 - (1) Tenant shall submit to State any plans for remedying the violations, and
 - (2) Tenant shall implement any remedial measures to restore the Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.
- (d) At a minimum, Tenant and affiliates shall observe the following Hazardous Substances operational standards. If the Washington Department of Ecology, United States Environmental Protection Agency (EPA) or other regulatory agency establishes different standards applicable to Tenant’s activities under the

Permitted Use, Tenant shall meet the standard that provides greater protection to the environment.

- (1) Tenant shall not allow work on overwater structures or vessels without protective measures to prevent discharge of toxins to the water, including:
 - (i) Tenant shall not cause or allow underwater hull scraping and other underwater removal of paints.
 - (ii) Tenant shall not cause or allow underwater refinishing work from boats or temporary floats unless permitted by an industrial National Pollutant Discharge Elimination System (NPDES) permit.
 - (iii) Tenant shall not cause or allow above the waterline boat repairs or refinishing in-water except if limited to decks and superstructures and less than 25 percent (25%) of a boat is repaired or refinished in-water per year.
 - (iv) Tenant shall use and require others to use tarps and other dust, drip and spill containment measures when repairing or refinishing boats in water.
- (2) Tenant shall not store or allow others to store fuel tanks, petroleum products, hydraulic fluid, machinery coolants, lubricants and chemicals not in use in locations above the water surface.
- (3) Tenant shall inspect all equipment using petroleum products, hydraulic fluids, machinery coolants, chemicals, or other toxic or deleterious materials on a monthly basis and immediately make all repairs necessary to stop leakage. Tenant shall document the monthly inspections and repairs and keep such documentation for the duration of the Lease. Within thirty (30) days of a request by State, Tenant shall make any requested documentation of monthly inspections available to State.
- (4) Tenant shall maintain a supply of oil spill containment materials adequate to contain a spill from the largest vessel in use on the Property.

8.5 Management of Contamination, if any.

- (a) Tenant and affiliates shall not undertake activities that:
 - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
 - (2) Result in human or environmental exposure to contaminated sediments, if any;
 - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Tenant shall allow reasonable access to:
 - (1) Employees and authorized agents of the EPA, the Washington State Department of Ecology, health department, or other similar environmental agencies; and
 - (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Tenant may negotiate an access agreement with such parties, but Tenant may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

- (a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:
 - (1) A release or threatened release of Hazardous Substances;
 - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances;
 - (3) Any lien or action arising from Hazardous Substances;
 - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
 - (5) Any notification from the EPA or the Washington State Department of Ecology that remediation or removal of Hazardous Substances is or may be required at the Property.
- (b) Tenant's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a) and to any other property used by Tenant in conjunction with the Property if a release of Hazardous Substances on the other property could affect the Property.
- (c) Tenant shall provide State with copies of all documents Tenant submits to any federal, state or local authorities concerning environmental impacts or proposals relative to the Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollutant Discharge Elimination System permits; United States Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality Certifications; Shoreline Substantial Development permits; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

8.7 Indemnification.

- (a) Tenant shall fully indemnify, defend, and hold harmless State from and against Liabilities that arise out of, or relate to:
 - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property;
 - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property.
- (b) Tenant shall fully indemnify, defend, and hold harmless State for Liabilities that arise out of or relate to Tenant's breach of obligations under Paragraph 8.5.
- (c) If Tenant fails to exercise care as described in Paragraph 8.2(b)(2), to the extent permitted by law, Tenant shall fully indemnify, defend, and hold harmless State from and against Liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances.

8.8 Reservation of Rights.

- (a) For Liabilities not covered by the indemnification provisions of Paragraph 8.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes

of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.

- (b) The Parties expressly reserve all rights, claims, immunities, and defenses that either Party may have against third parties. Nothing in this Section 8 benefits or creates rights for third parties.
- (c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 8 do not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.

8.9 Cleanup.

- (a) If Tenant's act, omission, or breach of obligation under Paragraph 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standard, Tenant shall, at Tenant's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.
- (b) If a cleanup is eligible for the Washington State Department of Ecology's Voluntary Cleanup Program, Tenant may undertake a cleanup of the Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Tenant cooperates with the Department of Natural Resources in development of cleanup plans. Tenant shall not proceed with Voluntary Cleanup without the Department of Natural Resources' approval of final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Lease. Tenant's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Lease.

8.10 Sampling by State, Reimbursement, and Split Samples.

- (a) State may enter the Property and conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (b) If such Tests, along with any other information, demonstrate a breach of Tenant's obligations regarding Hazardous Substances under this Lease, Tenant shall promptly reimburse State for all costs associated with such Tests, provided State gave Tenant thirty (30) days' advance notice in nonemergencies and reasonably practical notice in emergencies.
- (c) In nonemergencies, Tenant is entitled to obtain split samples of Test samples, provided Tenant gives State written notice requesting split samples at least ten (10) days before State conducts Tests. Upon demand, Tenant shall promptly reimburse State for additional cost, if any, of split samples.
- (d) If either Party conducts Tests on the Property, the conducting Party shall provide the other Party with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) days of a written request by the other Party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Tenant shall submit data and information to State

without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

SECTION 9 ASSIGNMENT AND SUBLETTING

9.1 State Consent Required. Tenant shall not sell, convey, mortgage, assign, pledge, sublease, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or the Property without State's prior written consent, which shall be at State's sole discretion.

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation, and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. State may refuse its consent to any conveyance, transfer, or encumbrance if it will result in a subdivision of the leasehold. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.
- (b) State reserves the right to condition its consent upon:
 - (1) Changes in the terms and conditions of this Lease, including, but not limited to, the Annual Rent; and/or
 - (2) The agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.
- (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant. Tenant shall remain liable for the full and complete performance, satisfaction, and compliance with the terms of this Lease.
- (d) State's consent under this Paragraph 9.1 does not constitute a waiver of any claims against Tenant for the violation of any term of this Lease.

9.2 Rent Payments Following Assignment. The acceptance by State of the payment of rent following an assignment or other transfer does not constitute consent to any assignment or transfer.

9.3 Terms of Subleases.

- (a) Tenant shall submit the terms of all subleases to State for prior approval.
- (b) Tenant shall incorporate the following requirements in all subleases:
 - (1) The sublease must be consistent with and subject to all the terms and conditions of this Lease;
 - (2) The sublease must provide that this Lease controls if the terms of the sublease conflict with the terms of this Lease;
 - (3) The term of the sublease (including any period of time covered by a renewal option) must end before the Termination Date of the initial Term or any renewal term;
 - (4) The sublease must terminate if this Lease terminates for any reason;

- (5) The sublease must include an acknowledgment that the subtenant has received a copy of this Lease;
- (6) The sublease must prohibit the prepayment to Tenant by the subtenant of more than one year of rent;
- (7) The sublease must identify the rental amount subtenant is to pay to Tenant;
- (8) The sublease must provide that there is no privity of contract between the subtenant and State;
- (9) The sublease must require removal of the subtenant's Improvements and Personal Property upon termination of the sublease;
- (10) The subtenant's permitted use must be within the scope of the Permitted Use;
- (11) The sublease must require the subtenant to indemnify, defend, and hold harmless State to the same extent Tenant is required to indemnify, defend, and hold harmless State under this Lease ;
- (12) The sublease must require the subtenant to meet the Insurance requirements under Section 10 unless State agrees in writing to exempt a subtenant from this requirement;
- (13) The sublease must require the subtenant to comply with the Financial Security requirements under Section 10 unless State agrees in writing to exempt a subtenant from this requirement; and
- (14) If the sublease includes moorage of a vessel, the sublease must require the subtenant to procure marine insurance as set forth in Paragraph 10.2(c)(4) of this Lease.

9.4 Event of Assignment. If Tenant is a corporation, dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant is an assignment of this Lease. If Tenant is a partnership, dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant is an assignment of this Lease. If Tenant is a limited liability company, conveyance of an economic interest of greater than fifty percent (50%) is an assignment of this Lease. Assignments defined in this Paragraph 9.4 require State's consent under Paragraph 9.1.

SECTION 10 INDEMNITY, INSURANCE, FINANCIAL SECURITY

10.1 Indemnity.

- (a) Tenant shall indemnify, defend, and hold harmless State, its employees, officials, officers, and agents from any Claim arising out of the Permitted Use, any Claim arising out of activities related to the Permitted Use, and any Claim arising out of the use, occupation, or control of the Property by Tenant, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees, to the fullest extent permitted by law and subject to the limitations provided below.
- (b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, costs, fees (including attorneys' fees), fines, penalties,

or judgments attributable to: bodily injury; sickness; disease; death; and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to tangible property, diminution in value to tangible property, damages resulting from loss of use of tangible property, and loss or diminution of natural resource values.

- (c) State shall not require Tenant to indemnify, defend, and hold harmless State, or its employees, officials, officers, and agents for a Claim caused solely by or resulting solely from the negligence or willful act of State, its employees, officials, officers, or agents.
- (d) Tenant specifically and expressly waives any immunity that may be granted under the Washington State Industrial Insurance Act, Title 51 RCW in connection with its obligation to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents. Further, Tenant's obligation under this Lease to indemnify, defend, and hold harmless State and its employees, officials, officers, and agents shall not be limited in any way by any limitation on amount or type of damages, compensation, or benefits payable to or for any third party under the workers' compensation acts.
- (e) Only to the extent RCW 4.24.115 applies and requires such a limitation, if a Claim is caused by or results from the concurrent negligence of (a) State or State's employees, officials, officers, or agents, and (b) the Tenant or Tenant's subtenants, agents, or employees, these indemnity provisions shall be valid and enforceable only to the extent of the negligence of the Tenant and those acting on its behalf.
- (f) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Tenant's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold harmless State for Hazardous Substances.

10.2 Insurance Terms.

- (a) Insurance Required.
 - (1) At its own expense, Tenant, or Tenant's contractor(s) where permitted in Paragraph 10.3, shall procure and maintain during the Term, the insurance coverages and limits described in this Paragraph 10.2 and in Paragraph 10.3, Insurance Types and Limits. State may terminate this Lease if Tenant fails to maintain required insurance.
 - (2) Unless State agrees to an exception, Tenant shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of A.M. Best's Insurance Reports. Tenant may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
 - (3) All general liability, excess, umbrella and pollution legal liability insurance policies must name the State of Washington, the Department of

Natural Resources, its elected and appointed officials, officers, agents, and employees as an additional insured by way of endorsement.

- (4) All property insurance, builder's risk insurance, and equipment breakdown insurance must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, officers, agents, and employees as a loss payee.
 - (5) All insurance provided in compliance with this Lease must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
- (1) Tenant waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Lease covers these damages.
 - (2) Except as prohibited by law, Tenant waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this lease.
- (c) Proof of Insurance.
- (1) Tenant shall provide State with a certificate(s) and endorsement(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Lease; and, if requested, copies of policies to State.
 - (2) The certificate(s) of insurance must reference the Lease number.
 - (3) Receipt of such certificates, endorsements or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Lease, as follows:
- (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
 - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State twenty (20) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
- (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
 - (2) Tenant shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
- (f) If Tenant fails to procure and maintain the insurance required in this Lease within fifteen (15) days after Tenant receives a notice to comply from State, State may either:
- (1) Deem the failure an Event of Default under Section 14 and terminate the Lease without giving Tenant any further opportunity to cure, or
 - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Tenant shall pay to State the full amount paid

by State, together with interest at the rate provided in Paragraph 6.3 from the date of State's notice of the expenditure until Tenant's repayment.

- (g) General Terms.
 - (1) State does not represent that coverage and limits required under this Lease are adequate to protect Tenant.
 - (2) Coverage and limits do not limit Tenant's liability for indemnification and reimbursements granted to State under this Lease.
 - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay State any sums in arrears, and then to Tenant.

10.3 Insurance Types and Limits.

- (a) General Liability Insurance.
 - (1) Tenant shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
 - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
 - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
 - (1) State of Washington Workers' Compensation.
 - (i) Tenant shall comply with all State of Washington workers' compensation statutes and regulations. Tenant shall provide workers' compensation coverage for all employees of Tenant. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Tenant's use, occupation, and control of the Property.
 - (ii) If Tenant fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Tenant shall indemnify State. Indemnity shall include all fines; payment of benefits to Tenant, employees, or their heirs

or legal representatives; and the cost of effecting coverage on behalf of such employees.

- (2) Longshore and Harbor Workers' and Jones Acts. The Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 30104) may require Tenant to provide insurance coverage in some circumstances. Tenant shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with the law. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employers' Liability Insurance. Tenant shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
- (d) Property Insurance.
 - (1) Tenant shall buy and maintain property insurance covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State). Such insurance must be written on an all risks basis and, at minimum, cover the perils insured under ISO Special Causes of Loss Form CP 10 30, and cover the full replacement cost of the property insured. Such insurance may have commercially reasonable deductibles. Any coinsurance requirement in the policy must be waived.
 - (2) Tenant shall buy and maintain equipment breakdown insurance covering all real property and fixtures, equipment, tenant improvements and betterments (regardless of whether owned by Tenant or State) from loss or damage caused by the explosion of equipment, fired or unfired vessels, electric or steam generators, electrical arcing, or pipes.
 - (3) In the event of any loss, damage, or casualty that is covered by one or more of the types of insurance described above, the Parties shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which State shall hold in trust, including interest earned by State on such proceeds, for use according to the terms of this Lease. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).
 - (4) When sufficient funds are available, using insurance proceeds described above, the Parties shall continue with reasonable diligence to prepare plans and specifications for, and thereafter carry out, all work necessary to:
 - (i) Repair and restore damaged building(s) and/or Improvements to their former condition, or
 - (ii) Replace and restore damaged building(s) and/or Improvements with a new building(s) and/or Improvements on the Property of a quality and usefulness at least equivalent to or more suitable than, damaged building(s) and/or Improvements.
- (e) Builder's Risk Insurance.

- (1) Tenant shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance must be written on a completed form and in an amount equal to the value of the completed building and/or Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Tenant, all contractors, and all subcontractors in the work as insured.
- (2) Insurance described above must cover or include the following:
 - (i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;
 - (ii) The entire work on the Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
 - (iii) Portions of the work located away from the Property but intended for use at the Property, and portions of the work in transit;
 - (iv) Scaffolding, falsework, and temporary buildings located on the Property; and
 - (v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.
- (3) Tenant or Tenant's contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.
- (4) Tenant or Tenant's contractor(s) shall buy and maintain equipment breakdown insurance covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Tenant, all contractors, and subcontractors in the work as insured.
- (f) Business Auto Policy Insurance.
 - (1) Tenant or Tenant's contractor(s) shall maintain business auto liability insurance and, if necessary, commercial umbrella liability insurance with a limit not less than One Million Dollars (\$1,000,000) per accident. Such insurance must cover liability arising out of "Any Auto".
 - (2) Business auto coverage must be written on ISO Form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy must be endorsed to provide contractual liability coverages and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

10.4 Financial Security.

- (a) On the Commencement Date of this Lease, Tenant is not required to procure and maintain a corporate security bond or other financial security ("Security"). During the Term, State may require Tenant to procure and maintain Security upon any of

the events listed in Paragraph 10.4(c)(1). Tenant's failure to maintain the Security in the required amount during the Term constitutes a breach of this Lease.

- (b) All Security must be in a form acceptable to State.
 - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports, unless State approves an exception in writing. Tenant may submit a request to the Risk Manager for the Department of Natural Resources for an exception to this requirement.
 - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
 - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
 - (1) State may require an adjustment in the Security amount:
 - (i) At the same time as revaluation of the Annual Rent,
 - (ii) As a condition of approval of assignment or sublease of this Lease,
 - (iii) Upon a material change in the condition or disposition of any Improvements, or
 - (iv) Upon a change in the Permitted Use.
 - (2) Tenant shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any default by Tenant in its obligations under this Lease, State may collect on the Security to offset the liability of Tenant to State. Collection on the Security does not (1) relieve Tenant of liability, (2) limit any of State's other remedies, (3) reinstate the Lease or cure the default or (4) prevent termination of the Lease because of the default.

SECTION 11 MAINTENANCE AND REPAIR

11.1 State's Repairs. State shall not be required to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

11.2 Tenant's Repairs, Alteration, Maintenance and Replacement.

- (a) Tenant shall, at its sole cost and expense, keep and maintain the Property and all Improvements in good order and repair, in a clean, attractive, and safe condition.
- (b) Tenant shall, at its sole cost and expense, make any and all additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any Improvements on the Property that may be required by any public authority having jurisdiction over the Property and requiring it for public health, safety and welfare purposes.
- (c) Except as provided in Paragraph 11.2(d), all additions, repairs, alterations,

maintenance, replacements or changes to the Property and to any Improvements on the Property shall be made in accordance with, and ownership shall be governed by, Section 7, above.

- (d) Routine maintenance and repair are acts intended to prevent a decline, lapse, or cessation of the Permitted Use and associated Improvements. Routine maintenance or repair that does not require regulatory permits does not require authorization from State pursuant to Section 7.

11.3 Limitations. The following limitations apply whenever Tenant conducts maintenance, repair, replacement, alterations, or additions. The following limitations also apply whenever Tenant conducts Work on the Property.

- (a) Tenant shall not use or install treated wood on decking, docks, rafts, floats, wharves, piers, fixed docks, gangways, pilings, fence supports, or any other structure at any location above or below water, except that Tenant may use Ammoniacal Copper Zinc Arsenate (ACZA) treated wood for above water structural framing. Tenant shall never use Chromated Copper Arsenate (CCA), Alkaline Copper Quaternary (ACQ), or creosote-treated wood at any location.
- (b) Tenant shall not use or install tires (for example, floatation or fenders) at any location above or below water.
- (c) Tenant shall install only floatation material encapsulated in a shell resistant to ultraviolet radiation and abrasion. The shell must be capable of preventing breakup and loss of floatation material into the water.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

- (a) In the event of any damage to or destruction of the Property or any Improvements, Tenant shall immediately notify State, with subsequent written notice to State within five (5) days.
- (b) Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and Improvements in accordance with Section 7 and Tenant's additional obligations in Exhibit B, if any.

12.2 State's Waiver of Claim. State does not waive any claims for damage or destruction of the Property unless State provides written notice to Tenant of each specific claim waived.

12.3 Insurance Proceeds. Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any Improvements on the Property is not conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs, reconstruction, replacement, removal, or restoration may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

12.4 Rent in the Event of Damage or Destruction. Unless the Parties agree to terminate this Lease, there is no abatement or reduction in rent during such reconstruction, repair, and replacement.

12.5 Default at the Time of Damage or Destruction. If Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

SECTION 13 CONDEMNATION

13.1 Definitions.

- (a) “Taking” means that an entity authorized by law exercises the power of eminent domain, either by judgment, settlement in lieu of judgment, or voluntary conveyance in lieu of formal court proceedings, over all or any portion of the Property and Improvements. This includes any exercise of eminent domain on any portion of the Property and Improvements that, in the judgment of State, prevents or renders impractical the Permitted Use.
- (b) “Date of Taking” means the date upon which title to the Property or a portion of the Property passes to and vests in the condemner or the effective date of any order for possession if issued prior to the date title vests in the condemner.

13.2 Effect of Taking. If there is a taking, the Lease terminates proportionate to the extent of the taking. If this Lease terminates in whole or in part, Tenant shall make all payments due and attributable to the taken Property up to the date of taking. If Tenant has pre-paid rent and Tenant is not in default of the Lease, State shall refund Tenant the pro rata share of the pre-paid rent attributable to the period after the date of taking.

13.3 Allocation of Award.

- (a) The Parties shall allocate the condemnation award based upon the ratio of the fair market value of (1) Tenant’s leasehold estate and Tenant-Owned Improvements and (2) State’s interest in the Property; the reversionary interest in Tenant-Owned Improvements, if any; and State-Owned Improvements, if any.
- (b) If Tenant and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 DEFAULT AND REMEDIES

14.1 Default Defined. Tenant is in default of this Lease on the occurrence of any of the following:

- (a) Failure to pay rent or other expenses when due;
- (b) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
- (c) Failure to comply with any other provision of this Lease; or
- (d) Commencement of bankruptcy proceedings by or against Tenant or the appointment of a trustee or receiver of Tenant’s property.

14.2 Tenant's Right to Cure.

- (a) A default becomes an "Event of Default" if Tenant fails to cure the default within the applicable cure period following State's written notice of default. Upon an Event of Default, State may seek remedies under Paragraph 14.3.
- (b) Unless expressly provided elsewhere in this Lease, the cure period is ten (10) days for failure to pay rent or other monetary defaults; for other defaults, the cure period is thirty (30) days. This cure period does not apply where State terminates this Lease under Paragraph 10.2(f) or Paragraph 12.5.
- (c) For nonmonetary defaults not capable of cure within thirty (30) days, Tenant may submit a reasonable alternative cure schedule for State's approval, which State has discretion to grant or deny. The default is not an Event of Default if State approves the alternative cure schedule and Tenant cures the default in accordance with the approved alternative cure schedule.
- (d) State may elect to deem a default by Tenant as an Event of Default if the default occurs within six (6) months after a default by Tenant for which State has provided notice and opportunity to cure and regardless of whether the first and subsequent defaults are of the same nature.

14.3 Remedies.

- (a) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise.
- (b) State's Rights to Cure Tenant's Defaults.
 - (1) If an Event of Default occurs, State may, without terminating this Lease, remedy the default (in whole or in part) on behalf of Tenant at Tenant's expense. Tenant shall pay State all costs, expenses, fees, and damages incurred by State in connection therewith.
 - (2) If Tenant is in default under the terms of the Lease, and State determines that such default poses an imminent threat of injury or damage to persons or property, State may enter the Property and take actions to eliminate, mitigate, or remedy the imminent threat at Tenant's expense. On demand by State, Tenant shall pay State the amount of all costs, expenses, and fees incurred by State in connection therewith.
 - (3) The rights given to State under Paragraph 14.3(b)(1)-(2) shall neither impose a duty on State nor excuse any failure on Tenant's part to comply with any term, covenant, or condition of this Lease.
- (c) Without terminating this Lease, State may relet the Property on any terms and conditions as State may decide are appropriate.
 - (1) State shall apply rent received by reletting: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. State shall hold and apply any balance to Tenant's future rent as it becomes due.

- (2) Tenant is responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly.
- (3) At any time after reletting, State may elect to terminate this Lease for the previous Event of Default.
- (d) State's reentry or repossession of the Property under Paragraph 14.3 is not an election to terminate this Lease or cause a forfeiture of rents or other charges Tenant is obligated to pay during the balance of the Term, unless (1) State gives Tenant written notice of termination or (2) a legal proceeding decrees termination.
- (e) The remedies specified under this Paragraph 14.3 are not exclusive of any other remedies or means of redress to which State is lawfully entitled for Tenant's default or threatened default of any provision of this Lease.

SECTION 15 ENTRY BY STATE

15.1 Right to Enter The Property.

- (a) State and persons authorized by State may, without notice to Tenant, enter the Property and any Improvements on the Property at any reasonable hour to inspect the Property and Improvements, to inspect for compliance with the terms of this Lease, to monitor impacts to habitat, to survey habitat and species, enforce the terms of the Lease, or to exercise any right of State under the Lease or the law.
- (b) State and persons authorized by State, may enter the Property and any Improvements at any time without notice in the case of an imminent threat of injury or damage to persons or property or to prevent waste on the Property.

15.2 Disclaimer. State's failure to inspect the Property does not constitute a waiver of any rights or remedies under this Lease. The rights given to State under this Section 15 do not impose, nor does State assume by reason thereof, any responsibility for the care, maintenance, or supervision of the Property or any part thereof.

15.3 Right to Enter Tenant's Land. Tenant grants State and persons authorized by State permission to cross Tenant's private upland property to access the Property.

SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

16.1 No Guaranty or Warranty.

- (a) State believes that this Lease is consistent with the Public Trust Doctrine and that none of the third-party interests identified in Paragraph 1.1(b) will materially or adversely affect Tenant's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.
- (b) State disclaims and Tenant releases State from any claim for breach of any implied covenant of quiet enjoyment. This disclaimer and release includes, but is not limited to, interference arising from exercise of rights under the Public Trust Doctrine; Treaty rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands and navigable waters.

- (c) Tenant is responsible for determining the extent of Tenant's right to possession and for defending Tenant's leasehold interest.

16.2 Eviction by Third-Party. If a third-party evicts Tenant, this Lease terminates as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations abate as of the date of the partial eviction, in direct proportion to the extent of the eviction; this Lease shall remain in full force and effect in all other respects.

SECTION 17 NOTICE AND SUBMITTALS

Following are the locations for delivery of notice and submittals required or permitted under this Lease. Any Party may change the place of delivery upon ten (10) days' written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Aquatic Resources Division
1111 Washington Street SE
MS 47027
Olympia, WA 98504-7027

Tenant: PORT OF BREMERTON
8850 SW State Hwy 3
Bremerton, WA 98312

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Lease number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

SECTION 18 MISCELLANEOUS

18.1 Authority. Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant shall provide evidence satisfactory to State confirming these representations.

18.2 Successors and Assigns. Subject to the limitations set forth in Section 9, this Lease binds and inures to the benefit of the Parties, their successors, and assigns.

18.3 Headings. The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

18.4 Entire Agreement. This Lease, including the exhibits, attachments, and addenda, if any, contains the entire agreement of the Parties. This Lease merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property.

18.5 Waiver.

- (a) The waiver of any breach or default of any term, covenant, or condition of this Lease is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.
- (b) The renewal of the Lease, extension of the Lease, or the issuance of a new lease to Tenant, does not waive State's ability to pursue any rights or remedies under the Lease.

18.6 Cumulative Remedies. The rights and remedies of State under this Lease are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

18.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Lease.

18.8 Language. The word "Tenant" as used in this Lease applies to one or more persons and regardless of gender, as the case may be. If there is more than one Tenant, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Tenant in the collective. The word "Party" means either or both State and Tenant, depending on the context.

18.9 Invalidity. The invalidity, voidness, or illegality of any provision of this Lease does not affect, impair, or invalidate any other provision of this Lease.

18.10 Applicable Law and Venue. This Lease is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Lease is in the Superior Court for Thurston County, Washington.

18.11 Statutory Reference. Any reference to a statute or rule means that statute or rule as presently enacted or hereafter amended or superseded.

18.12 Recordation. At Tenant's expense and no later than thirty (30) days after receiving the fully-executed Lease, Tenant shall record this Lease in the county in which the Property is located. Tenant shall include the parcel number of the upland property used in conjunction with the Property, if any. Tenant shall provide State with recording information, including the date of recordation and file number.

18.13 Modification. No modification of this Lease is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

18.14 Survival. Any obligations of Tenant not fully performed upon termination of this Lease do not cease, but continue as obligations of the Tenant until fully performed.

18.15 Exhibits and Attachments. All referenced exhibits and attachments are incorporated in the Lease unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

PORT OF BREMERTON

Dated: _____, 20__

By: JIM ROTHLIN
Title: Chief Executive Officer
Address: 8850 SW State Hwy 3
Bremerton, WA 98312

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20__

By: ALEXANDRA K. SMITH
Title: Deputy Supervisor for Forest Resilience,
Regulation, and Aquatics
Address: 1111 Washington Street SE
MS 47027
Olympia, WA 98504-7027

Aquatic Lands Lease
Template approved as to form this
20th day of July 2022
Jennifer Clements, Assistant Attorney General

REPRESENTATIVE ACKNOWLEDGMENT

[Notarized online using audio-video communication]

STATE OF)
) ss.
County of)

I certify that I know or have satisfactory evidence that JIM ROTHLIN is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the Chief Executive Officer of Port of Bremerton to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

[This notarial act involved the use of communication technology.]

Dated: _____, 20__

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of
Washington, residing at

My appointment expires _____

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY & USE CLASSIFICATIONS**

Agreement Number 20-B09891

1. LEGAL DESCRIPTION OF THE PROPERTY:

That real property legally described and shown as Lease 22-0A9891 A, B C, D, E, and F in that Record of Survey recorded in Kitsap County, Washington on March 1, 2011 under Auditor's File Number 201103010135 and in Book 75 of Surveys at Page 52 - 63.

2. SQUARE FOOTAGE OF EACH USE CLASSIFICATION:

Water-dependent	<u>0</u>
Water-dependent that is public use and access	<u>2,653</u>
Nonwater-dependent	<u>28,338</u>
Water-oriented subject to water-dependent rental rates	<u>0</u>
Water-oriented subject to nonwater- dependent rental rates	<u>0</u>
Total Square Feet	<u>30,991</u>

EXHIBIT B

1. DESCRIPTION OF PERMITTED USE

A. Existing Facilities. The Property is located on the southern shore of Sinclair Inlet adjacent to the Port Orchard Waterfront Park in the City of Port Orchard and consists of historically filled tidelands and a rock bulkhead. The shore adjacent to the Property has no appreciable drift and various marine vegetation and macroalgae were observed on a site visit on July 18, 2023. However, recent surveys from 2000 and 2016 did not observe any eelgrass or floating kelp in the area. Black Jack creek to the east has runs of fall chum, summer chum, winter steelhead, Coho, Cutthroat, and fall Chinook, while a stream to the west supports a population of Cutthroat. There is also documented spawning of smelt along the eastern portion of the Property and sand lance spawning approximately 250 feet to the east.

Uses include a parking lot, bulkhead and public access boardwalk. Improvements on the Property include a rock bulkhead, paved parking areas, vegetated parking islands, a boardwalk consisting of a mix of treated and untreated timber planks, and a chain link fence with a mix of treated and untreated wood fence posts.

B. Proposed Work. Tenant proposes no new facilities or Work.

2. ADDITIONAL OBLIGATIONS

State has not authorized Tenant to conduct any Work on the Property. Where Work will need to be conducted to meet the Additional Obligations below, Tenant shall obtain State's prior written consent in accordance with Paragraph 7.3 of this Lease and obtain all necessary regulatory permits prior to commencing such Work.

A. By August 31, 2035, Tenant shall replace existing treated wood boardwalk decking and fence supports, with non-toxic materials such as untreated wood, steel, concrete, fiberglass or recycled plastic. Tenant may use Ammoniacal Copper Zinc Arsenate (ACZA) treated wood to replace above water structural framing. Tenant shall never use Chromated Copper Arsenate (CCA), Alkaline Copper Quaternary (ACQ), or creosote-treated wood at any location.

B. By November 30, 2023, Tenant shall submit to State for approval a stormwater management plan for the Property to reduce direct discharge of contaminants and nutrients to the water. State may require additional or different means or methods. Tenant shall implement the stormwater management plan 30 days after State approves the plan.

PORT OF BREMERTON
AGENDA SUMMARY

Agenda Item No: Action Item #2

Subject: Washington State Recreation and Conservation Office Local Parks Maintenance Program Grant Application

Exhibits: Local Parks Maintenance Program Applicant Authorization and Electronic Signature Form

Prepared By: Ellen Ataie, Contract Administrator

Meeting Date: September 12, 2023

Summary:

Port staff is preparing a grant application for Local Parks Maintenance (LPM) Grant program administered by the Washington State Recreation and Conservation Office (RCO). The Local Parks Maintenance grant program was created in 2023 when the Washington State Legislature allocated funding in the operating budget to provide grants to local parks to support needed maintenance. LPM grants help local agencies provide safe and modern amenities that support meaningful outdoor experiences. This program focuses on helping communities in need address maintenance backlogs at local parks. Grant funds can be used for deferred maintenance of existing property or equipment and cannot be used to expand the physical size or capacity of the park.

Port staff has identified Port of Bremerton Waterfront Park at Port Orchard as the project area of the application. The funds will be used to refresh and repair park equipment.

The grant process requires that an agency's governing body formally authorize the application for the grant and indicate the authorized representative(s)/agent(s) for the grant. The language and content of the required authorization is prescribed by RCO and is included in Resolution 2023-04.

Fiscal Impact:

The fiscal impact will be up to \$100,000 from the agency. The grant does not require a Port commitment to matching funds. If the Port is awarded the grant, all funding must be expended by June 30, 2025.

Strategic Purpose:

This action conforms with the Port's strategic plan Goal #2: Operate all Port facilities efficiently and cost effectively with a high degree of customer service, and Strategy 2.b. Pursue cost efficiencies throughout the Port.

Recommendation:

Approve Resolution 2023-04 authorizing the application and for Jim Rothlin, Chief Executive Officer, to act as the authorized representative/agent on behalf of our organization.

Motion for Consideration:

Move to approve Resolution 2023-04 authorizing the submittal of the Local Park Maintenance application and for Jim Rothlin, Chief Executive Officer, to act as the authorized representative/agent on behalf of the Port and to legally bind our organization with respect to the above Project for which we seek grant funding assistance managed through the Recreation and Conservation Office.

**PORT OF BREMERTON
KITSAP COUNTY, WASHINGTON
RESOLUTION NO. 2023-04
DATED: September 12, 2023**

A RESOLUTION of the Board of Commissioners, Port of Bremerton, that authorizes the person(s) identified below (in Section 2) to act as the authorized representative/agent on behalf of our organization and to legally bind our organization with respect to the Port Orchard Marina Park Maintenance Project for which we seek grant funding assistance managed through the Recreation and Conservation Office (Office).

WHEREAS, the Port of Bremerton is requesting aid in financing the cost of the Port Orchard Marina Park Maintenance Project #03-23-30016;

NOW, THEREFORE BE IT RESOLVED by the Board of Commissioners, Port of Bremerton, that

1. Our organization has applied for or intends to apply for funding assistance managed by the Office for the above “Project.”
2. Our organization authorizes the following persons or persons holding specified titles/positions (and subsequent holders of those titles/positions) to execute the following documents binding our organization on the above projects:

Grant Document	Name of Signatory and Title of Person Authorized to Sign	Email Address
Grant application (submission thereof)	Jim Rothlin	jimr@portofbremerton.org
Project contact (day-to-day administering of the grant and communicating with the RCO)	James Weaver	jamesw@portofbremerton.org
Agreement/amendment approver	Jim Rothlin	jimr@portofbremerton.org
RCO Grant Agreement signer	Jim Rothlin	jimr@portofbremerton.org
Agreement amendments signer	Jim Rothlin	jimr@portofbremerton.org

The above persons are considered an “authorized representative(s)/agent(s)” for purposes of the documents indicated. Our organization shall comply with a request from the RCO to provide updated documentation of authorized signers, if needed.

3. Our organization acknowledges and warrants, after conferring with its legal counsel, that its authorized representative(s)/agent(s) have full legal authority to act and sign on behalf of the organization for their assigned role/document.
4. Grant assistance is contingent on a signed Agreement. Entering into any Agreement with the Office is purely voluntary on our part.

5. Our organization understands that grant policies and requirements vary depending on the grant program applied to, the grant program and source of funding in the Agreement, the characteristics of the project, and the characteristics of our organization.
6. Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the project(s) referenced above.
7. Our organization acknowledges that the grant will only be used for maintenance of local park property owned by our organization.
8. This resolution/authorization is deemed to be part of the formal grant application to the Office.
9. Our organization warrants and certifies that this resolution/authorization was properly and lawfully adopted following the requirements of our organization and applicable laws and policies and that our organization has full legal authority to commit our organization to the warranties, certifications, promises, and obligations set forth herein.

ADOPTED by the Board of Commissioners of the Port of Bremerton at the regular public meeting thereof held this 12th day of September 2023, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the Seal of the Commission.

Commission President

Commission Vice President

ATTEST:

Commission Secretary

On File at: Port of Bremerton (8850 SW State Hwy 3, Bremerton WA 98312)
Location: Bremerton National Airport Administration Office