

AIRSPACE LEASE

THIS IS AN AIRSPACE LEASE (Lease) made and entered into between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, (hereinafter WSDOT), and SNOHOMISH COUNTY, a political subdivision of the State of Washington, (hereinafter TENANT).

RECITALS

- A. The land and premises to be leased are not presently needed for highway purposes.
- B. WSDOT is granted authority to lease property under RCW 47.12.120, and WSDOT deems it to be in the public interest to enter into this Lease.
- C. TENANT wishes to construct an access road to perform maintenance on and replace the existing rail corridor bridge.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, IT IS MUTUALLY AGREED THAT:

1. PREMISES.

A. WSDOT does hereby lease to TENANT, and TENANT does hereby lease from WSDOT, the premises located in Gov't. Lot 6 and Gov't. Lot 3, Section 2, Township 31 North, Range 05 East W.M. and known to be a portion of the highway right of way of SR 9, SR 530 Vic. to Stillaguamish River Vic., sheet 3 of 3 sheets, approved June 14, 1996 and SR 9, Schloman Rd. Vic. to Bryant Vic., sheet 3 of 18 sheets, approved January 7, 2005 and as shown hachured on **Exhibit A**, attached hereto and by this reference incorporated herein (Premises).

B. The Premises consists of approximately 42,000 square feet.

C. WSDOT and TENANT acknowledge that they have jointly examined the Premises and TENANT accepts said Premises in its present condition as of the Commencement Date of this Lease.

2. USE OF PREMISES.

A. TENANT's use of the Premises is limited to the construction, maintenance and use of an access road to perform maintenance and/or replacement of the existing rail corridor bridge. TENANT's occupancy or use of the Premises and improvements, if any, shall not interfere with the use, safety, appearance, nor the enjoyment of the highway facility, nor produce fumes, vapors, odors, drippings, droppings, or discharge of any kind.

B. In using the Premises, TENANT shall comply with all policies and regulations, including, but not limited to RCW 47.42 *et seq.* and WAC 468-66 *et seq.*, heretofore adopted or hereafter promulgated by WSDOT relative to the location, operation, and maintenance of improvements located on the Premises.

C. In using the Premises, it is expressly agreed that TENANT shall:

(1) Comply with all applicable federal, state, and local laws, ordinances, and regulations, including environmental requirements that are in force or which may hereafter be in force, and

(2) Secure all necessary permits and licenses for the uses of the Premises authorized in this Lease.

D. Access to the Premises is shown on **Exhibit A**. Further, direct access to ramps or traveled lanes of limited access highways is not permitted.

E. TENANT shall not commit or allow to be committed any waste upon the Premises nor allow any public or private nuisance.

F. TENANT may construct improvements on the Premises as further detailed in **Section 15** herein.

3. TERM/RENEWALS.

A. The term of this Lease shall commence on the first day of the month following TENANT's written notice to WSDOT that they are ready to begin use of the Premises. TENANT shall notify WSDOT in writing by email to NWRRESM@WSDOT.WA.GOV not less than 20 calendar days prior to the start of construction with the date construction will begin, and shall be a year-to-year tenancy that is automatically renewed for a successive one-year term unless:

(1) TENANT is in default under any term or condition of this Lease at the time of the renewal or has been in default during the term of this Lease and has not cured said default to the sole satisfaction of WSDOT; or

(2) Either party gives written notice of its intention **not** to renew thirty (30) calendar days before the expiration of the then current term; or

(3) The terms and conditions of this Lease do not conform to then existing WSDOT policies or practices, laws, regulations and contracts, WSDOT has provided written notification of such noncompliance at least sixty (60) calendar days prior to the expiration date of the then current term, and TENANT has not executed an amendment to this Lease to bring it into compliance with such policies, practices, laws, regulations, and contracts prior to the expiration of the then current Term.

B. The renewal period shall be on the same terms and conditions as set forth herein, except as modified by any changes in policies, practices, laws, regulations or contracts and as reflected in a written amendment signed by both parties.

4. **TERMINATION.** This Lease may be terminated by either party upon not less than thirty (30) calendar days prior written notice to the other; provided, in the event of an emergency as determined by WSDOT, WSDOT may terminate this Lease with less notice or immediately, as deemed necessary by WSDOT. TENANT shall be entitled to a pro rata refund of any rent prepaid beyond the effective termination date only when WSDOT terminates this Lease for reasons other than a TENANT default or TENANT terminates this Lease for a WSDOT default.

5. **RENT.** TENANT covenants and agrees to pay rent for the Premises to WSDOT annually, in advance on or before the anniversary of the Commencement Date stipulated herein.. Beginning on the Commencement Date stipulated herein, rent shall be paid at the initial rate, subject to adjustment as hereinafter provided, of Three Hundred Fifty and no/100Dollars (\$350.00) for rent, payable at the address designated under **Section 6**. In no event shall the rent be less than this initial amount.

6. **RENT PAYMENTS PAYABLE TO:** Washington State Department of Transportation.
Mail payments to:

DEPARTMENT OF TRANSPORTATION (Mailing Address)
Attn.: Property Management Program Manager
P.O. Box 47339
Olympia, WA 98504-7339

DEPARTMENT OF TRANSPORTATION (Physical Address)
Real Estate Services
Attn.: Property Management Program Manager
7345 Linderson Way SW
Tumwater, WA 98501

7. RENT ADJUSTMENTS.

A. Rent shall automatically increase annually on the Commencement Date at the rate of 2% (hereinafter the "Annual Increase Factor") of the rent in effect during the preceding Lease year. WSDOT may, in its sole discretion, adjust the Annual Increase Factor on or after the fifth anniversary of the Commencement Date, and then no more frequently than on or after the fifth anniversary of the most recent adjustment of the Annual Increase Factor. The percentage change of the Annual Increase Factor shall be based on the percentage change that occurred during the years between adjustment of the Annual Increase Factor in the U.S. Consumer Price Index for All Urban Consumers (U.S. CPI-U), using the data as published by the United States Department of Labor's Bureau of Labor Statistics, or its successor; provided that, in the event such index is discontinued the parties hereto shall select and use for such adjustment purpose, a similar index that reflects consumer price changes generally recognized as an authority by financial and insurance institutions (By way of illustration only, if the Base CPI is 189.7 and the CPI figure for the fourth calendar month before the adjustment year is 256.143, then the rent for that year shall be increased by 1.350 percent. Calculation is $256.143 \div 189.70 = 1.350\%$). Provided, however, that in no event shall the Annual Increase Factor be adjusted downward. WSDOT shall give not less than thirty (30) calendar days' prior written notice to TENANT that the Annual Increase Factor has been adjusted under this Subsection A This notice shall include the amount of the new Annual Increase Factor, the amount of the new rent, and the date the new rent is to become effective.

B. In lieu of the automatic annual rent increase described in Subsection A, above, WSDOT may, in its sole discretion, adjust the rent annually on the Commencement Date in an amount that reflects changes in comparable rents as identified in an appraisal/market evaluation conducted by WSDOT. Provided, however, that in no event shall the Annual Increase Factor be adjusted downward. WSDOT shall give not less than thirty (30) calendar days' prior written notice to TENANT that a rent adjustment under this Subsection B has been made. This notice shall include the amount of the adjusted rent and the date the new rent is to become effective. Failure or refusal by TENANT to pay the adjusted rental rate shall constitute a default of this Lease for which WSDOT may terminate with not less than five (5) calendar days prior written notice.

8. CHARGE FOR LATE PAYMENT/NSF CHECKS.

A. If any sums payable to WSDOT under this Lease are not received by the fifteenth (15th) calendar day following its Due Date, TENANT shall pay WSDOT, in addition to the amount due, for the cost of collecting and handling such payment, Twenty-five and no/100 Dollars (\$25.00) and one percent (1%) of the delinquent amount. In addition, all delinquent sums payable by TENANT to WSDOT and not paid within fifteen (15) calendar days of the Due Date shall, at WSDOT's option, bear interest at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is greater; provided that, if the highest rate

allowable by law is less than twelve percent (12%), interest charged hereunder shall not exceed that amount. Interest on all delinquent amounts shall be calculated from the original Due Date to the date of payment. Also there shall be a charge for any check returned uncollectable in accordance with WAC 468-20-900. WSDOT and TENANT agree that such charges represent a fair and reasonable estimate of the costs incurred by WSDOT by reason of late payments and uncollectable checks.

B. WSDOT's acceptance of late payment charges and/or any portion of the overdue payment shall in no event constitute an accord and satisfaction, compromise of such payment, or a waiver of TENANT's default with respect to such overdue payment, nor prevent WSDOT from exercising any other rights and remedies granted in this Lease.

C. When a delinquency exists, any payments received will be applied first to the late payment charge and late payment fees, next to delinquent rent, and any balance remaining to the current rent and LET, if applicable.

9. ENCUMBRANCES. TENANT shall not encumber the Premises.

10. MAINTENANCE. TENANT shall perform or cause to be performed at its expense all maintenance of the Premises, including improvements thereon, if any. Such maintenance will include, but not be limited to, keeping the Premises in good condition, both as to safety and appearance, and in a manner so as to assure the improvements and condition of the Premises do not adversely affect the highway safety and appearance and that such maintenance will cause no interference with the highway use, all to the satisfaction of WSDOT. Application of pesticides and herbicides within WSDOT right of way as part of TENANT's maintenance of the Premises shall be performed by, or under, the direct supervision of TENANT's officers, officials, employees, and/or agents who possess a current Public Operator or Commercial Pesticide Operator license. Washington State Department of Agriculture Pesticide Application Records shall be kept by TENANT for each application in accordance with RCW 17.21 and be produced to WSDOT within five (5) calendar days after WSDOT requests the records.

11. SUBSEQUENT USE FOR TRANSPORTATION PURPOSES.

A. TENANT and WSDOT hereby affirm that upon expiration or termination, in whole or in part, of this Lease for any reason and the subsequent use of the Premises for transportation or other purposes, such use will not be considered the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge within the meaning of 23 U.S.C. § 138 and/or 49 U.S.C. § 303 (former 49 U.S.C. § 1653(f), Section "4f"). If this Lease is terminated, in whole or in part, for transportation or other purposes and WSDOT or authorized local, state, or federal official having jurisdiction of the land or a court of competent jurisdiction determines that replacement of all or any portion of the Premises is required under 23 U.S.C. § 138 and/or

49 U.S.C. § 303, TENANT agrees to acquire any necessary replacement lands promptly at its own expense, and hold harmless WSDOT from any such related costs.

B. TENANT further acknowledges, agrees, and promises not to use Outdoor Recreation Funds as provided for in the Land and Water Conservation Act, 16 U.S.C. § 460-1, sections 4-11 (see section 8(f)(3)).

C. Within thirty (30) calendar days of the Commencement Date, TENANT at its expense shall erect and maintain a permanent sign at a location on the Premises approved by WSDOT stating as follows: *"This access road is located on highway right of way under a lease between Snohomish County and the Washington State Department of Transportation."*

12. SIGNS/DISPLAY/ADVERTISING DEVICES. Signs, display, or advertising devices, except that sign described in **Section 11. C** herein, are not permitted on the Premises unless they comply with RCW 47.42 and WAC 468-66 and are completely detailed on a separate plan sheet which has been approved in writing by WSDOT and incorporated by reference into this Lease. Such advertising shall only indicate ownership and type of on-Premise activities.

13. PERSONAL PROPERTY. WSDOT shall not be liable in any manner for, or on account of, any loss or damage sustained to any property of whatsoever kind stored, kept, or maintained on or about the Premises, except for such claims or losses that may be caused by WSDOT or its authorized agents or employees. Upon termination of this Lease, WSDOT or its agent may remove all property remaining on the Premises at TENANT's expense and dispose of it in any manner WSDOT deems appropriate. TENANT agrees to reimburse WSDOT for the costs of such removal and disposal within thirty (30) calendar days of the date of WSDOT's invoice.

14. FENCES. Any WSDOT-owned fences in place at the time of execution of this Lease or relocated to separate the Premises from the traveled roadway will be maintained by WSDOT for the duration of the Lease. Nothing is to be attached to WSDOT's fence without WSDOT's prior written approval. If any fence is damaged as a result of TENANT's activities, TENANT will immediately repair such damage at its cost and to WSDOT's satisfaction; provided that, if TENANT fails to complete said repair immediately WSDOT may complete the repair and TENANT agrees to reimburse WSDOT for the cost of said repair within thirty (30) calendar days of the date of WSDOT's invoice.

15. CONSTRUCTION WORK.

A. TENANT is hereby authorized to construct the improvements and or perform the Work on the Premises as set forth in **Exhibit B**, attached hereto and by this reference made a part hereof. For the purposes of this Lease, the term "Work" shall include, but not be limited to

activities such as re-grading, construction, installation, repair, or reconstruction of an improvement or utility.

B. TENANT covenants that any Work it may perform on the Premises will not at any time during or after construction either damage, threaten to damage, or otherwise adversely affect any part or element of the highway facility or the operation thereof. In addition, the design, occupancy, or use of any improvement shall not interfere with the use, the safety, the appearance, nor the enjoyment of the highway facility nor produce fumes, vapors, odors, drippings, droppings, or discharge of any kind. WSDOT shall be furnished with one set of complete plans, details, and specifications and any revisions thereto for grading and all improvements proposed to be placed on the Premises. No work shall be done without the prior written approval of such plans by WSDOT. All construction work shall be done in conformity with the plans and specifications as approved. WSDOT may take any action necessary, including directing that work be temporarily stopped or that additional work be done, to ensure compliance with the plans and specifications, protection of all parts and elements of the highway facility, and compliance with WSDOT's construction and safety standards. The improvements shall be designed and constructed in a manner that will permit access to the highway facility for the purpose of inspection, maintenance, and construction by WSDOT.

16. NON-COMPLETION OF CONSTRUCTION. In the event that this Lease authorizes the construction of improvements, unless the time or times for completion are extended in writing by WSDOT, WSDOT may, at its option, terminate this Lease, without penalty or further liability if:

A. Construction of the improvements is not begun within 60 days of the Commencement Date; and

B. Construction of the improvements is not prosecuted to completion with reasonable adherence to a construction schedule that allows not more than 180 days from the start to the finish of construction.

17. "AS-BUILT" PLANS. Within sixty (60) calendar days following TENANT's completion of underground utilities and/or buildings or other construction, TENANT shall furnish WSDOT a complete set of reproducible "As-Built" plans, acceptance of which shall be subject to WSDOT's approval.

18. USE OF RIGHT OF WAY UNDER/ADJACENT TO STRUCTURE.

A. TENANT agrees to provide protection against vehicular hits or other likely causes of damage arising from TENANT's use of the Premises to all retaining walls and to piers exposed

to such potential damage under any elevated highway structure existing on the Premises. Such wall and pier protection shall be provided to the satisfaction of WSDOT prior to occupancy.

B. TENANT shall not weld any metal object to any metal member of any metal structure, nor drill or rivet into nor otherwise fasten anything to any pier or beam on any concrete, metal, or wood structure without WSDOT's specific written approval of detailed drawings for such welding, riveting, drilling, or fastening.

C. TENANT shall at its own expense, and upon prior written approval from WSDOT, make any provisions it deems necessary to protect users of the proposed facility from any hazards resulting from use and operation of the highway.

19. WSDOT'S RIGHT OF ENTRY/INSPECTION.

A. WSDOT, for itself, its agents and contractors, and for the Federal Highway Administration (FHWA), reserves the right to enter upon the Premises at any time without notice to TENANT for the purpose of inspection, maintenance, construction, or reconstruction of the highway facility or any element thereof, to perform security audits such as Homeland Security, or to perform environmental audits as provided for elsewhere in this Lease. Any loss of the use of the Premises due to WSDOT's exercise of such right will be compensated for solely by a pro rata reduction of rent. WSDOT shall in no way be responsible for any incidental or consequential damages due to such loss of use, if any, by TENANT.

B. WSDOT and FHWA may enter upon the Premises at any time without prior notice for the purpose of inspecting any excavation, construction, or maintenance work being done by TENANT. In addition, WSDOT and FHWA may enter the improvements, if any, on the Premises at any time and without prior notice, for the purpose of inspection, maintenance, and repair of said improvements.

C. Entry upon the Premises and the improvements, if any, for any other purpose by WSDOT and FHWA shall be conducted with reasonable notice to TENANT and during the hours of 8:00 a.m. to 5:00 p.m.

20. DISPOSITION OF IMPROVEMENTS. Except as provided elsewhere herein, upon termination of this Lease under any provision hereof, the improvements constructed by TENANT on the Premises shall become the property of WSDOT or, at the option of WSDOT, shall be removed by TENANT at TENANT's expense in a manner prescribed by WSDOT. In the event TENANT fails to remove said improvements upon termination, WSDOT may remove and dispose of said improvements as it deems appropriate and at TENANT's expense. TENANT shall reimburse WSDOT for all expenses incurred in such removal and disposal within thirty (30) calendar days of the date of WSDOT's invoice for such costs.

21. VACATION OF PREMISES. Upon termination of this Lease, TENANT shall cease its operations on and/or use of the Premises. In the event TENANT fails to vacate the Premises on the date of termination, TENANT shall be liable for any and all costs to WSDOT arising from such failure.

22. WSDOT ACCESS TO REMOVE IMPROVEMENTS. In the event TENANT fails to remove improvements or restore the Premises to WSDOT's satisfaction, then if necessary or desirable in WSDOT's judgment for reasons of safety or economy, WSDOT or its agents shall have the right to cross any lands owned or otherwise controlled by TENANT for the purpose of accomplishing said removal or restoration. Said right shall expire one hundred eighty (180) calendar days after the date of termination of this Lease, or when removal and restoration is complete in WSDOT's judgment, whichever is the earlier.

23. RESTORATION OF PREMISES. Prior to termination of this Lease, TENANT agrees, if so directed by WSDOT, to restore the Premises to its condition prior to TENANT's occupancy, reasonable wear and tear excepted. This work is to be done at TENANT's expense to the satisfaction of WSDOT.

24. NON-APPLICABILITY OF RELOCATION ASSISTANCE. TENANT acknowledges that this Lease does not at any time entitle TENANT to assistance by or through WSDOT under the Relocation Assistance - Real Property Acquisition Policy (RCW 8.26).

25. WSDOT'S RESERVATION OF RIGHT TO MAINTAIN/GRANT UTILITY FRANCHISES/PERMITS.

A. WSDOT reserves the right for utility franchise and permit holders to enter upon the Premises to maintain, repair, and enhance existing facilities and install new utilities and, for itself, to grant utility franchises and/or permits across the Premises. Such installation will be accomplished in such a manner as to minimize any disruption to TENANT. The franchise/permit holder will be required to restore paving and grading damaged by the installation. WSDOT also reserves the right to withdraw portions of the Premises for uses such as, but not limited to, communications sites, which WSDOT determines to be reasonably compatible with TENANT's authorized use of the Premises.

B. TENANT shall not disturb markers installed by a franchise/permit holder and will contact and provide notice to any franchise/permit holder and all owners of underground facilities prior to any excavation. TENANT shall contact WSDOT and call the Underground Utility Locating Service, or its successor organization, as part of its efforts to ascertain any and all owners of underground utility facilities and to locate the utility. TENANT shall not damage legally installed underground utilities. TENANT shall comply with all applicable provisions of RCW 19.122 relating to underground facilities.

26. TAXES/ASSESSMENTS/UTILITIES. TENANT agrees to pay all assessments that benefit the Premises and/or which may hereafter become a lien on the interest of TENANT in accordance with RCW 79.44.010. TENANT also agrees to pay all taxes that may hereafter be levied or imposed upon the interest of TENANT or by reason of this Lease. TENANT is responsible for and agrees to pay the cost of utilities, including, but not limited to, surcharges, fuel adjustments, rate adjustments and taxes that serve the Premises.

27. LIENS.

A. Nothing in this Lease shall be deemed to make TENANT the agent of WSDOT for purposes of construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on the Premises. TENANT acknowledges that WSDOT may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by TENANT.

B. TENANT shall at all times indemnify and hold harmless WSDOT from all claims for labor or materials in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities on or within the Premises, and from the cost of defending against such claims, including attorney fees.

C. In the event a lien is filed upon the Premises, TENANT shall:

(1) Record a valid Release of Lien;

(2) Deposit sufficient cash with WSDOT to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim; or

(3) Procure and record a bond which releases the Premises from the claim of the lien and from any action brought to foreclose the lien.

D. Should TENANT fail to accomplish C.(1), (2), or (3), above, within fifteen (15) calendar days after the filing of such a lien, the Lease shall be in default per **Section 4**.

28. ENVIRONMENTAL REQUIREMENTS.

A. TENANT represents, warrants and agrees that it will conduct its activities on Premises and lands adjacent thereto in compliance with all applicable Environmental Laws. As used in this Lease, "Environmental Laws" means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Federal Water Pollution Control

Act, 33 U.S.C. § 1251 *et seq.*, the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Oil Pollution Control Act, 33 U.S.C. § 2701 *et seq.*, the WSDOT National Pollutant Discharge Elimination System, the State Waste Discharge Municipal Stormwater General Permit, and Washington or any other comparable local, state or federal statute or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto, including all amendments and/or revisions to said laws and regulations. It is the responsibility of TENANT to ensure that the functionality of all existing WSDOT stormwater facilities is maintained during construction in accordance with all applicable Environmental Laws.

B. Toxic or hazardous substances are not allowed on the Premises without the express written permission of WSDOT and under the terms and conditions specified by WSDOT. For the purposes of this Lease, "Hazardous Substances" shall include all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, and the Washington Model Toxics Control Act, RCW 70.105D *et seq.*, and shall include gasoline and other petroleum products. "Existing Hazardous Substances" shall mean those Hazardous Substances existing on the Premises as of the Commencement Date of this Lease that are not WSDOT Hazardous Substances. "WSDOT Hazardous Substances" shall mean those Hazardous Substances (a) that have been released on the Premises by WSDOT, its employees, contractors, or agents, either before or after the Commencement Date; (b) released or have the potential to be released as a result of WSDOT's activities or operations on the Premises either before or after the Commencement Date; or (c) have been released or have the potential to be released as a result of WSDOT's use, disposal, transportation, generation and/or sale of Hazardous Substances on the Premises, regardless of when they may have been released on the Premises.

C. TENANT agrees to cooperate in any environmental investigations conducted by WSDOT's staff or independent third parties where there is evidence of a release or potential release of Hazardous Substances on the Premises, or where WSDOT is directed to conduct such audit by an agency or agencies having jurisdiction. TENANT will reimburse WSDOT for the cost of such investigations, to the extent the need for said investigation is determined to be caused by TENANT's operations. TENANT will provide WSDOT with notice of any inspections of the Premises, notices of violations, and orders to clean up Hazardous Substances. TENANT will permit WSDOT to participate in all settlement or abatement discussions. In the event TENANT fails to take remedial measures as duly directed by a state, federal, or local regulatory agency within ninety (90) calendar days of such notice, WSDOT may elect to perform such work, and TENANT covenants and agrees to reimburse WSDOT for all direct and indirect costs associated

with WSDOT's work where said release of Hazardous Substances is determined to have resulted from TENANT's use of the Premises.

WSDOT's right to implement any required actions pursuant to this subparagraph shall not accrue unless and until:

(1) TENANT's failure to implement remedial measures violates the terms of the direction received from the state, federal, or local regulatory agency;

(2) WSDOT has provided TENANT with written notice of TENANT's failure to implement the subject remedial measures; and

(3) TENANT has failed to cure the breach within ten (10) business days of receipt of such written notice, unless the parties agree to an extended cure period.

D. TENANT agrees the use of the Premises shall be such that no hazardous or objectionable smoke, fumes, vapor, odors, or discharge of any kind shall rise above the grade of the property.

E. For the purposes of this Lease, "Costs" shall include but not be limited to, all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorneys' fees and other litigation costs incurred in complying with Environmental Laws.

F. To the extent allowed by law, TENANT agrees to defend, indemnify and hold harmless WSDOT from and against any and all claims, causes of action, demands and liability that are caused by or result from TENANT's activities on the Premises, including but not limited to any Costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and attorneys' fees associated with the removal or remediation of any Hazardous Substances that have been released or have the potential to be released on the Premises, including those that may have migrated from the Premises through water or soil to other properties, including without limitation, the adjacent WSDOT property, as a result of TENANT's activities on the Premises.

G. To the extent allowed by law, TENANT further agrees to defend, indemnify and hold harmless WSDOT from any and all liability arising from the offsite disposal, handling, treatment, storage, or transportation of any Hazardous Substances or Existing Hazardous Substances removed from said property by TENANT or at TENANT's direction. This subsection applies to Hazardous Substances that were released on to the Premises as a result of TENANT's activities and the Existing Hazardous Substances that are disposed of offsite pursuant to subsection I below. This obligation shall not apply with respect to the presence of Hazardous Substances on said property that did not result from TENANT's use of the Premises except to the

extent that TENANT arranges for the disposal of Existing Hazardous Substances offsite pursuant to subsection I below.

H. To the extent allowed by law, WSDOT agrees to defend, indemnify, and hold harmless TENANT from and against any and all claims, causes of action, demands, and liability that are caused by or result from the removal or remediation of any WSDOT Hazardous Substances that have been released or have the potential to be released on the Premises, including, but not limited to, any Costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments, and attorneys' fees associated with the presence of WSDOT Hazardous Substances on the Premises. WSDOT further agrees to take all remedial measures at the Premises as duly directed by a state, federal, or local regulatory agency, or as required under applicable Environmental Laws, where such obligations result from WSDOT Hazardous Substances. In completing any work required on the Premises in satisfaction of its duties under this Subsection, WSDOT shall not unreasonably interfere with TENANT's use of the Premises. TENANT agrees to cooperate with WSDOT in providing access to the Premises for any such work.

I. Any Costs associated with the investigation, removal, or remediation of Existing Hazardous Substances on the Premises by TENANT, including any increased construction costs, shall be the responsibility of TENANT and not the responsibility of WSDOT. Nothing in this Agreement shall limit the ability of TENANT or WSDOT to pursue cost recovery from third parties responsible for release of Hazardous Substances on the Premises.

J. To the extent allowed by law, WSDOT shall reimburse TENANT for the cost of any environmental investigations, disposal, or cleanup activities conducted by TENANT to the extent the need for said investigation resulted from WSDOT Hazardous Substances. WSDOT will provide TENANT with notices of any inspections of the Premises, notices of violations, and orders to clean-up contamination that WSDOT receives from an agency or agencies with jurisdiction. WSDOT will permit TENANT to participate in all settlement or abatement discussions. In the event that WSDOT fails to take remedial measures as duly directed by a state, federal, or local regulatory agency within ninety (90) calendar days of such notice, TENANT may elect to perform such work, and WSDOT covenants and agrees to reimburse TENANT for the reasonable direct and indirect costs associated with TENANT's work. This reimbursement obligation shall not apply,

however, to the extent the contamination is determined to have resulted from TENANT's use of the Premises.

TENANT's right to implement any required actions pursuant to this subparagraph shall not accrue unless and until:

(1) WSDOT's failure to implement remedial measures violates the terms of the direction received from the state, federal, or local regulatory agency;

(2) TENANT has provided WSDOT with written notice of WSDOT's failure to implement the subject remedial measures; and

(3) WSDOT has failed to cure its breach within ten (10) business days of receipt of such written notice, unless the parties agree in writing to an extended cure period.

K. WSDOT will obtain TENANT'S consent in instances when a third party seeks to use the Premises, except as otherwise provided in **Sections 19** and **25** of this Lease, and WSDOT shall require the third party to indemnify TENANT for any Costs associated with the third party's release of Hazardous Substances from the Premises or use of Hazardous Substances on the Premises. If WSDOT allows a third party to use the Premises, the responsibility for any Costs for Existing Hazardous Substances or WSDOT Hazardous Substances that are not released by TENANT will be determined by applicable law.

L. In the event of any third party actions related to Existing Hazardous Substances including private party actions or actions brought by public agencies, except as allowed in **Section 28.G**, each Party shall bear its own costs of defense and neither shall be entitled to indemnification or defense by the other Party under this Section.

M. The provisions of this Section shall survive the expiration or termination of this Lease.

29. INSURANCE (SELF INSURED).

A. TENANT warrants that it is self-insured, and agrees to provide acceptable evidence of its self-insured status to WSDOT. TENANT's insurance program must provide liability coverage for the Premises, including public liability coverage for bodily injury, property damage, and personal injury of not less than Two Million and no/100 Dollars (\$2,000,000.00) combined single limit per occurrence, with a general aggregate amount of not less than Four Million and no/100 Dollars (\$4,000,000.00) per policy period. TENANT shall increase the program liability coverage at its sole cost, when and if WSDOT deems it necessary due to TENANT's use of the Premises.

B. TENANT assumes all obligations to fund its self-insurance program in the amounts required above. In the event TENANT fails to adequately fund its self-insurance program, TENANT shall reimburse WSDOT the cost of maintaining the insurance coverage and any legal fees incurred in enforcing such reimbursement should TENANT fail to pay the policy premiums.

C. Liability coverage, whether through self-insurance or a purchased policy shall not be deemed as having relieved TENANT of any liability in excess of such coverage.

D. In the event TENANT, after commencement of this Lease, elects to terminate its self-insured status and secure commercial liability coverage, TENANT will promptly notify WSDOT and provide a certificate of insurance from an insurer licensed to conduct business in the State of Washington, in the amounts and types as set forth in **Section 29.A.** above. Further, TENANT shall provide a certificate of insurance within ten (10) calendar days of receiving a written notice from WSDOT for an increase in the coverage amounts.

30. ENVIRONMENTAL IMPAIRMENT INSURANCE.

A. TENANT shall carry Environmental Impairment Insurance naming WSDOT as an additional insured. Such insurance shall protect against Superfund or other environmental liabilities caused by, contributed to or by, or otherwise the responsibility of TENANT. The required coverage shall not be less than the greater of either:

(1) That required by law, or

(2) Five Hundred Thousand and no/100 Dollars (\$500,000.00) combined single limit per occurrence with a general aggregate amount of not less than One Million and no/100 Dollars (\$1,000,000.00) per policy period.

(3) Coverage in the minimum amounts set forth herein shall not be construed to relieve TENANT from liability in excess of such coverage. TENANT agrees that WSDOT may request increases in said coverages by written notice to TENANT, as WSDOT deems reasonable and necessary.

31. HOLD HARMLESS/INDEMNIFICATION/WAIVER.

A. TENANT, its successors, and assigns, will protect, save, and hold harmless WSDOT, its authorized agents, and employees, from all claims, actions, costs, damages, (both to persons and/or property) or expenses of any nature whatsoever by reason of the acts or omissions of TENANT, its assigns, subtenants, agents, contractors, licensees, invitees, employees, or any person whomsoever, arising out of or in connection with any acts or activities related to this Lease, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Premises. TENANT further agrees to defend WSDOT, its agents, or employees, in

any litigation, including payment of any costs or attorney's fees, for any claims or actions commenced, arising out of, or in connection with acts or activities related to this Lease, whether those claims, actions, costs, damages, or expenses result from acts or activities occurring on or off the Premises. This obligation shall not include such claims, actions, costs, damages, or expenses which may be caused by the sole negligence of WSDOT or its authorized agents or employees; provided that, if the claims or damages are caused by or result from the concurrent negligence of (1) WSDOT, its agents, or employees; and (2) TENANT, its assigns, subtenants, agents, contractors, licensees, invitees, employees, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of TENANT or its assigns, subtenants, agents, contractors, licensees, invitees, and employees.

B. **WAIVER:** TENANT agrees that its obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents while occupying the Premises for any purpose. For this purpose, TENANT, by MUTUAL NEGOTIATION, hereby waives with respect to WSDOT only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions RCW 51.12.

C. The provisions contained in this Section shall survive the termination or expiration of this Lease.

32. NONDISCRIMINATION. TENANT, for itself, its successors, and assigns, as part of the consideration hereof, does hereby agree to comply with all applicable civil rights and antidiscrimination requirements, including, but not limited to, RCW 49.60.

33. ASSIGNMENT. Neither this Lease nor any rights created by it may be assigned, sublet, or transferred by TENANT. In the event that TENANT allows others to use any portion of the Premises, whether by written or oral agreement without WSDOT's prior written approval, WSDOT, in addition to or in lieu of terminating this Lease for default, and in addition to any damages it may experience, may demand a share of any revenue generated by such unauthorized use. WSDOT shall set the amount of said share, and its decision shall be final and binding. WSDOT may demand such share at any time during the term of this Lease. TENANT shall pay said share to WSDOT within thirty (30) calendar days of demand. TENANT agrees to pay said share retroactively to the date the unauthorized third party's use of the Premises commenced. Furthermore, such unauthorized assignment shall not relieve TENANT hereunder from all of its obligations under this Lease, including but not limited to, payment of rent and maintenance of insurance.

34. BINDING CONTRACT. This Lease shall not become binding upon WSDOT unless and until executed for WSDOT by the Secretary of Transportation or such Secretary's duly authorized representative.

35. PERFORMANCE BY WSDOT. If TENANT defaults in the performance or observation of any covenant or agreement contained in this Lease, WSDOT, without notice if deemed by WSDOT that an emergency exists, or if no emergency exists, with thirty (30) calendar days prior written notice, may direct TENANT to stop all or a portion of its use of the Premises and may itself perform or cause to be performed such covenant or agreement and may enter upon the Premises for such purpose. Such emergency shall include, but not be limited to, endangerment of life, the highway facility or failure of TENANT to obtain in a timely manner the specified insurance coverage. TENANT shall reimburse WSDOT the entire cost and expense of such performance by WSDOT and any legal fees WSDOT incurred in enforcing such reimbursement. TENANT shall make such reimbursement within thirty (30) calendar days of the date of WSDOT's invoice. Any act or thing done by WSDOT under the provisions of this Section shall not be construed as a waiver of any agreement or condition herein contained or the performance thereof.

36. MODIFICATIONS. This Lease contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any other manner other than by a written agreement signed by all parties hereto. The receipt of rent by WSDOT, with knowledge of any breach of this Lease by TENANT, and/or with knowledge of any default on the part of TENANT shall not be deemed to be a waiver of any provision of this Lease. Failure on the part of WSDOT to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of WSDOT to enforce the same in the event of any subsequent breach or default.

37. INTERPRETATION. This Lease shall be governed by and interpreted in accordance with the laws of the state of Washington. The titles to paragraphs or sections of this Lease are for convenience only and shall have no effect on the construction or interpretation of any part hereof.

38. SEVERABILITY. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

39. TOTALITY OF AGREEMENT. It is understood that no guarantees, representations, promises, or statements expressed or implied have been made by TENANT or by WSDOT, except to the extent that the same are expressed in this Lease. It is further understood that this Lease shall not be valid and binding upon WSDOT unless and until accepted and approved by the Secretary of Transportation or such Secretary's duly authorized representative.

40. ATTORNEYS' FEES. In the event of any controversy, claim, or dispute arising out of this Lease, each party shall be solely responsible for the payment of its own legal expenses, including but not limited to, attorney's fees and costs, except as provided elsewhere in this Lease.

41. **VENUE.** TENANT agrees that the venue of any action or suit concerning this Lease shall be in the Thurston County Superior Court and all actions or suits thereon shall be brought therein, unless applicable law requires otherwise.

42. **NOTICES.** Wherever in this Lease written notices are to be given or made, they will be served, personally delivered or sent by certified or overnight mail addressed to the parties at the addresses listed below unless a different address has been designated in writing and delivered to the other party. TENANT agrees to accept service of process at said addresses; provided that, such address is located in the state of Washington. Otherwise, TENANT designates the Secretary of state of Washington as an agent for the purpose of service of process. Such service shall be deemed personal service.

WSDOT: DEPARTMENT OF TRANSPORTATION (Mailing Address)
Attn.: Property Management Program Manager
P.O. Box 47338
Olympia, WA 98504-7338

DEPARTMENT OF TRANSPORTATION (Physical Address)
Real Estate Services
Attn.: Property Management Program Manager
7345 Linderson Way SW
Tumwater, WA 98501

TENANT: Snohomish County
Attn: Parks Division
6705 Puget Park Drive
Snohomish, WA 98296

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IN WITNESS WHEREOF, the parties have executed this Lease as of the date of WSDOT's execution written below.

Signatures:

Accepted and Approved by:

SNOHOMISH COUNTY

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION

By: _____

By: _____
Brian D. Nielsen

Title: _____

Title: Region Administrator, Northwest Region

Dated: _____

Dated: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

By: /s/ Sean Reay 10/21/2022

By: 
Assistant Attorney General

Dated: _____

Dated: 1/26/2023

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AGENCY ACKNOWLEDGMENT

STATE OF WASHINGTON)

) ss.

County of Snohomish)

On this _____ day of _____, 20____ before me personally appeared _____, to me known to be the duly appointed _____ and that he/she executed the within and foregoing instrument and acknowledged the said instrument to be his/her free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath Lessees that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the _____ day of _____, 20____.

(Signature)

(Print or type name)
Notary Public in and for the State of Washington
residing at _____

My commission expires _____

WSDOT ACKNOWLEDGMENT

STATE OF WASHINGTON)

) ss.

County of King)

On this _____ day of _____, 20__ before me personally appeared Brian D. Nielsen, to me known to be the duly appointed Region Administrator, Northwest Region, and that he executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the _____ day of _____, 20__.

(Signature)

(Print or type name)
Notary Public in and for the State of Washington
residing at _____

My commission expires _____