

GROUND LEASE  
Interlocal Agreement

TSD-24-058

TACOMA SCHOOL DISTRICT NO. 10

MARITIME 253  
South Puget Sound Maritime Skills Center

06/07/2024

**GROUND LEASE  
BY AND BETWEEN  
  
PORT OF TACOMA  
AND  
TACOMA SCHOOL DISTRICT NO. 10**

**THIS GROUND LEASE** (“Ground Lease” or “Agreement”) is made and entered into this \_\_\_\_\_ day of 05/28/2024, 2024, by and between the Port of Tacoma, a public port district organized under the laws of the State of Washington (hereinafter the “Lessor” or “Port”), and Tacoma School District No. 10, a political subdivision of the State of Washington (hereinafter “District” or “Lessee”) (individually, a “Party” and collectively, the “Parties”).

**I. RECITALS**

**A. WHEREAS**, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, upon and subject to the terms and conditions of this Ground Lease, that certain real property consisting of approximately 30,830 square feet of land located at 1203 East D Street in Tacoma, Pierce County, Washington, as generally shown in **Exhibit “A”** hereto (the “Premises”), subject to encumbrances, rights, and reservations as shown therein or provided in this Ground Lease, and as presently existing or hereafter arising pursuant to governmental authority; and

**B. WHEREAS**, Lessee and Lessor are each local governmental units authorized under Chapter 39.34 RCW, the Interlocal Cooperation Act, to enter into agreements for joint or cooperative action and under Chapter 39.33 RCW, the Intergovernmental Disposition of Property Act, to enter into leases of real property with each other on such terms as may be mutually agreed upon; and

**C. WHEREAS**, Lessee intends to construct a new South Puget Sound Maritime Skills Center (“Maritime 253” or “Skills Center”) on the Premises, which will be a regional career and technical education center serving high school students from multiple schools within the District and South Puget Sound. Maritime 253 is intended to provide career-focused pathways in the skilled and technical trades as well as transportation and logistics, technology and innovation, and sustainability industries; and

**D. WHEREAS**, the Port intends to construct a new Port Maritime Center to meet the business needs of the Port while accommodating public access elements, community engagement, and other opportunities adjacent to the Maritime Skills Center as part of a larger campus development (collectively, the “Project”); and

**E. WHEREAS**, the Port of Tacoma’s 2021-2026 Strategic Plan calls upon the Port to partner with regional organizations to facilitate career development and business growth in Pierce County; and

**F. WHEREAS**, the Port of Tacoma Commission adopted a Workforce Development Strategic Plan in 2022, which has an overarching objective of ensuring that the maritime industry has access to workers who have the necessary skills to provide safe and efficient maritime services; and

**G. WHEREAS**, the Port of Tacoma Commission recognizes that Maritime 253 will be uniquely suited to prepare the future maritime workforce using an integrated approach of high school and college-level curriculum that will result in student attainment of industry-recognized credentials, certification, and training; and

**H. WHEREAS**, in reliance upon the Port's adopted plans and the Port's statutory authority under RCW 53.08.245 to engage in economic and workforce development, the District and the Port have entered prior Interlocal Agreements pursuant to RCW 39.34 to partner on the development of the Maritime Skills Center and Port Maritime Center using alternative project delivery methods pursuant to chapter 39.10 RCW; and

**I. WHEREAS**, Lessee and Lessor desire to establish the terms of Lessee's use of the Premises and define the responsibilities of each Party in relation to ongoing use and maintenance thereof.

## **II. AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and benefits herein, the Parties agree as follows:

### **1. Property Leased; Conditions Precedent**

**1.1** Effective June 7, 2024 (the "Effective Date") the Lessee hereby leases from the Lessor and the Lessor hereby leases to the Lessee the Premises identified in **Exhibit A** for the construction and operation of the Skills Center consisting of an academic building and attached enclosed outdoor space. In addition to the Premises, the Port will provide the Lessee non-exclusive use of the following planned improvements on adjacent Port property: (1) Maritime Skills Center Parking Area, (2) Future Dock, and (4) Future Beach Access, as generally depicted on the Concept Site Plan at **Exhibit B**. Lessee's use of these additional areas on Port property outside the Premises shall be subject to the terms and conditions of a separate Joint Use Agreement being negotiated by the Parties, which is further described in Section 7 of this Ground Lease.

**1.2** Lessee's access to the Premises may be subject to such reasonable restrictions as adopted, in writing, by the Port and the District, which restrictions shall not unreasonably impair either Party's intended use of the Premises.

**1.3** The Parties' obligations under this Ground Lease are expressly conditioned upon the following:

(i) Lessee obtaining all necessary approvals for the construction of permanent improvements on the Premises from the City of Tacoma, Pierce County, State of Washington and any other governmental or regulatory authority having jurisdiction; and

(ii) Lessee obtaining adequate federal, state and local funding, in

the Lessee's sole discretion, for the construction of the planned improvements on the Premises, and

(iii) Lessor obtaining a crossing right ("Crossing Right") over the portion of the Port property encumbered by an easement reserved for the use and benefit of BNSF (the "Easement Area") pursuant to a Quitclaim Deed dated October 10, 1977, and recorded under Pierce County Recording No. 2771306 (the "BNSF Easement") and the Parties' consent to the terms of a Private Grade Crossing License Agreement or similar instrument associated with the Crossing Right to be negotiated between Lessor and BNSF, in Lessor's sole discretion (the "BNSF License"); and

(iv) the Parties' execution of the Joint Use Agreement referred to herein.

In the event the conditions in 1.3(i)-(iv) are not satisfied by January 1, 2025, either Party may terminate this Ground Lease upon thirty (30) days written notice to the other Party. The January 1, 2025 deadline may be extended or otherwise modified by written agreement of the Parties. In the event of termination of this Ground Lease under this provision, each Party shall bear its own costs associated with the Project incurred through the effective date of termination.

## **2. Term**

**2.1 Initial Term.** The initial term shall be fifty (50) years beginning on the Effective Date and ending on June 6, 2074 (the "Initial Term"); provided that in addition to satisfaction of the conditions in Section 1.3, the commencement of this Ground Lease is subject to the Port's receipt of a certificate of insurance from Lessee in a form acceptable to the Port.

### **2.2 Option to Extend**

**2.2.1 Option to Extend.** Lessee shall have one thirty (30)-year option to extend ("Option to Extend") the Initial Term (the "Extension Term") (the "Initial Term" together with the "Extension Term," the "Term"), subject to the Parties' mutual agreement regarding the form and amount of consideration to be paid for the Extension Term. With the exception of consideration, such extension shall be upon the terms, covenants, and conditions contained herein. Lessee shall not be entitled to extend this Ground Lease if Lessee is in default of the performance of its obligations hereunder on the date notice for the Option to Extend is due or on the date the Extension Term is to commence.

**2.2.2 Exercise of Option to Extend; Consideration.** Lessee's Option to Extend may be exercised only by written notice to the Port no later than one hundred eighty (180) days prior to the expiration of the Initial Term. Within thirty (30) days of Lessee's delivery of written notice of intent to exercise its Option to Extend, the Parties shall make a good faith effort to determine and agree upon the form and amount of consideration due for the Extension Term, which may, but is not required to, be based upon one of the following options:

**2.2.2.1** A one-time payment by Lessee to Lessor towards new

or existing capital improvements serving the Premises and/or Port property subject to the Joint Use Agreement, paid in full prior to the first day of the Extension Term; or

**2.2.2.2** Lessee's payment of fair market monthly rent to Lessor during the Extension Term using base rent determined by an appraiser with MAI designation from the Appraisal Institute with at least ten (10) years of experience appraising commercial properties in the leasing market in which the Premises are located, or equivalent experience in the commercial leasing industry. The appraiser appointed shall determine the fair market rental rate for the Premises within thirty (30) days of appointment, which determination shall be final, conclusive, and binding upon Lessor and Lessee. The appraiser's fees and expenses shall be shared equally between the Parties.

If the Parties are unable to agree on the form and terms of consideration for the Extension Term within ninety (90) days of Lessee's delivery of written notice of intent to exercise its Option to Extend, then Lessee's right to extend the Initial Term shall automatically terminate, and the Ground Lease shall terminate on the last day of the Initial Term.

**2.2.3 Rent Adjustment – Extension Term.** If the Parties' agreement under the preceding section results in the payment of fair market monthly rent to the Extension Term, unless otherwise agreed, then monthly rent shall be automatically increased annually on the effective date of the Extension Term (the "Rent Adjustment Date") by the percent change over the one (1) twentieth (20<sup>th</sup>) of the month preceding the applicable Rent Adjustment Date in the Consumer Price Index for the Seattle-Tacoma-Bellevue Area, All Items, Not Seasonally Adjusted, 1982-84 = 100, All Urban Consumers (CPI-U), as issued by the U.S. Department of Labor, Bureau of Labor statistics, or the successor index or closest comparable index if the above index is no longer published, and the one (1)-year period based on such month, shall be used for the calculation (for example, for a Rent Adjustment Date of July 1, the calculation shall be based on data for April, since the data for June is not available until after the Rent Adjustment Date, and the next earlier month for which data is currently issued is April).

**2.3 Extension Term.** The Extension Term shall commence on the expiration of the immediately preceding Initial Term.

### **3. Use of Premises**

**3.1** Lessee shall use the Premises for the construction and operation of the Maritime 253 academic building (serving academic, administrative, and District purposes), including District-related or sponsored events within the building. Lessee shall not use the Premises for any other purpose without the prior written consent of the Port, which will not be unreasonably withheld, conditioned, or delayed. The Premises shall be used only for lawful purposes; and only in accordance with all applicable building, fire, and zoning codes. Lessee shall use the entire Premises for the Maritime Skills Center in a first-class manner continuously during the entire Term of this Ground Lease.

**3.2** Lessee agrees that it will not disturb the Port or any other Lessee of the Port by making or permitting any disturbance or any unusual noise, release or other condition on, in or near the Premises not related to uses associated with the Maritime Skills Center.

**3.3** Lessee may install, post, erect and, as Lessee desires or may be required, illuminate exterior facility identification, traffic control, safety, security, ADA, and other code required signage complying with applicable building codes, municipal codes, and regulations. No signs or other advertising matter, symbols, canopies, or awnings shall be attached to or painted on or within the Premises, including the windows and doors thereof, without the written approval of the Port, which shall not be unreasonably withheld, conditioned, or delayed.

**3.4** At no time shall the Lessee have the right to remove or otherwise disturb timber, valuable minerals, sand, gravel, water, or other natural resources, from the Premises, which materials belong to the Port and may only be used with consent and appropriate compensation.

**3.5** So long as Lessee is not in default under this Ground Lease and subject to the specific provisions, covenants and agreements contained in this Ground Lease, the Port covenants and agrees that the quiet and peaceful possession and enjoyment of the Property by Lessee shall not be disturbed or interfered with by the Port.

**4. Condition of the Premises.** Lessee and Lessor acknowledge that the Premises contains Hazardous Substances in the form of soil and groundwater contamination identified in the Phase 2 Environmental Site Assessment Report for the Parcel 94 Property dated February 2024, as prepared by Anchor QEA, a copy of which has been provided to Lessee. Lessee has examined the Premises, and the adjoining areas of which the Premises are a part. Subject to the provisions of Section 17 herein, Lessee accepts the Premises in its present condition. Lessee agrees that any changes to the Premises under this Ground Lease shall conform to any federal, state, or local law applicable to Lessee's use of the Premises. In addition, Lessee acknowledges that the Premises is subject to the Environmental Requirements set out in **Exhibit C** attached hereto, and Lessee shall ensure compliance with the same. Upon expiration or termination of this Ground Lease, Lessee shall return the Premises to the Port in the same condition in which received, except for reasonable wear and tear and any permitted improvements which Lessor authorizes to remain pursuant to Section 13.

## **5. Consideration**

**5.1 Lessee Cost Share - Capital Site Improvements.** In lieu of Lessee paying monthly rent as consideration over the Initial Term of this Ground Lease, the Parties agree that Lessee will share in the cost of certain capital site improvements on Port property adjacent to the Premises which are necessary for access to and occupancy of the Skills Center (the "Capital Site Improvements"). The Capital Site Improvements and estimated Lessee cost share are described in the attached **Exhibit D**.

**5.2 Future Amendment – Construction of Capital Site Improvements; Final Lessee Cost Share.** The Parties acknowledge that as of the Effective Date, both the Maritime Skills Center and the Port's adjacent Maritime Business Center are in the design phase and requirements, schedules, plans, specifications, and cost estimates for the two facilities and associated site improvements necessary for permit approval are not yet finalized. As a result of this uncertainty, the Parties intend to negotiate and enter into a future Amendment to this Ground Lease which will (a) assign responsibility for the construction of

the Capital Site Improvements to either Lessor or Lessee; (b) determine the Lessee's final cost share for the Capital Site Improvements as consideration for the Ground Lease under Section 5.1; and (c) define provisions for construction timing, performance, payment, and/or reimbursement associated with the Capital Site Improvements. The Parties anticipate entering into this Amendment on or before December 31, 2024.

## **6. Skills Center Improvements**

**6.1 Design Cooperation.** The Port acknowledges that Lessee intends to construct the Maritime Skills Center upon the Premises, for which plans and specifications are still being developed. The Lessee and Port agree to cooperate on design elements to maximize compatibility of the Maritime Skills Center with the Port's adjacent planned Maritime Business Center.

**6.2 Initial Lessee Improvements.** Lessee Improvements of the Premises for the Skills Center shall be subject to Lessor's prior written approval of detailed descriptions, drawings, and specifications for such Lessee Improvements in accordance with Lessor's Tenant Improvement Procedure dated March 4, 2021, except that in the event of conflict between the Tenant Improvement Procedure and the terms of this Ground Lease, the terms of this Ground Lease shall control. Lessee shall make no improvements without the prior written consent of Lessor, which will not be unreasonably withheld, conditioned or delayed. Lessor agrees to approve or disapprove Lessee's plans and specifications within thirty (30) days of receipt of same by Lessor, and to provide specific reasons and instructions regarding any disapproved matters. If Lessor fails to respond within such thirty (30)-day period, Lessee's plans and specifications so provided to Lessor shall be deemed approved by Lessor. Lessee shall obtain all required approvals and permits from the City of Tacoma and any other federal, state, or local governmental agency, department, or entity with jurisdiction over the Initial Lessee Improvements.

**6.3 Compliance with Crossing Right and/or BNSF License.** In addition to the foregoing approval, Lessee acknowledges and agrees that Lessee, at Lessee's sole cost and expense, will be required to conform the plans and specifications for the Skills Center to comply with the terms and conditions of the Crossing Right granted to Lessor pursuant to the BNSF License. In no event shall the Skills Center be designed, developed or constructed in a manner that would violate the rights and obligations of Lessor in connection with the Crossing Right or under the BNSF License.

**6.4 Future Improvements.** Future maintenance, repairs, replacement or remodeling of the Skills Center shall not require submittals in accordance with Lessor's Tenant Improvement Procedure (then in effect) or Lessor's consent to the extent such work (a) does not increase the footprint or exterior dimensions, design, and functional purpose of the Lessee Improvements on the Premises, and (b) occurs above the ground surface.

**6.5 Cost of Improvements.** Any and all Lessee Improvements shall be at the sole cost and expense of the Lessee. Unless otherwise provided in this Ground Lease and/or agreed to in approved Interlocal Agreements between the Parties associated with development of the Maritime Skills Center, the Port shall have no responsibility whatsoever with respect to any such Lessee improvements, permitting costs, other development costs or construction costs. Except as provided for in (a) Lessee's Cost Share for Capital Site

Improvements in Section 5 of this Ground Lease (or as later amended), (b) pursuant to the Joint Use Agreement, or (c) as otherwise agreed to between the Parties for the Extension Term, Lessee shall have no responsibility whatsoever with respect to any improvements owned by the Port located outside of the Premises.

## **6.6 Construction Requirements**

**6.6.1** Construction of the Initial Lessee Improvements on the Premises shall be performed in a careful manner consistent with industry standards and in compliance with all applicable laws, regulations, and codes. Construction work shall follow the City of Tacoma Noise Ordinance. Work shall not be performed between 10:00 P.M. to 7:00 AM. unless otherwise approved by the Port.

**6.6.2** Prior to construction of the Initial Lessee Improvements fencing must be installed around the perimeter of the Premises by the Lessee to provide security and safety. All fencing must be consistent with industry standards for educational institutions and Port facilities. Fencing shall be removed after construction has been completed.

**6.6.3** During construction of any Lessee improvements upon the Premises, the Lessee will maintain the Premises in a safe and clean manner and will not unreasonably interfere with any Port operations.

**6.6.4** Following construction of the Initial Lessee Improvements, the Lessee will remove all rubbish and debris.

**6.7 Drawings.** Within sixty (60) days after completion of the Initial Lessee Improvements (or any later improvement, addition, or alteration to the Premises), the Lessee shall deliver to the Port a complete paper or electronic set of reproducible drawings reflecting the final “as-built” design or condition of said improvements, addition or alteration. Electronic sets shall be in a format accessible by a standard program (i.e. Adobe Acrobat).

**6.8 Ownership of Improvements Upon Expiration or Termination.** Upon the expiration or termination of this Ground Lease, all improvements constructed by the Lessee on the Premises authorized to remain shall become the property of the Port.

**7. Joint Use.** The Parties intend to make joint use of certain site improvements on Port Property outside of the Premises depicted on **Exhibit B** and anticipate providing specific joint use of elements of their respective facilities, with the intent of maximizing the use of public resources. The specific joint uses of the Premises and Port Property and respective improvements cannot be determined at this time. To avoid the necessity of frequently amending this Ground Lease to reflect those joint uses and changes to those joint uses, the Parties agree any joint use, and the cost sharing for maintenance and repairs associated therewith, will be reflected in the separate Joint Use Agreement which will be incorporated by reference into this Ground Lease via later amendment. The Parties agree that following initial approval, changes to the Joint Use Agreement may occur over the term of this Ground Lease without need of corresponding amendment to the Ground Lease to effectuate the same.



**8. Utilities.** Lessee shall be liable for and shall pay throughout the Term of this Ground Lease all charges for all utility services furnished to the Premises, including but not limited to, heat, gas, janitorial services, garbage disposal, security, electricity, water, stormwater and sewage, including any connection fees, and any fire protection, police protection, or emergency health services as furnished by local authorities and as may be the subject of a contract between the Port and such local authorities or as imposed by ordinance or statute. If the Premises are part of a larger premises to which any utility services are furnished on a consolidated or joint basis, Lessee agrees to pay to the Port Lessee's pro-rata share of the cost of any such utility services. Lessee's pro-rata share of any such services may be computed by the Port on any reasonable basis, and separate metering or other exact segregation of cost shall not be required.

Lessee shall, at its sole cost and expense, arrange for construction of utility improvements within the boundaries of the Premises and shall be responsible for paying charges, including connection charges, for all utilities, including electricity, water, sewer, telephone or other utility services necessary for the operation of the Skills Center, and the Lessee covenants and agrees to pay all such charges directly to the applicable public utility or governmental authority furnishing such service to the Premises, the amounts due for such services as indicated by meters measuring the Lessee's consumption thereof.

**9. Maintenance and Repairs**

**9.1** Lessee shall, at its own expense, keep the Premises and the improvements located on the Premises in a neat, clean, safe, sanitary, and good condition, reasonable wear and tear excepted, free from rubbish and debris.

**9.2** Lessee shall also, at its own expense, at all times keep the Premises free from infestation of pests and conditions which might result in harborage for, or infestation of, pests (pests shall include, without limitation, rodents, insects, and birds in numbers to the extent that a nuisance is created). Lessee shall keep the glass of all windows and doors on the Premises clean and presentable, and shall maintain and keep the Premises in a good state of repair, and shall commit no waste of any kind, and, without limiting the generality of the foregoing, shall replace all damaged or broken structures on the Premises, and keep the electrical system and all drains clean and in a good state of repair, and shall protect all sprinkler systems and all pipes and drains within the Premises so that they will not freeze or become clogged.

**9.3** If Lessee fails to properly maintain or repair the Premises or any improvements thereon, the Port shall be entitled, but shall not be obligated, to enter the Premises after notice to Lessee and the expiration of any applicable cure period and perform such work as may be necessary to restore the Premises and improvements to the conditions set forth herein. The cost of such repairs shall be billed to Lessee by the Port and shall be payable upon receipt and subject to the same penalties for late payment as if such payment was additional rent. Lessee shall have no claim as deduction or offset any monies or charges against the Rent paid to the Port for maintenance or repairs.

**9.4** Lessee shall also keep the Premises free and clear of any liens and encumbrances arising or related to the use and occupancy of the Premises by Lessee. At the Port's request, Lessee shall furnish the Port with written proof of payment of any item which

would or might constitute the basis for such a lien on the Premises if not paid. Any dispute under this Section shall be subject to arbitration.

**10. Damage to the Premises.** In the event that any improvements to the Premises constructed at the expense of the Lessee are destroyed or injured, in whole or in part, by fire, flood, earthquake, or other casualty, then the Lessee shall rebuild and restore those improvements to the Premises, or such part thereof as may be injured.

**11. Supervision of the Premises.** The Lessee shall assume all supervisory duties for its activities on or use of the Premises.

**12. Compliance with Applicable Laws, Regulations and Rules.** Lessee shall comply with the laws, rules or regulations of any applicable federal, state or local governmental authority.

**13. Surrender at End of Term.** At the termination of this Ground Lease, all improvements by Lessee shall either be removed by Lessee at its expense or shall remain in place and become the property of Lessor, at Lessor's option in its sole discretion.

**14. Assignment and Subletting.** Lessee shall not have the right, voluntarily or involuntarily, to assign, convey, transfer, mortgage or sublet the whole or any part of the Premises under this Ground Lease without the prior written consent of the Port. This prohibition applies to assignments, subleases, and other transfers by which the Lessee transfers any interest, including partial or indirect interests, in the leasehold created hereby, except for transfer or assignment to a Skills Center authorized under RCW 28A.245 (as it now exists, or as later amended) formed between Lessee and other qualified public school districts.

**15. Insurance.** At all times during the Term of this Ground Lease or any extension thereto, the Lessee shall, at its sole cost and expense and as additional consideration, maintain in full force and effect the following insurance:

**15.1** Public liability insurance with a minimum coverage of Two Million Dollars

payable to any one person for personal injury or death arising out of any one event, Two Million Dollars for all such personal injuries or death resulting out of one occurrence arising from use of the Premises. The Lessee and the Port agree to re-evaluate coverage amounts once every year to update both the coverage amounts and types of coverage required to then existing commercially reasonable coverage limits.

**15.2** Fire and extended coverage insurance covering all structures and all improvements made by the Lessee to the Premises and all personal property of the Lessee within the Premises in the amount of the full replacement value thereof.

**15.3** All insurance required under this Ground Lease shall include public liability and property damage coverage for any construction activities conducted by the Lessee on the Premises.

**15.4** All insurance required of the Lessee may be provided through private insurers authorized to transact business in the State of Washington and with a company

acceptable to the Port, or in the alternative through a State authorized risk pool.

**15.5** To the extent available for the above required insurance, Lessee shall provide Lessor with endorsements for waiver of subrogation and primary and non-contributory coverage.

**15.6** Lessee shall deliver to Lessor certificates of such insurance, and at Lessor's request shall also deliver to Lessor a copy of all policies of such insurance together with all endorsements, showing all required coverage and endorsements to be in effect. Lessor shall be given at least thirty (30) days prior written notice of any cancellation or non-renewal of any required insurance.

**16. Indemnification/Hold Harmless**

**16.1 Indemnification by Lessee.** Lessee shall defend, indemnify, and hold Lessor harmless from any and all liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or willful act or omission of Lessee or Lessee's employees, officers, agents, servants, contractors, visitors, guests, or other licensees or invitees on or around the Premises or the Property, or arising from any breach of this lease by Lessee. Lessee shall use legal counsel reasonably acceptable to Lessor in defense of any action within Lessee's defense obligation.

**16.2 Indemnification by Lessor.** Lessor shall defend, indemnify, and hold Lessee harmless against all liabilities, costs, damages, from any and all liabilities, damages, costs, and expenses, including attorneys' fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or willful act or omission of Lessor or Lessor's employees, officers, agents, servants, contractors, visitors, guests, or other licensees or invitees on or around the Premises, or arising from any breach of this lease by Lessor. Lessor shall use legal counsel reasonably acceptable to Lessee in defense of any action within Lessor's defense obligation.

**16.3** In connection with the Crossing Right, Lessee, recognizing that BNSF's operations and any use of Easement Area involves increased risks, expressly assumes all risk of loss and damage to, and waives any right to ask or demand damages for any property of Lessee at the Easement Area, including loss of or interference with the use of service thereof, regardless of cause, except if such loss or damage was due to the negligence, or willful misconduct of Lessor or BNSF. Lessee, with the recognition above, and as further consideration of this Ground Lease, except to the extent caused by negligence or willful misconduct of Lessor or BNSF, releases and agrees to defend, indemnify, protect and save Lessor harmless from and against any third-party claims related to the following:

(A) all loss of or damage to any property situated on or which may be placed at or on the Easement Area; and

(B) all loss and damage on account of injury to or death of any and all persons (including but not limited to employees, invitees and patrons of the parties hereto) on the Easement Area; and

(C) all costs and expenses thereof arising out of, resulting from, or connected in any manner with the foregoing.

Lessee shall promptly advise Lessor in writing of any claims made against Lessee, Lessor or BNSF under this Ground Lease or from use of the Easement Area.

**16.4** The indemnification obligations contained in this Section shall not be limited by any worker's compensation, benefit or disability laws, and the indemnifying Party hereby waives any immunity that said indemnifying Party may have under the Industrial Insurance Act, Title 51 RCW and similar worker's compensation, benefit, or disability laws.

**16.5** THE PARTIES ACKNOWLEDGE BY THEIR EXECUTION OF THIS GROUND LEASE THAT EACH OF THE INDEMNIFICATION PROVISIONS OF THIS GROUND LEASE (SPECIFICALLY INCLUDING BUT NOT LIMITED TO THOSE RELATING TO WORKER'S COMPENSATION BENEFITS AND LAWS) WERE SPECIFICALLY NEGOTIATED AND AGREED TO BY THE PARTIES AND SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS GROUND LEASE.

## **17. Hazardous Substances**

**17.1 Hazardous Substances Defined:** As used in this Ground Lease, the term "Hazardous Substance" means any hazardous, toxic, dangerous or extremely dangerous substance, material, vapor, or waste, pollutant, or pollution, which is or becomes regulated by the United States Government, the State of Washington, or any local governmental authority. The term includes, without limitation, any substance containing constituents regulated as specified above. .

### **17.2 Preexisting Contamination**

**17.2.1 Preexisting Contamination; Port's Obligation to Remediate.** Portions of the Premises may contain contamination with Hazardous Substances described in the Phase 2 Environmental Site Assessment Report for the Parcel 94 Property dated February 2024, prepared by Anchor QEA, which has been provided to Lessee. The Port shall undertake, at the Port's sole expense, such remediation efforts as are required for the Premises to meet residential cleanup standards under the Model Toxics Control Act ("MTCA") (RCW 70A.305). Lessor will undertake reasonable effort to ensure that remediation of the Premises under this provision to the extent required for construction of the Skills Center is complete on or before November 30, 2024.

**17.2.2 Hold Harmless and Indemnification – Preexisting Contamination.** The Port shall be responsible for and shall indemnify, defend and hold Lessee harmless from any and all claims, suits, actions, or liabilities for any damage, expense, loss, or liability, including injury to person or damage that arises out of or is related to any Hazardous Substances on, under, in, above, to, or from the Premises that predate the Effective Date of this Ground Lease.

### **17.3 Lessee's Obligations – Hazardous Substances**

**17.3.1 Release Defined.** As used in this Ground Lease, the term “Release” shall be defined as provided in 42 U.S.C. §9601 and RCW 70A.305.020(32). In the event a conflict exists between the two definitions, the broader definition shall apply. For the purposes of this Lease, the term Release shall also include a threatened Release.

**17.3.2 Use, Storage, and Disposal.** The Lessee shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Substances on, under, in, above, to, or from the Premises or portion thereof except as such Hazardous Substances are (i) used, stored and disposed of in conformance with manufacturer recommendations and all applicable legal requirements, (ii) are used in connection with the Lessee’s permitted use as specified above; and (iii) used in normal school operations.

**17.3.3 Notifications.** Lessee shall notify Lessor and any applicable governmental entity within twenty-four (24) hours of any Release of Hazardous Substances by Lessee that may affect the Premises and shall promptly provide Lessor with a copy of any notifications given to any governmental entity regarding any such Release. Lessee shall promptly provide Lessor with copies of any inspection report, order, fine, request, notice or other correspondence from any governmental entity regarding the Release of Hazardous Substances that may affect the Premises. Lessee shall provide Lessor with a copy of all reports, manifests, material safety data sheets (MSDs), and identification numbers regarding Hazardous Substances at the same time they are submitted to the appropriate governmental authorities.

**17.3.4 Environmental Assessment.** Lessee shall, upon written request from Lessor, based on reasonable belief there has been a Release or discovery of Hazardous Substances caused by or related to Lessee’s tenancy under this Lease, provide Lessor with an environmental assessment prepared by a qualified professional approved in advance by Lessor. The environmental assessment shall, at a minimum, certify that a diligent investigation of the Premises has been conducted, including a specific description of the work performed, and either (1) certify that diligent investigation of the Premises has revealed no evidence of a Release of Hazardous Substances or violation of applicable Laws, or (2) if a Release or violation of applicable Laws is detected, identify and describe: (i) the types and levels of Hazardous Substances detected; (ii) the nature and extent of the Release, including the physical boundaries thereof and whether the Release extends to or otherwise impacts property other than the Premises; (iii) the actual and potential risks to human health and/or the environment from such Release or violation; and (iv) the procedures and actions necessary to fully remedy the Release or violation in compliance with applicable Laws. Lessee shall pay the expense of obtaining the environmental assessment and of performing all remediation in accordance with Section 17.3.5 below.

**17.3.5 Hold Harmless and Indemnity.** Lessee shall defend (with attorneys’ approval in writing by Lessor), indemnify and hold Lessor, its commissioners, employees, and agents harmless from any loss, claim, fine or penalty arising from the Release of Hazardous Substances or any violation of applicable Laws affecting the Premises to the extent caused by Lessee or related to Lessee’s tenancy under this Lease. Such obligation shall include, but shall not be limited to, environmental response and remedial costs, other cleanup costs, environmental consultants’ fees, attorneys’ fees, fines and penalties, laboratory testing fees, claims by third parties and governmental authorities for

death, personal injuries, property damage, business disruption, lost profits, natural resource damages and any other costs.

Lessee shall have no obligation under this subsection 17.3.5 if the Lessee can establish that the Release or threat of Release of a Hazardous Substance and the damages resulting therefrom were caused solely by:

- (1) An act of God;
- (2) An act of war;
- (3) An act or omission of a third party other than (i) an employee or agent of the Lessee, or (ii) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the Lessee, if the Lessee establishes by a preponderance of the evidence that Lessee (a) exercised due care with respect to the Hazardous Substance concerned, taking into consideration the characteristics of such Hazardous Substance, in light of all relevant facts and circumstances, and (b) took reasonable precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of such acts or omissions; or
- (4) Any combination of the foregoing paragraphs.

**17.4 THE PARTIES ACKNOWLEDGE BY THEIR EXECUTION OF THIS GROUND LEASE THAT EACH OF THE RELEASE AND INDEMNIFICATION PROVISIONS OF THIS GROUND LEASE RELATING TO HAZARDOUS MATERIALS WERE SPECIFICALLY NEGOTIATED AND AGREED TO BY THE PARTIES AND SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS GROUND LEASE.**

**18. Condemnation.** If all or any portion of the Premises is taken for any public or quasi-public use under government law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (collectively, "Taking"), this Ground Lease shall terminate when the physical taking of the Premises occurs and the Port shall have no liability to the Lessee for its loss of use of the Premises or portion thereof. If any part of the Premises is subject to a Taking, the Lessee may terminate this Ground Lease or continue this Ground Lease as to the remaining premises but without abatement of any of the Lessee's obligations hereunder. The Port shall receive the entire award for any Taking of the Premises or portion thereof, however, the Lessee shall be entitled to any award separately designated for any taking of or damage to Lessee's Skills Center building and related equipment, fixtures, or other personal property, provided that any award to Lessee shall not reduce Lessor's recovery. The Parties to this Ground Lease are public agencies with the power of eminent domain, and each agrees not to exercise such power against the other to the extent allowed by law.

**19. Mechanic's Liens.** The Lessee shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature upon, or in any manner to bind, the interest of the Port in the Premises in favor of any person dealing with the Lessee, including those who may furnish materials or perform labor for any construction or repairs, and each such lien shall attach to, if at all, only the leasehold interest granted to the Lessee by this instrument. The Lessee will pay or cause to be paid all sums due and payable by it on account of any labor performed or materials furnished in connection with any work

performed on the Premises on which any lien is or can be validly and legally asserted against its leasehold interest in the Premises or the improvements thereon. The Lessee will discharge, by bond or otherwise, any mechanic's lien filed against the Premises or part thereof for work claimed to have been done for, or materials claimed to have been furnished to the Lessee within ten (10) days after filing. The Lessee will indemnify, defend, and hold the Port harmless from any and all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the right, title, and interest of the Port in the Premises or under the terms of this Ground Lease.

**20. Inspection.** The Port reserves the right to inspect the Premises at any and all reasonable times throughout the Term of this Ground Lease, provided that it shall not interfere unduly with Lessee's operations. The right of inspection reserved to the Port hereunder shall impose no obligation on the Port to make inspections to ascertain the condition of the Premises and shall impose no liability upon the Port for failure to make such inspections. Except in emergency circumstances, inspections shall be scheduled in advance with not less than forty-eight (48) hours prior notice from the Port to Lessee and shall not interrupt Lessee's educational activities on the Premises.

**21. Default.** The following events are deemed to be events of default by the Lessee under this Ground Lease:

**21.1** If the Lessee shall be in default of the performance of any obligations of this Ground Lease, and if such default is not cured within seven (7) days for monetary defaults or sixty (60) days for non-monetary defaults after written notice thereof is given by the Port to the Lessee; or if such default should be of such a nature that it cannot be cured completely within such sixty-(60) day period, if Lessee shall not have promptly commenced within such sixty (60) day period or shall not thereafter proceed with reasonable diligence and in good faith to remedy such default;

**21.2** If the Premises becomes abandoned or deserted by the Lessee for a period of one (1) or more consecutive years;

**21.3** If this Ground Lease shall be assigned or the Premises sublet other than in accordance with the Terms of this Ground Lease and such default is not cured with thirty (30) days after written notice to the Lessee;

**21.4** If any of the above events of default are not cured within the period stated above, then the Port may immediately or at any time thereafter recover the Premises in the manner provided by law.

**21.5** The Lessee agrees to pay as additional consideration any and all sums which may become due by reason of the failure of the Lessee to comply with all the covenants of this Ground Lease and any and all damages, costs, and expenses which the Port may suffer or incur by reason of any default of the Lessee.

**21.6** Without in any way limiting the above remedies in the event of default, if the Lessee defaults in the performance of any covenant or condition under this Ground Lease required to be performed by the Lessee, then the Port may, at its option and upon twenty (20) days' prior written notice to the Lessee, or without notice if in Port's opinion an emergency exists, perform such covenant or condition for the account and at the

expense of the Lessee.

**21.7** The statement of specific remedies as set forth above is not exclusive, and the Port shall, at its option, have available any and all other remedies for default available to it under the laws of the State of Washington.

**22. Quiet Enjoyment.** The Port warrants title and quiet enjoyment of the Premises.

**23. ADA Compliance/Non-Discrimination**

**23.1** All Lessee improvements to the Premises shall comply with the requirements of the Americans with Disabilities Act of 1990 as now in effect or hereafter amended, and all rules and regulations issued thereunder (hereinafter collectively referred to as the “ADA”) and all similar state and local laws or regulations.

**23.2** The Lessee shall comply with all the federal, state, and local non-discrimination laws, ordinances, regulations, and policies, which are otherwise applicable to the Lessee. Accordingly, no person shall, on the ground of race, creed, color, religion, national origin, age, sex, marital status, sexual orientation, sexual identity, pregnancy, or the presence of any sensory, mental, or physical disability, be unlawfully excluded from participation in, be denied the benefits of, or be otherwise subjected to illegal discrimination under any employment with or activity of the Lessee and its agents under this Ground Lease.

**24. Notice.** All default and other substantial notices required under the provisions of this Ground Lease may be personally delivered or mailed. If mailed, they shall be sent by certified mail, return receipt requested, to the following addresses:

To the Port:                      Port of Tacoma  
   One Sitcum Plaza  
   Tacoma, WA 98421

To the Lessee:                      Tacoma School District No. 10  
   Central Administration Building  
   601 South 8<sup>th</sup> Street  
   Tacoma, WA 98405

or to such other respective addresses as either Party hereto may hereafter from time to time designate in writing. Notices given by personal delivery shall be deemed given upon receipt. Notices sent by mail shall be deemed given when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

**25. Attorneys’ Fees.** Should a dispute arise between the Parties hereto as to the effect of any provision hereof and said dispute is referred to an attorney, whether for enforcement in court or for decision under arbitration, the losing Party shall pay the prevailing Party’s actual and incurred attorney’s fees; costs of court or arbitration, including such fees and costs of any appeal; other legal expenses; and collection costs, except that the amount of such fees, costs or expenses taken separately or in the aggregate, shall not be unreasonable. If such dispute arises and is later settled by the Parties, such settlement shall



include a specific allocation of disposition of attorney's fees on both sides.

Except where expressly allocated otherwise in this Ground Lease, in any action in any forum (including any appeals) brought to enforce any provisions of this Ground Lease, the prevailing Party shall be entitled to recover from the other Party all reasonable costs and reasonable attorneys' fees incurred by the prevailing Party.

**26. Construction.** This Ground Lease shall not be construed more favorably to one Party over another, notwithstanding the fact one Party, or its attorney, may have been more responsible for the preparation of this document.

**27. Nonwaiver of Breach.** The failure of a Party to insist upon strict performance of any of the covenants and agreements of this Ground Lease or to exercise any option herein contained in any one or more instances shall not be construed to be a waiver or relinquishment of any such, or any other, covenant or agreements; but the same shall be and remain in full force and effect.

**28. Successors.** The terms, covenants and conditions herein contained shall accrue to the benefit of the successors and assigns of the Parties hereto.

**29. Governing Law.** This Ground Lease shall be governed by the laws of the State of Washington without regard to doctrines regarding choice of law. All actions and proceedings related to this Ground Lease shall be held and filed in Pierce County, Washington.

**30. Complete Agreement.** This Ground Lease fully integrates the understanding of the Parties. It supersedes and cancels all prior negotiations, correspondence, and communication between the Parties with respect to the Premises. No oral modification of or amendment to this Ground Lease shall be effective; however, this Ground Lease may be modified or amended by written agreement signed by all the Parties hereto. Notwithstanding the foregoing, the Parties agree that **Exhibit A** (Leased Premises) and **Exhibit B** (Site Plan) hereto are based upon initial design of the Project as of the Effective Date, and that the Parties may replace both exhibits with updated versions after development of the Project without amending this Ground Lease.

**31. Paragraph Headings, Gender, and Number.** Paragraph headings are not to be construed as binding provisions of this Ground Lease; they are for the convenience of the Parties only. The masculine, feminine, singular and plural of any word or words shall be deemed to include and refer to the gender appropriate in the context.

**32. No Agency/Joint Venture.** Nothing herein is intended to nor shall create an agency, partnership or joint venture agreement, arrangement or relationship between the Lessee and the Port.

**33. Survival.** All indemnities and obligations of the Lessee hereunder not fully performed as of the expiration or earlier termination of this Ground Lease.

**34. Time.** Time is of the essence of this Ground Lease with respect to the performance of every provision in which time of performance is a factor.

35. **Severability.** The invalidity of any provision of this Ground Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

36. **Filing.** By its signature below, each Party confirms it approves of and is authorized to enter into this Agreement pursuant to RCW 39.34.080. A copy of this Agreement shall be filed with the Pierce County Auditor pursuant to chapter 39.34 RCW. Alternatively, a copy of this Agreement may be listed by subject on the District and Port's website or other electronically retrievable public source.

37. **Exhibit List**

**Exhibit A** – General Depiction of the Premises

**Exhibit B** – Concept Site Plan

**Exhibit C** – Environmental Requirements

**Exhibit D** – Lessee's Estimated Share of Capital Site Improvements

38. All Exhibits and Recitals are incorporated into this Ground Lease as if set forth in full in this Ground Lease.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Ground Lease on the date first written above.

**LESSOR:  
PORT OF TACOMA**

By:  \_\_\_\_\_

Eric D. Johnson

Its: Executive Director

**LESSEE:  
TACOMA SCHOOL DISTRICT NO. 10**

By:  \_\_\_\_\_  
Joshua J. Garcia (May 28, 2024 07:46 PDT)

Joshua J. Garcia

Its: Superintendent

**EXHIBIT A**






# EXHIBIT A

**LEASED PREMISES**  
1208 E D ST  
TACOMA, WA 98421  
PORT PARCEL: #94

**SHEET: 1 OF 1**  
**PURPOSE: LEASE**  
**DATE: 4/17/2024**  
**AUTHOR: Brian Archer**

-  Future Port Admin Building
-  Maritime Skills Center Building
-  Leased Premises  
= +/- 30,830 SF

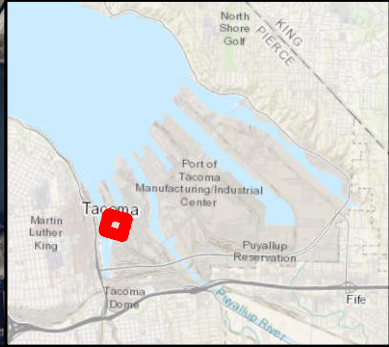


0 70 140 280 Feet

**DISCLAIMER:** The information included on this map has been compiled by Port of Tacoma staff from a variety of sources and is subject to change without notice. These data are intended for informational purposes and should not be considered authoritative for engineering, navigational, legal and other site-specific uses. The Port of Tacoma makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information.



PO Box 1837 Tacoma, WA 98401 (253) 383-5841



**EXHIBIT B**



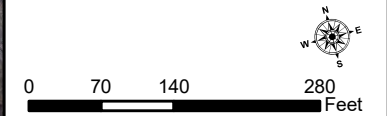


### EXHIBIT B

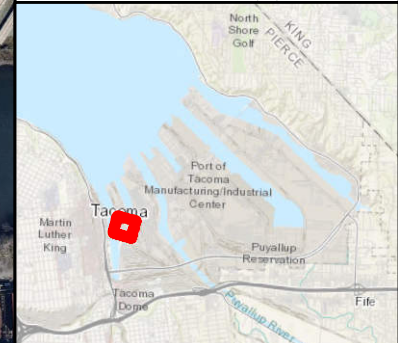
**CONCEPTUAL SITE PLAN**  
 1208 E D ST  
 TACOMA, WA 98421  
 PORT PARCEL: #94

**SHEET: 1 OF 1**  
**PURPOSE: INFORMATION**  
**DATE: 4/17/2024**  
**AUTHOR: Brian Archer**

- Port Admin Building
- Maritime Skills Center Building
- Maritime Skills Center Premise
- Port Exclusive Parking
- Joint Use Area
- Future Dock Area



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## **EXHIBIT C**

**EXHIBIT C**  
**ENVIRONMENTAL REQUIREMENTS**

**Maritime 253**  
1203 East D Street  
Tacoma, WA  
Port Parcel 94

***Environmental Agreements/Consent Decrees/Conditions***

Some areas of or adjacent to the Premises are within the boundaries of certain contaminated sites or in the future may be within or adjacent to the boundaries of future such sites (collectively “sites”) subject to remediation (or cleanup) under the oversight of the United States Environmental Protection Agency (EPA) and/or Washington State Department of Ecology (Ecology) pursuant to federal or Washington State law, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (CERCLA or Superfund), the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (RCRA), or the Washington Model Toxics Control Act, Chapter 70A.305 RCW (MTCA). These include, but are not necessarily limited to, the following sites:

- Wheeler Osgood Maritime Center; 1203 E. D St; West side of the street; Facility Site ID (FSID) 100001328; awaiting cleanup
- Semco Services, LLC; 1203 E. D St 106; FSID 42111825; Interaction Description: Hazardous Waste Generator
- MARINE FLOATS CORP; 1208 E. D St; FSID 6089938; Interaction Description: Urban Waters
- MARINEFLOATS CORP; 1208 E. D St; FSID 4801624; Interaction Description: Enforcement Final – Water quality, Industrial SW GP
- Wattles Co; 1203 E. D St; FSID 13819222; Interaction Description: Hazardous Waste Generator, Haz Waste Management Activity, Enforcement Final – SPILLS
- MAIN OFFICE; 1200 E. D St; FSID 51975898; Interaction Description: Underground Storage Tank
- Petrich Marine Dock; 1118 to 1120 E. D St; FSID 414876; Interaction Description: Voluntary Cleanup Sites; Local Source Control 7/09 - 3/12
- Petrich Marine Dock Bldg 1; 1118 E. D St, Bldg 1; FSID 7794161; Interaction Description: Hazardous Waste Generator, Haz Waste Management Activity
- Heavy Duty Shop; 1200 E. D St; FSID 1348; Interaction Description: Hazardous Waste Generator; Independent Remedial Actn Prg
- Sound Environmental Strategies Corp; 1203 E. D St; W SIDE OF LOT; FSID 76693458; Interaction Description: Hazardous Waste Generator; Revised Site Visit Program
- SQG Specialists; 1118 E. D St, BLDG 2; FSID 41998995; Interaction Description: Hazardous Waste Generator
- Dutch Harbor Seafoods Ltd MV Galaxy; 1118 E. D St; FSID 6314293; Interaction Description: Hazardous Waste Generator
- Nordlund Boat Co D St; 1120 E. D St; FSID 73631661; Interaction Description: Hazardous Waste Generator; Hazardous Waste Planner; Emergency/Haz Chem Rpt TIER 2
- MARINE IRON WORKS INC; 1120 E. D St; FSID 20858615; Interaction Description: Underground Storage Tank



Lessee acknowledges and agrees that:

- i) Pursuant to the documents listed above and/or any future consent decree, agreed order, or agreement related to the sites listed above and/or any future sites within or adjacent to the Premises, Lessee shall coordinate its activities on the Premises with Lessor's cleanup requirements, as requested by Lessor and/or provided herein or in such documents.
- ii) Lessee acknowledges that the Premises is subject to ongoing remediation by Lessor as described in Section 17 of the Ground Lease for development of the Skills Center. Lessee understands that remediation may include a requirement for institutional controls on the Premises, including environmental covenants and expressly consents to the same.
- iii) Any costs incurred due to Lessee's activities, operations, or development, in excess of the minimum costs required for Lessor's remediation in the absence of Lessee's activities, operations, or development, shall be paid by Lessee.
- iv) Lessee shall not interfere with, remove, tamper with, damage, or destroy any remediation infrastructure (e.g., groundwater extraction and monitoring wells and associated vaults and piping), whether currently installed or installed on the Premises at a later date.
- v) Lessee shall not disturb soil, groundwater, or sediments on the Premises without prior notice to and express prior written permission from Lessor.
- vi) Lessor, Ecology, or EPA may require access as, or by, Potentially Responsible Parties, and/or by the agencies or their assigns, to portions of the Premises for remediation activities (e.g., investigations, remedial actions, inspections, maintenance, and monitoring). The required access may be for short or extended periods, may be for small or larger areas, may require Lessee to move equipment and/or material of Lessee and Lessee Parties located on the Premises, and may vary from time to time. Upon reasonable request for such access, Lessee shall use reasonable efforts to provide the required access, upon reasonable terms, and at no cost or expense to Lessor.
- vii) Lessee and Lessee Parties shall not interfere with any required source control activities or equipment or institutional controls.
- viii) Lessee shall inform Lessor of any environmental or regulatory issues, including any spills or releases of any volume. Lessee shall copy Lessor on all environmental compliance-related notices and correspondence with Ecology, EPA, or other governmental agencies related to the Premises and/or any activities or operations on the Premises.
- ix) Lessee acknowledges that releases of hazardous substances into water, sediments, uplands, or any other part of the environment could result in Lessee liability under applicable federal, state, and/or local laws.
- x) Lessee has received and had the opportunity to review any and all documents listed above prior to execution of this lease.

### ***Lessee Alterations to Premises and Associated Permitting***

If Lessee proposes alterations to the Premises, environmental review under the Washington State Environmental Policy Act (SEPA) may be required. If SEPA review is required, Lessor may serve as the SEPA lead agency per the applicable Commission Resolution, as amended or revised (per

Port of Tacoma Commission Resolution 2023-01-PT adopted July 18, 2023). If Lessor serves as SEPA lead agency and an Environmental Impact Statement (EIS) is required, Lessee shall reimburse Lessor for its time and expenses associated with those SEPA EIS efforts, including but not limited to, Lessor's staff's time and costs and Lessor's consultants' time and costs.

***Water and Sediment Quality Protection***

The receiving waters for stormwater from the Premises are waterbodies that may be classified as "waters of the state" under the Washington State Water Pollution Control Act (RCW 90.48) or "waters of the United States," under the Clean Water Act of 1972 (33 U.S.C. §1251 *et seq.*, as amended and clarified).

*Municipal/Industrial Stormwater:* Facilities operated on Lessor-owned properties are required to comply with applicable National Pollutant Discharge Elimination System (NPDES) stormwater permits, as issued by the applicable regulatory entity (e.g., Ecology), and all applicable law (e.g., applicable federal and state law and local stormwater codes, including but not limited to, Tacoma Municipal Code Chapter 12.08D. Lessee recognizes Lessor as a municipality and shall satisfy all requirements of Ecology's Phase I Municipal Stormwater NPDES Permit (MS4) to the extent applicable to the Premises and Lessee's facilities, activities, and operations thereon, including but not limited to, those of any subtenants.

It is Lessee's responsibility to comply with the applicable stormwater permit(s) and all applicable law based on Lessee's facilities, activities, and operations at the sole cost of the Lessee, during the term of the Lease and as required by Ecology.

Lessee shall defend, indemnify, and hold harmless Lessor against any and all costs, including but not limited to, attorneys' fees, expenses, damages, fines, penalties, and liabilities of any kind incurred by Lessor as a result of Lessee's stormwater discharge.

*Wastewater Discharge:* Lessee shall, at its sole cost and expense, comply with all local wastewater discharge permit requirements, as applicable.

*Coatings for Galvanized Metals:* Un-coated galvanized metals shall not be used on equipment or structure surfaces exposed to natural elements, nor stored or staged out of doors without sufficient protection, in order to reduce the potential of discharging zinc or other metals into receiving waters. Lessee will not be responsible for replacing existing un-coated galvanized metals, except as required by any applicable law or by any permitting or regulatory entity in connection with any operation, alteration, or other activity by Lessee, and except that Lessee must promptly repair coated galvanized metal surfaces if coatings become damaged during this Lease.

*Emergency/Spill Response:* Lessee and Lessee Parties shall have a spill response plan in compliance with all federal, state, and local regulations and permits. Lessee shall have all necessary equipment and supplies on-hand to conduct an emergency or spill response. Lessee shall initiate spill response immediately when a spill or release is discovered and notify the Port of Tacoma Security Department at (253) 383-9472 as soon as possible during any incident or event. If a spill response is undertaken by Lessor at Lessee's request or is determined to be necessary by Lessor to protect Lessor property, Lessee shall reimburse Lessor for spill response to spills originating from Lessee and/or Lessee Parties, whether on or off the Premises.

### ***Noise Management***

Lessee shall comply with all local, state, and federal noise regulations, including the following local regulations depending on the Premises location:

- Lessee shall comply with Chapter 173-60 WAC, entitled “Maximum Environmental Noise Levels,” the City of Tacoma’s Ordinance No. 27673 and Tacoma Municipal Code Title 8, Chapter 8.122, entitled “Noise Enforcement,” as applicable.

### ***Invasive Species Control***

Lessee shall take measures to prevent invasive species from entering or infesting the Premises and/or surrounding areas from the operations or acts or omissions of Lessee or Lessee Parties. Lessee shall take measures to control invasive species that have entered or infested the Premises and shall comply with all criteria and directives issued by Lessor or any governmental agency to control and eliminate such infestation. If an invasive species is discovered originating from the operations of Lessee or Lessee Parties or the acts or omissions of Lessee or Lessee Parties, Lessee shall take measures to control and eliminate the invasive species from infested areas, whether on or off the Premises, at the sole cost of Lessee.

### ***Environmental Stewardship***

*Habitat and Critical Areas Protection:* To the best of its knowledge, Lessor shall provide current locations of known critical habitats and jurisdictional wetlands adjacent to or on the Premises. Lessee is responsible for confirming all such areas with the appropriate city, state, or federal regulatory agency(ies) and shall protect these areas from damage caused by Lessee or Lessee Parties. The Premises are adjacent to the Wheeler-Osgood Waterway and may be subject to the City of Tacoma’s Critical Areas Preservation Ordinance (Ordinance 25060, Tacoma Municipal Code [TMC] 13.11), the City of Tacoma’s Shoreline Management Area of Washington State’s Shoreline Management Act of 1971 (RCW 90.58) propagated under the TMC 19 (Shoreline Master Program), and/or adjacent water may be classified as “waters of the state” or “waters of the United States” under applicable law. These aforementioned ordinances, codes, and acts restrict certain land uses or activities within designated areas and may require an exemption or development permits for certain uses or activities. Lessee shall comply with the requirements and restrictions of all applicable law.

*Endangered Species:* Lessee shall not harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any endangered species, as defined in the Endangered Species Act, 16 U.S.C. §1531, *et seq.* or attempt to engage in any such conduct on or near the Premises.

*Renewable Energy:* Lessee will consider the use of renewable energy and electric power for its equipment, vehicles, buildings, and facilities where practical and feasible. Lessor and Lessee will explore options for renewable energy technology and funding.

### ***Emission Control***

*Northwest Ports Clean Air Strategy:* Lessee shall use commercially reasonable efforts to assist Lessor with meeting the goals and objectives of the Northwest Ports Clean Air Strategy by implementing programs, policies, plans, or procedures to meet Actions and Performance Targets as listed in the Northwest Ports Clean Air Strategy 2020 update, as amended, or revised.

*Port of Tacoma Greenhouse Gas Resolution:* Lessee shall use commercially reasonable efforts to assist Lessor with meeting the objectives of the Port of Tacoma Greenhouse Gas Resolution (2023-12-PT).

At Lessor's request, Lessee may be asked to participate in small-scale emission reduction pilot studies or projects that test the feasibility and effectiveness of technology or changes in operation, at commercially reasonable cost to Lessee. In such cases, Lessor and Lessee will mutually explore potential pilot technology and funding.

*Emission Inventory:* On an annual basis, Lessee shall provide Lessor a complete inventory of all cargo-handling equipment at the Premises. In addition, at Lessor's request, Lessee shall provide other equipment data, activity data, and available air testing results needed for Lessor's air quality assessment and provide reasonable access to allow monitoring by Lessor's staff, consultants, and contractors. Lessor will make reasonable efforts to ensure that Lessor's access to the Premises for this purpose does not unreasonably interfere with Lessee's business operations at the Premises.

*Anti-Idling and Fuel Efficiency:* Lessee shall post anti-idle signs on the Premises. At Lessor's request, Lessee shall develop and implement, an anti-idle policy and fuel efficiency plan for all equipment on the Premises. Lessor and Lessee will mutually explore fuel efficiency and idle reduction technology and funding.

***Periodic Review***

Lessor and Lessee shall periodically review and adjust Lessee's environmental performance requirements at Lessor's request.

**Exhibit D**

**Lessee's Estimated Share of Capital Site Improvements**

<b>Improvement</b>	<b>Lessee Estimated Cost Share</b>
Utilities	\$1MM
Parking Lots/Driveways	\$3MM
Safety Improvements Required for BNSF Crossing Right/License	50% of actual cost of required safety improvements