

Agenda Summary Report (ASR)

Franklin County Board of Commissioners

DATE SUBMITTED: October 25, 2019	PREPARED BY: Laura B. Stark, Administrative Asst.
Meeting Date Requested: November 5, 2019	PRESENTED BY: Matt Mahoney, Public Works Dir.
ITEM: (Select One) <input checked="" type="checkbox"/> Consent Agenda <input type="checkbox"/> Brought Before the Board Time needed:	
SUBJECT: Approve option to extend the lease for approximately 4.21 acres located at 3414 Stearman Avenue, Pasco, commonly known as the County Maintenance Shop and Yard, between the Port of Pasco and Franklin County Public Works for a period of three (3) years, commencing July 1, 2019 and ending June 30, 2022.	
FISCAL IMPACT: Lease payments are currently budgeted for ER&R (Motor Vehicle) in 2019 and are contained in the proposed 2020 budget.	
BACKGROUND: On or about the 15 th day of August, 2014, the Port of Pasco entered into a Lease Agreement with Franklin County through its Public Works Department for the lease of approximately 4.21 acres, commonly known as the County Maintenance Shop and Yard, located at 3414 Stearman Avenue, Pasco, Washington for a term of five (5) years, commencing July 1, 2014 and ending June 30, 2019. The Port of Pasco recently forwarded their Notice of Exercise of Option to extend the current lease executed with Franklin County Resolution 2014-303 for an additional three (3) years pursuant to page one (1) article three (3) of said lease, commencing July 31, 2019 and ending June 30, 2022.	
RECOMMENDATION: Staff recommend that the Franklin County Board of Commissioners approve exercising the option to extend the lease for an additional three (3) years, commencing July 1, 2019 and ending June 30, 2022 and authorize the Chairman of the Board to sign the Notice of Exercise of Option, on behalf of Franklin County. Recommended Motion: I hereby move that the Board of Franklin County Commissioners approve the extension of the lease agreement between Franklin County through its Public Works Department and the Port of Pasco, for approximately 4.21 acres, commonly known as the County Maintenance Shop and Yard located at 3414 Stearman Avenue, Pasco, Washington for the term of three (3) years, commencing July 1, 2019 and ending June 30, 2022; and The Chairman of the Board of Franklin County Commissioners be, and hereby is, authorized to the Notice of Exercise of Option, on behalf of Franklin County.	
COORDINATION: This Notice of Exercise of Option to extend the current Lease Agreement has been discussed with and reviewed by Matt Mahoney, Public Works Director, Laura Stark, Public Works Administrative Assistant, Tara White, Airport Business Manager for Port of Pasco, and Mayra Reyna, Property Leasing Associate for Port of Pasco.	

ATTACHMENTS:

- Resolution w/attached lease 2014-303 for reference
- Notice of Exercise of Option
- Proposed Resolution

HANDLING / ROUTING:

- 1 – Original to Clerk of the Board
- 1 – Copy to Franklin County Public Works

I certify the above information is accurate and complete.



Matt Mahoney, Public Works Director

FRANKLIN COUNTY RESOLUTION _____

**BEFORE THE BOARD OF COMMISSIONERS OF
FRANKLIN COUNTY, WASHINGTON**

EXTEND LEASE AGREEMENT FOR APPROXIMATELY 4.21 ACRES, LOCATED AT 3414 STEARMAN AVENUE, PASCO, WASHINGTON, COMMONLY KNOWN AS FRANKLIN COUNTY MAINTENANCE SHOP AND YARD, BETWEEN FRANKLIN COUNTY THROUGH ITS PUBLIC WORKS DEPARTMENT AND THE PORT OF PASCO FOR THE TERM OF THREE (3) YEARS, COMMENCING JULY 1, 2019 AND ENDING JUNE 30, 2022.

WHEREAS, pursuant to RCW 36.01.010 and RCW 36.32.120 the legislative authority of each county is authorized to enter into contracts on behalf of the County and have the care of County property and management of County funds and business; and

WHEREAS, the Board of Franklin County Commissioners constitutes the legislative authority of Franklin County and desires to extend the lease agreement, authorized in Franklin County Resolution 2014-303, as being in the best interest of Franklin County,

NOW, THEREFORE, BE IT RESOLVED that the attached Notice of Exercise of Option extending the existing lease agreement for approximately 4.21 acres located at 3414 Stearman Avenue, Pasco, Washington, commonly known as Franklin County Maintenance Shop and Yard, between Franklin County through its Public Works Department and the Port of Pasco for the term of three (3) years, commencing July 1, 2019 and ending June 30, 2022 is hereby approved by the Board; and

BE IT FURTHER RESOLVED that the Chairman of the Board of County Commissioners is hereby authorized to sign the Notice of Exercise of Option on the Board's behalf.

APPROVED this _____ day of _____, 20__.

BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON

Chairman

Chairman Pro Tem

Member

Attest:

Clerk of the Board

NOTICE OF EXERCISE OF OPTION

On or about the 15th day of August, 2014, the PORT OF PASCO, a municipal corporation of the State of Washington ("Port"), entered into a Lease Agreement ("Lease") with Franklin County through its Public Works Department ("Lessee") for the lease of the following described premises situated in Franklin County, Washington:

Approximately 4.21 acres located at 3414 Stearman Avenue (as shown on Exhibit A) and more clearly defined as: Commencing at the intersection of Stearman Avenue and Boeing Street, Tri-Cities Airport; thence Southerly on the center-line of said Stearman Avenue South $18^{\circ}50'18''$ East, 282.0 feet; thence South $71^{\circ}09'42''$ West, 40.0 feet to the True Point of Beginning; thence, North $45^{\circ}23'42''$ East, 500.0 feet; thence North $44^{\circ}36'18''$ West, 89.26 feet; thence northwesterly 275.67 feet on a curve to the right having a radius of 613.0 feet; thence North $18^{\circ}50'18''$ West, 3.14 feet, to the True Point of Beginning.

Article 3 of the Lease Agreement affords Lessee the option to extend the Lease for a period of THREE (3) years, commencing July 1, 2019 and ending June 30, 2022.

Lessee warrants that Lessee is not in default in any provision of the Lease, and hereby exercises its option to renew the Lease for the period described in the Lease, according to all the terms, provisions, covenants, and agreements of the Lease, including those relating to increased rent and security requirements.

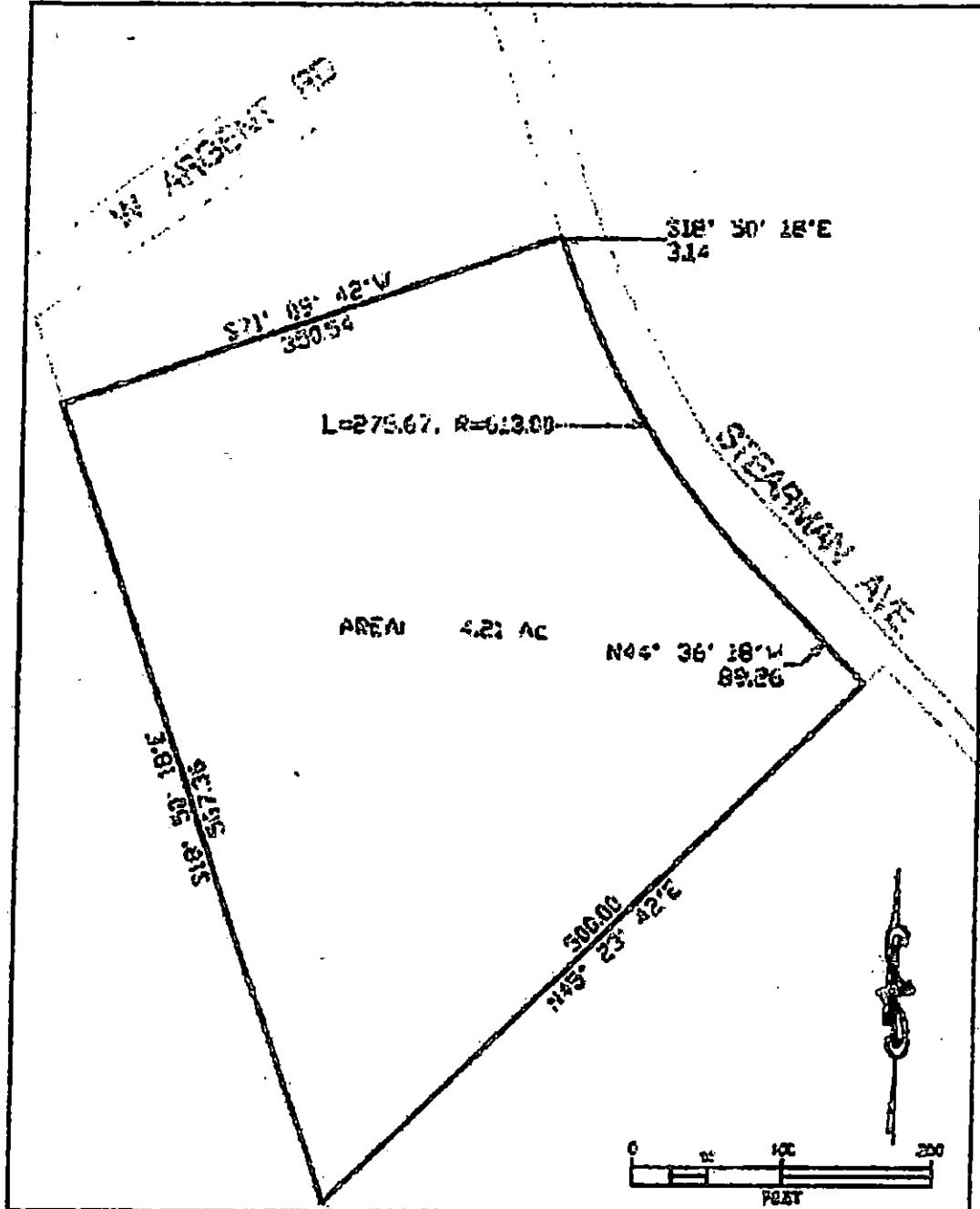
DATED this _____ day of _____, 2019.

LESSEE

By: _____

Its: _____

Exhibit A
Franklin County - Public Works Department



FRANKLIN COUNTY RESOLUTION NO. 2014 303

BEFORE THE BOARD OF COUNTY COMMISSIONERS of Franklin County, Washington.

RE: LEASE AGREEMENT FOR THE APPROXIMATE 4.21 ACRES LOCATED AT 3414 STEARMAN AVENUE, PASCO, WASHINGTON, BETWEEN FRANKLIN COUNTY THROUGH ITS PUBLIC WORKS DEPARTMENT AND THE PORT OF PASCO FOR THE TERM OF FIVE (5) YEARS, COMMENCING JULY 1, 2014 AND ENDING JUNE 30, 2019

WHEREAS, pursuant to RCW 36.01.010 and RCW 36.32.120 the legislative authority of each county is authorized to enter into contracts on behalf of the County and have the care of County property and management of County funds and business; and

WHEREAS, the Board of Franklin County Commissioners constitutes the legislative authority of Franklin County and desires to enter into the attached lease agreement as being in the best interest of Franklin County, and

NOW, THEREFORE, BE IT RESOLVED, that the attached Lease Agreement for the approximate 4.21 acres located at 3414 Stearman Avenue, Pasco, Washington, between Franklin County through its Public Works Department and the Port of Pasco for the term of five (5) years, commencing July 1, 2014 and ending June 30, 2019 is hereby approved by the Board.

APPROVED this 16 day of July, 2014.

BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON

Approved by Robert E. Koch

Chair



Chair Pro Tem



Member

Attest:

Mary Withers
Clerk of the Board

LEASE

THIS LEASE AGREEMENT made this 15th day of August, 2014, by and between the PORT OF PASCO, a municipal corporation organized and existing under the laws of the State of Washington, hereinafter referred to as "PORT" and Franklin County thru its Public Works Department, hereinafter referred to as "Lessee".

WITNESSETH: THAT THE PARTIES DO HEREBY MUTUALLY AGREE AS FOLLOWS:

ARTICLE 1 • LEASED PREMISES

The Port hereby leases to the Lessee and the Lessee hereby hires from the Port the following described premises situated in Franklin County, State of Washington:

Approximately 4.21 acres located at 3414 Stearman Avenue (as shown on Exhibit A) and more clearly defined as: Commencing at the Intersection of Stearman Avenue and Boeing Street, Tri-Cities Airport; thence Southerly on the center-line of said Stearman Avenue South 18°50'18" East, 282.0 feet; thence South 71°09'42" West, 40.0 feet to the True Point of Beginning; thence continuing South 71°09'42" West, 350.54 feet; thence South 18°50'18" East, 567.36 feet; thence North 45°23'42" East, 500.0 feet; thence North 44°36'18" West, 89.26 feet; thence northwesterly 275.67 feet on a curve to the right having a radius of 613.0 feet; thence North 18°50'18" West, 3.14 feet, to the True Point of Beginning.

hereinafter called the "PREMISES".

ARTICLE 2 • TERM

This lease shall be for a term of Five (5) years, commencing July 1, 2014 and ending June 30, 2019. Provided, whether or not this lease is signed by both parties or not, this Lease shall not become effective until the Lessee has provided the Port with the Bond or other security required by Article 6 and the proof of insurance as required by Article 17 of this Lease. Upon execution of this Lease by both parties; and compliance by Lessee of the provisions described above, the Lease will be in effect, and shall commence on the commencement date stated above in this Article 2.

ARTICLE 3 • OPTION TO RENEW RENTAL ADJUSTMENT

Provided, the Lessee is not in default in any provision of this Lease, the Lessee shall have, and it is hereby given and granted by the Port, an option to renew this lease for two (2) additional terms of three (3) years each according to all the terms, provisions, covenants, and agreements in this lease contained, except the provisions specifying the rental to be paid by the Lessee to the Port for the leased premises. In the event the lease term, including any option period, shall extend the lease term beyond three (3) years, or any successive multiple of three (3) year terms, the rental amount shall be subject to an increase as outlined in this lease. This option shall be exercised by the Lessee giving the Port written notice of its intent to bind itself to an extended term of this lease. Such written notice shall be mailed by certified mail not less than one hundred and eighty (180) days prior to the date of which the lease would otherwise expire. Wherever in the lease agreement reference is made to "the term of this lease", or words of like or similar import are used, they shall always be deemed and construed to include a renewal term of this lease, unless the context clearly requires a contrary construction.

ARTICLE 4 • RENT

Lessee agrees to pay as rental for the leased Premises the sum of ONE THOUSAND FIVE HUNDRED SEVENTEEN DOLLARS AND 71/100's (\$1,517.71) per month. Lessee shall pay all leasehold taxes due and owing on all taxable rent consistent with RCW Chapter 82.29A relating to leasehold excise tax, and any subsequent revision and amendments thereto. Taxable rent includes contract rent which is the amount of consideration due as payment for a leasehold interest, including the total of cash payments made to the Port, or to any other party for the benefit of the Port according to the requirements of the Lease agreement, including, but not limited to: any payments paid by a sublessee; expenditures for the protection of the Port's interest when required by the terms of the Lease or agreement; and expenditures for improvements to the property to the extent that such improvements become the property of the Port.. The rent for each month shall be paid to the Port in advance on or before the first day of each and every month of the lease term and shall be payable at such place as the Port may hereafter designate.

Lessee acknowledges that late payment by Lessee to Port of Rent or other sums due hereunder will cause Port to incur costs not contemplated by this Lease, the exact amount of which would be extremely difficult and impractical to ascertain. Those costs include, but are not limited to, processing expenses, accounting expenses, and legal fees. Therefore, in the event Lessee fails to

pay any installment of Rent or any other sum due hereunder within thirty (30) days after that amount is due, Lessee shall pay to Port, as Additional Rent, a \$100.00 late charge. Waiver of the late charge with respect to any installment or sum will not be deemed to constitute a waiver with respect to any subsequent late charge which may accrue. In the event any amount so due is delinquent for a period in excess of thirty (30) days, Lessee shall pay Port an additional late charge computed at the rate of 1½% per month upon the total amount so overdue for each day following its due date that the payment is delinquent. Lessee shall pay Port a standard charge for each returned check, based upon the amount banks are then charging. Lessee shall also pay the sum of \$100.00 for the service of any notice associated with a default of any kind by Lessee to reimburse Port for the cost of the preparation and service of such notice."

ARTICLE 5 • RENT INCREASE

After the lease has run for the first three (3) years, or for any succeeding three (3) year period (s) thereafter, any increased rental to be paid by the Lessee and charged by the Port shall be determined as outlined in this section as the rental for each succeeding three (3) year period. The nearest quarterly consumer price index (hereinafter called the Index) to the commencement date of the initial term of this lease, or the commencement date of any current succeeding rental adjustment period, shall be the base Index and it shall be based on the data of the Seattle, Washington Index for all items of the Bureau of Labor Statistics of the United States Department of Labor. The quarterly Index issued nearest in point of time to the date at the end of the then current rental period shall be the current Index. The current Index number shall be divided by the base Index number. From the quotient thereof, there shall be subtracted the integer 1, and any resulting positive number shall be deemed to be the percentage of increase in the cost of rent for the succeeding period. The rent being paid in the current rent period shall be multiplied by the percentage increase to establish the rent increase which shall be added to the current rent to establish the new rental for the next succeeding period. Provided further that any increase during such three (3) year interval shall be limited and shall be no more than fifteen percent (15%) over the rental determined at the previous three (3) year determination.

The Port shall, within a reasonable time after obtaining the appropriate data necessary for computing such increase, give the Lessee notice of any increase so determined, and the Port's computation thereof shall be conclusive and binding but shall not preclude any adjustment which may be required in the event of a published amendment of the Index figures upon which the computation was based unless the Lessee shall, within sixty (60) days after the giving of such notice, notify the Port of any claimed error therein. If, at the time required for the determination of the additional rent the Index is no longer published or issued, the parties shall use such other index as is then generally recognized and accepted for similar determination of purchasing power. Any dispute between the parties as to any such rental computation shall be determined by arbitration. If arbitration is requested by either party, then each party shall notify the other party of their choice of one arbitrator each, and each party shall instruct their arbitrator to meet with the arbitrator selected by the other party, and it shall be their duty to mutually agree upon a third arbitrator. These three arbitrators shall then, as soon as practicable, meet to determine what rental adjustment, if any, should be made in accordance with the above guidelines. The majority decision of such arbitrators shall be binding upon both parties thereto. Each party shall be responsible for the fee charged by their selected arbitrator and shall bind themselves to share equally in the fee charged by the third arbitrator. In the event the decision of the arbitrators, or the Port where arbitration is not involved, is not available before the commencement of the next succeeding rental term, the Lessee shall continue to pay rent at the then current rental rate and any change in that amount made by the arbitrators, or the Port where arbitration is not involved, shall be promptly paid retroactively by the Lessee. If either party fails to appoint an arbitrator or if the two arbitrators that are appointed fail to select a third arbitrator within a reasonable time, either party shall have the right to apply to the Superior Court of Franklin County, State of Washington, for appointment of an arbitrator.

In lieu of the automatic Increase in Rent determined as hereinabove provided, either party may elect to have the rental adjusted as of any Rental Adjustment Date as follows:

Ninety (90) days or more prior to a particular Rental Adjustment Date, either party may notify the other in writing of its election to have the Rent established at fair market value as herein after determined, in lieu of the CPI adjusted Rent. The Port and Lessee shall attempt to agree upon Rent for the Premises until the next Rental Adjustment Date, or the expiration of the term of the Lease, as the case may be (the "Succeeding Period"), such Rent to equal at least one hundred percent (100%) of the fair market rental value of the Premises for the Succeeding Period. If the parties are unable to agree upon the Rent for the Succeeding Period within thirty (30) days, then within ten (10) days thereafter each party, at its own costs and by giving notice to the other party, shall appoint a real estate appraiser with at least five (5) years full-time commercial real estate appraisal experience in the area in which the Premises are located to appraise and set Rent for the Succeeding Period. If a party does not appoint an appraiser within ten (10) days after the other party has given notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and shall set Rent for the Succeeding Period. If there are two appraisers appointed by the parties as stated in this paragraph, they shall meet promptly and attempt to set Rent for the Succeeding Period. If the two appraisers are unable to agree within thirty (30) days after the second appraiser has been appointed, they shall attempt to select a third appraiser meeting the qualifications stated in this paragraph within ten (10) days after the last day the two appraisers were given to set Rent. If the two appraisers are unable to agree on the third appraiser within such ten (10) day period, either of the parties to this Lease, by giving ten (10) days' notice to the other party, may apply to the presiding Judge of the Superior Court of Franklin County, for the

selection of a third appraiser meeting the qualifications stated in this paragraph. Each of the parties shall bear one-half (1/2) of the cost of appointing the third appraiser and of paying the third appraiser's fee. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for either party.

Within thirty (30) days after the selection of the third appraiser, a majority of the appraisers shall set Rent for the Succeeding Period. If a majority of the appraisers are unable to set Rent within the stipulated period of time, the three appraisals shall be added together and their total divided by three (3). The resulting quotient shall be the Rent for the Premises during the Succeeding Period. If, however, the low appraisal and/or the high appraisal is/are more than five percent (5%) lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If only one (1) appraisal is disregarded, the remaining two (2) appraisals shall be added together and their total divided by two (2), and the resulting quotient shall be Rent for the Premises during the Succeeding Period. If both the low appraisal and the high appraisal are disregarded as stated in this paragraph, the middle appraisal shall be Rent for the Premises during the Succeeding Period. In setting Rent, the appraiser or appraisers shall not take into consideration any properties located outside of the geographic location of the Premises.

After Rent for the Succeeding Period has been set, the appraisers shall immediately notify the parties thereof in writing, certified mail, return receipt requested.

In no event shall any appraisal procedures provided for herein, nor any determination by the parties hereto, result in Rent for any period being less than Rent for the immediately preceding period.

ARTICLE 6 • BOND

The Lessee shall, upon the execution of this lease and agreement, file and maintain with the Port a good and sufficient corporate surety bond or bonds or such other security as to the Port may be acceptable in accordance with the requirements of the laws of the State of Washington, the form and terms of which bond or other security shall be subject to the approval of the Port, in the sum of SIX THOUSAND SEVENTY DOLLARS AND 84/100's (\$6,070.84), (depending on extensions or renewals this sum may increase or decrease), conditioned upon the full performance by Lessee of all the terms and conditions of this lease agreement and the payment by Lessee of the rentals and of all other amounts herein provided for the full term hereof.

ARTICLE 7 • USE OF PREMISES

Lessee shall use the Premises for a maintenance shop and yard and shall not use them for any other purpose without the written consent of the Port.

ARTICLE 8 • UTILITIES

The Lessee shall be liable for and shall pay, throughout the term of this lease, all charges for all utility services furnished to the premises, including but not limited to electricity, gas, water, sewer and garbage disposal. The Lessee shall make application directly to Public Utility District #1 of Franklin County for its own electric service and, if the Lessee is required to have its own electric meter and meter loops, then it shall apply to said utility district for said meter and to any qualified electric contractor for a meter base and meter loop, all at the expense of the Lessee. The Lessee shall make application directly to the City of Pasco for water and sewer.

ARTICLE 9 • ACCEPTANCE OF PREMISES

Lessee accepts the Premises in their present condition. Lessee shall be responsible for performing any work necessary to bring the Premises into condition satisfactory to Lessee. By signing this Lease, Lessee acknowledges that it has had adequate opportunity to investigate the Premises, acknowledges responsibility for making any corrections, and alterations to the Premises, and acknowledges that the time needed to complete any such items shall not delay the commencement date of the lease.

ARTICLE 10 • MAINTENANCE AND REPAIR

At the expiration or sooner at termination of this lease, Lessee shall return the premises to the Port in the same condition in which received, reasonable wear and tear excepted. Lessee shall, at its own expense, at all times, keep the premises and the adjoining platforms, roadways and tracks, if any, neat, clean, free from weeds and in a safe and sanitary condition and shall maintain and keep the leased premises in a good state of repair and shall commit no waste of any kind. Lessee shall not permit or suffer any undue accumulations of waste material on the premises nor dispose of any waste material on any property owned by the Port nor permit or suffer any liquid industrial waste or chemicals which might damage bacterial action of the sanitary lagoon to enter the drainage or sewer lines. Repairs shall be made with due diligence, in a good and workmanlike manner and in compliance with all laws, ordinances, orders, rules, regulations, certificates of occupancy, or other governmental requirements; shall be promptly and fully paid for by Lessee; and shall be made under the supervision of an architect or engineer reasonably satisfactory to Port and in accordance with plans and specifications and cost estimates approved by Port prior to the

commencement of work. Port may designate a supervising architect to assure compliance with the provisions of this paragraph, and if it does, Lessee will pay the supervising architect's charges.

ARTICLE 11 • ALTERATIONS AND IMPROVEMENTS

Lessee shall make no alterations or improvements to or upon the premises without first obtaining written approval from the Executive Director of the Port.

It is understood that the structures to be erected by the Lessee upon the demised premises shall be built solely at the expense of the Lessee and shall remain the property of the Lessee subject, however, as security to the Lessor for any claim it may have for payment of rent and performance of the conditions of this lease. Lessee shall complete all such approved alterations and improvements with due diligence, in a good and workmanlike manner and in compliance with all laws, ordinances, orders, rules, regulations, certificates of occupancy, or other governmental requirements; Lessee shall promptly and fully pay for all such approved alterations and improvements. Such approved alterations and improvements shall be made under the supervision of an architect or engineer reasonably satisfactory to Port and in accordance with plans and specifications and cost estimates approved by Port. Port may designate a supervising architect to assure compliance with the provisions of this paragraph, and if it does, Lessee will pay the supervising architect's charges. If and when the lease terminates and all conditions of the lease have been met and performed by the Lessee and all rental paid as hereby required, then the Lessee shall remove said buildings and improvements. Provided, however, that such removal within forty-five (45) days after the termination of this lease and the Lessee must leave the premises in a condition comparable to the condition prevailing at the inception of the lease. Following termination of the lease and during the cleanup period, monthly rental shall nonetheless be paid the Port until such time the premises are actually returned to the Port in acceptable condition." In the event of any failure by Lessee to remove, repair or clean the Premises as provided in this section, Lessee shall, upon demand, reimburse Port for the cost of any such removal, repair or cleaning. Any property left on the Premises after the expiration or termination of the Term or after Lessee's vacation or abandonment of the Premises ("Abandoned Property") will be deemed to have been abandoned and to have become the property of Port to dispose of at Port's discretion. Lessee shall reimburse Port for any of Port's court costs, attorneys' fees, and storage charges related to Abandoned Property. Port may, at its option, sell Abandoned Property at private sale without notice or legal process, for such price as Port may obtain, and apply the proceeds of such sale to any amounts due under this Lease from Lessee to Port, including expenses incident to the removal and sale of Abandoned Property, or Port may otherwise dispose of Abandoned Property, or retain it without compensation to Lessee.

ARTICLE 12 • INSPECTION

The Port reserves the right to inspect the leased premises, including any chattels or equipment of the Port thereon located, at any and all reasonable times throughout the term of this 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 inspection.

ARTICLE 13 • SIGNS

No signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted on or within the leased premises, including the windows and doors thereof, without the approval of the Executive Director first had and obtained. At the termination or sooner expiration of this lease, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Lessee shall be removed by Lessee at its own expense, and Lessee shall repair any damage or injury to the premises, and correct any unsightly condition, caused by maintenance and removal of said signs, etc.

ARTICLE 14 • DAMAGE OR DESTRUCTION

In the event fire or other casualty does damage to the buildings or improvements on the demised premises, the Lessee shall make such repairs as are necessary to restore the premises to a safe, neat, and good condition. The Port may elect to terminate this lease by giving notice to the Lessee in writing if the premises are not restored within a reasonable time after the date of the casualty. If termination of the lease becomes necessary because Lessee does not restore the casualty damaged premises, the Port shall have the right to restore the premises to the original condition of the land as leased and all cost or removal of debris and any tenant improvements shall be for the account of the Lessee.

ARTICLE 15 • INDEMNIFICATION

The Port, its employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property, regardless of how such injury or damage be caused, sustained or alleged to have been sustained by the Lessee or by others as a result of any condition (including existing or future defects in the premises or occurrence whatsoever related in any way to the premises and the areas adjacent thereto or related in any way to Lessee's use or occupancy of the premises and of

the areas adjacent thereto. Lessee agrees to defend and to hold and save the Port harmless from all liability or expense (including expense of litigation) in connection with any such items or actual or alleged injury or damage.

ARTICLE 16 • WAIVER OF SUBROGATION

Port and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance contracts, including any extended coverage endorsement thereto. Provided, that this waiver shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of Port or Lessee.

ARTICLE 17 • INSURANCE

Carried by Lessee. Lessee shall obtain and keep in force during the term of this Lease a commercial (comprehensive) liability insurance policy protecting Lessee and Port (as additional insureds) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an "Additional Insured - Managers or Landlords of Premises" endorsement and contain the "Amendment of the Pollution Exclusion" endorsement for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any inter-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "Insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance required by this Lease or as carried by Lessee shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. All insurance to be carried by Lessee shall be primary to and not contributory with any similar insurance carried by Port, whose insurance shall be considered excess insurance only. The Port shall be furnished with a certificate by Lessee's insurer evidencing the coverage under such policy or policies of insurance with a copy of the required endorsements. Should any policy terminate during the life of this lease, or any extension thereof, the Lessee shall furnish Port with a new binder and endorsements prior to the expiration of the prior policy.

Carried by Port. At Port's own expense, Port may also maintain liability insurance similar to that described in the preceding Section, in addition to and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

Insurance Policies. Insurance required hereunder shall be in companies duly licensed to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B+, V or such other rating as may be required by a Lender, as set forth in the most current issue of "Best's Insurance Guide." Lessee shall not do or permit to be done anything, which shall invalidate the insurance policies maintained by Port. Lessee shall cause to be delivered to Port, within seven (7) days after the earlier of the Early Possession Date or the Commencement Date, certified copies of, or certificates evidencing the existence and amounts of, the insurance required of Lessee by this Lease. No such policy shall be cancelable or subject to modification except after thirty- (30) days' prior written notice to Port. At least thirty (30) days prior to the expiration of such policies, Lessee shall furnish Port with evidence of renewals or "insurance binders" evidencing renewal thereof, or Port may obtain such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Port upon demand.

ARTICLE 18 • USE RESTRICTIONS

The Lessee shall not carry on upon the demised premises any noxious or annoying trade or activity which would constitute a nuisance or hazard to the public, other tenants or to the Lessor and shall not substantially deviate from its announced and original use of the property without consultation with and consent from the Port.

ARTICLE 19 • TAXES

Lessee shall be liable for and shall pay, throughout the term of this lease before delinquency, all license and excise fees and occupation taxes covering the business conducted on the premises and all taxes on property of Lessee on the leased premises and any taxes on the leasehold interest created by this lease agreement. At the present time, since the Port is a municipal corporation, there is no real estate tax assessed on realty owned by it. If in the future such a tax is assessed or if a tax in lieu of such a tax is assessed, the Lessee agrees to pay the same promptly and before delinquency on that portion of it allocable to the demised premises.

Should the real estate hereby leased, or any portion thereof, be specifically benefited by any local improvement district now in existence or hereafter formed by any other governmental entity such that an L.I.D. assessment is made as to such specially benefited property, the Lessee covenants and agrees to pay to the Port annually, during the term of this lease and any extensions thereof, a sum of money equal to that which the Port would be required to pay annually as to such property under the lengthiest payment schedule available to assessed property owners within the district.

ARTICLE 20 • COMPLIANCE WITH PORT REGULATIONS AND WITH ALL LAWS

Lessee agrees to comply with all applicable rules and regulations of the Port pertaining to the building or other realty of which the premises are a part now in existence or hereafter promulgated for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public. Lessee further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations. Any fees for any inspection of the premises during or for the lease term by any federal, state or municipal officer and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.

ARTICLE 21 • ASSIGNMENT OR SUBLEASE

Lessee shall not assign or transfer this lease or any interest therein nor sublet the whole or any part of the premises, nor shall this lease or any interest thereunder be assignable or transferable by operations of laws or by any process or proceeding of any court, or otherwise, without the written consent of the Port first had and obtained. If the Port shall give its consent to any assignment or sublease, this paragraph shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without the Port's consent. If Lessee is a corporation, any transfer of ownership by merger, consolidation or liquidation, or any change in ownership, or power to vote the majority of the outstanding voting stock of Lessee, constitutes an assignment for purposes of this section. If Lessee is a partnership, limited liability company, limited liability partnership, or proprietorship, a transfer of a controlling interest in such company, partnership or proprietorship constitutes an assignment for purposes of this section.

Notwithstanding any permitted assignment or subletting, Lessee shall at all times remain directly, primarily and fully responsible and liable for the payment of the rent herein specified and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease. Upon the occurrence of an "event of default" as hereinafter defined, if the Premises or any part thereof are then assigned or sublet, Port, in addition to any other remedies herein provided, or provided by law, may at its option collect directly from such assignee or subtenant all rents becoming due to Lessee under such assignment, transfer or sublease and apply such rent against any sums due to Port from Lessee hereunder, and no such collection shall be construed to constitute a novation or a release of Lessee from the further performance of Lessee's obligations hereunder.

ARTICLE 22 • DEFAULTS AND REMEDIES

EVENTS OF DEFAULT. The following events shall be deemed to be events of default by Lessee under this Lease:

- A. Lessee fails to pay any installment of the rent herein reserved when due, or any other payment or reimbursement to Port required herein when due, and such failure continues for a period of ten (10) days from the date after written notice thereof to Lessee.
- B. Lessee becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors.
- C. Lessee files a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any state thereof; or Lessor is adjudged bankrupt or insolvent in proceedings filed against Lessee thereunder.
- D. A receiver or trustee is appointed for all or substantially all of the assets of Lessee.
- E. Lessee abandons, deserts or vacates any substantial portion of the Premises.
- F. Lessee fails to comply with any term, provision or covenant of this Lease (other than the foregoing in this paragraph A) and does not cure such failure within twenty (20) days after written notice thereof to Lessee.

REMEDIES. Upon the occurrence of any such events of default described hereinabove, Port shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever.

- A. Port may accelerate all rent payments due hereunder which shall then become immediately due and payable.
- B. Terminate this Lease, in which event Lessee immediately shall surrender the Premises to Port, and if Lessee fails so to do, Port may, without prejudice to any other remedy which it may have for possession, or arrearages in rent, enter upon and take possession of the Premises and expel or remove Lessee and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim of damages therefor, and Lessee agrees to pay to Port on demand the amount of all loss and damage which Port may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise.
- C. Enter upon and take possession of the Premises and expel or remove Lessee and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim for damages therefor, and relet the Premises for such terms ending before, on or after the expiration date of the Lease Term, at such rentals and upon such other conditions (including concessions and prior occupancy periods) as Port in its sole discretion may

determine, and receive the rent therefor; and Lessee agrees to pay to Port on demand any deficiency that may arise by reason of such reletting. Port shall use reasonable efforts to mitigate its damages by reletting the Premises. In the event Port is successful in reletting the Premises at a rental in excess of that agreed to be paid by Lessee pursuant to the terms of this Lease, Port and Lessee each mutually agree that Lessee shall not be entitled, under any circumstances, to such excess rental, and Lessee does hereby specifically waive any claim to such excess rental.

- D. Enter upon the premises, without being liable for prosecution of any claim for damages therefor, and do whatever Lessee is obligated to do under the terms of this Lease; and Lessee agrees to reimburse Port on demand for any expenses which Port may incur in thus effecting compliance with Lessee's obligations under this Lease, and Lessee further agrees that Port shall not be liable for any damages resulting to the Lessee from such action, whether caused by the negligence of Port or otherwise.
- E. Whether or not Port retakes possession or relets the Premises, Port shall have the right to recover unpaid rent and all damages caused by Lessee's default, including attorney fees. Damages shall include, without limitation: all rentals lost, all legal expenses and other related costs incurred by Port following Lessee's default, all costs incurred by Port in restoring the Premises to good order and condition, or in remodeling, renovating or otherwise preparing the Premises for reletting, all costs (including without limitation any brokerage commissions and the value of Port's time) incurred by Port, plus interest thereon from the date of expenditure until fully repaid at the rate of eighteen percent (18%) per annum.
- F. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, such remedies being cumulative and non-exclusive, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Port hereunder or of any damages accruing to Port by reason of the violation of any of the terms, provisions and covenants herein contained. No act or thing done by Port or its agents during the Lease Terms hereby granted shall be deemed a termination of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate this Lease or accept a surrender of the Premises shall be valid unless in writing signed by Port. No waiver by Port of any violation or breach of any of the terms, provisions and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Port's acceptance of the payment of rental or other payments hereunder after the occurrence of an event of default shall not be construed as a waiver of such default, unless Port so notifies Lessee in writing. Forbearance by Port to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default or of Port's right to enforce any such remedies with respect to such default or any subsequent default. If, on account of any breach or default by Lessee in Lessee's obligations under the terms and conditions of this Lease, it shall become necessary or appropriate for Port to employ or consult with an attorney concerning or to enforce or defend any of Port's rights or remedies hereunder, Lessee agrees to pay any reasonable attorneys' fees so incurred.

ARTICLE 23 • TERMINATION FOR GOVERNMENT USE

In the event that the United States Government or any agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of the premises or any part thereof, either party may, at its option, terminate this lease as of the date of such taking, and, if Lessee is not in default under any of the provisions of this lease on said date, any rental prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination be promptly refunded to Lessee.

ARTICLE 24 • TERMINATION BECAUSE OF COURT DECREE

In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of its obligations under this lease, then either party may terminate this lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this lease on the effective date of such termination, any rental prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of termination, be promptly refunded to Lessee.

ARTICLE 25 • WAIVER

The acceptance of rental by the Port for any period or periods after a default by Lessee hereunder shall not be deemed a waiver of such default unless the Port shall so intend and shall so advise Lessee in writing. No waiver by the Port of any default hereunder by Lessee shall be construed to be or act as a waiver of any subsequent default by Lessee. After any default shall have been cured by Lessee, it shall not thereafter be used by the Port as a ground for the commencement of any action under the provisions of Article 22 hereof.

ARTICLE 26 • INSOLVENCY

If the lessee shall file a petition in bankruptcy or if Lessee shall be adjudged bankrupt or insolvent by any court, or if a receiver of the property of Lessee shall be appointed in any proceeding brought by or against Lessee, or if Lessee shall make an assignment for the benefit of creditors, or if any proceedings shall be commenced to foreclose any mortgage or any other lien on Lessee's interest in the premises or on any personal property kept or maintained on the premises by Lessee the Port may, at its option, terminate this lease.

ARTICLE 27 • SURRENDER OF PREMISES - ATTORNEY'S FEES

At the expiration or sooner termination of the lease, Lessee shall promptly surrender possession of the premises to the Port, and shall deliver to the Port all keys that it may have to any and all parts of the premises. In the event that either party shall be required to bring any action to enforce any of the provisions of this lease, or shall be required to defend any action brought by the other party with respect to this lease, the losing party shall pay all of the successful party's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorneys' fees in the trial court and in any appellate courts.

In the event the Port serves any notice for non-compliance with any provision of this lease on Lessee, Lessee shall pay the sum of \$50.00 for the cost of preparation of the notice and service of the notice upon Lessee. Said sum due immediately upon service of the notice.

ARTICLE 28 • HOLDING OVER

If Lessee shall, with the consent of the Port, hold over after the expiration or sooner termination of the term of this lease, the resulting tenancy shall, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. During such month-to-month tenancy, Lessee shall pay to the Port One Hundred Fifty percent (150%) of the rate of rental as set forth herein, unless a different rate shall be agreed upon, and shall be bound by all of the additional provisions of this lease agreement insofar as they may be pertinent.

ARTICLE 29 • ADVANCES BY PORT FOR LESSEE

If Lessee shall fail to do anything required to be done by it under the terms of this lease, except to pay rent, the Port may, at its sole option, do such act or thing on behalf of Lessee, and upon notification to Lessee of the cost thereof to the Port, Lessee shall promptly pay the Port the amount of that cost.

ARTICLE 30 • LIENS AND ENCUMBRANCES

Lessee shall keep the leased premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the said 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 leased premises if not paid.

ARTICLE 31 • NOTICES

All notices hereunder may be delivered or mailed. If mailed, they shall be sent by certified or registered mail to the following respective addresses:

TO LESSOR:

Port of Pasco
P.O. Box 769
Pasco, WA 99301

TO LESSEE:

Franklin County thru its Public Works Department
3416 Stearman Avenue
Pasco, WA 99301

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

ARTICLE 32 • JOINT AND SEVERAL LIABILITY

Each and every party who signs this lease, other than in a representative capacity, as Lessee, shall be jointly and severally liable hereunder.

ARTICLE 33 • "LESSEE" INCLUDES LESSEES, ETC.

It is understood and agreed that for convenience the word "Lessee" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this lease, regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual Lessee or Lessees under this agreement.

ARTICLE 34 • CAPTIONS

The captions in the lease are for convenience only and do not in any way limit or amplify the provisions of the lease.

ARTICLE 35 • INVALIDITY OF PARTICULAR PROVISIONS

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

ARTICLE 36 • ENTIRE AGREEMENT - AMENDMENTS

This agreement constitutes the whole agreement between the Port and Lessee. There are no terms, obligations, covenants or conditions other than those contained herein. No modification or amendment of this agreement shall be valid and effective unless evidenced by an agreement in writing.

ARTICLE 37 • NON-DISCRIMINATION

- A. The Lessee agrees that in the performance of this Lease that it will not discriminate by segregation or otherwise against any person or persons because of sex, race, creed, age, color or national origin.
- B. It is agreed that the Lessee's non-compliance with the provisions of this clause shall constitute a default of this Lease. In the event of such noncompliance, the PORT may take appropriate action to enforce compliance, may terminate this Lease, or may pursue such other remedies as may be provided by law.

ARTICLE 38 • HAZARDOUS SUBSTANCES

Lessee agrees that Lessee shall not use, generate, treat, store or dispose of Hazardous Material on the Premises or adjoining areas except in accordance with any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the Premises or adjoining areas. If Lessee breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Premises or adjoining areas caused or permitted by Lessee results in contamination of the Premises or adjoining areas, then Lessee shall indemnify, defend and hold Port harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including without limitation diminution in value of the Premises or adjoining areas, damages for the loss or restriction on the use of rentable or usable space or of any adverse impact on marketing of space on the Premises or adjoining areas, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Lease Term as a result of such contamination. This indemnification of Port by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work required by any federal, state or local governmental agency, political subdivision, lender or buyer because of Hazardous Material present in the soil or groundwater on or under the Premises or adjoining areas, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or adjoining areas, damages arising from any adverse impact on marketing of space in the building, and sums paid in settlement of claims, attorneys' fees, consultant fees, laboratory fees and expert fees. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises or adjoining areas caused or permitted by Lessee results in any contamination of the Premises or adjoining areas, Lessee shall promptly take all actions at its sole expense as are necessary to return the Premises or adjoining areas to the condition existing prior to the contamination of the Premises or adjoining areas by any such Hazardous Material; provided, however, the Port's approval of such action shall first be obtained, which approval shall not be unreasonably withheld.

Lessee will deliver to the Port copies of any documents received from, or sent by Lessee to, the United States Environmental Protection Agency and/or any state, county or municipal environmental or health agency concerning Lessee's operations on the Premises.

As used herein, the term "Hazardous Material" means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) asbestos, (vi) flammable explosives, (vii) infectious materials, or (viii) radioactive materials. "Environmental Law(s)" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., and the Washington Model Toxics Control Act, Chapter 70.105D, Revised Code of Washington, as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws and any other federal, state or local law, statute, rule, regulation or ordinance which regulates or proscribes the use, storage, disposal, presence, clean-up, transportation or release or threatened release into the environment of Hazardous Material.

ARTICLE 39 • PRINCIPAL AS CO-OBLIGOR • INTENTIONALLY OMITTED

I, _____, being a shareholder in the Lessee Corporation, in consideration of the Port's execution of this Lease, do hereby execute the foregoing Lease Agreement individually. I understand that I am personally liable to the Port as co-obligor with _____ in respect to all provisions of this Agreement.

Signed: _____

Signed: _____
Spouse

ARTICLE 40 • GOVERNING LAW; VENUE

This agreement shall be interpreted, construed and governed accordingly to the laws of the state of Washington. The parties agree that Venue for any action under this Agreement shall be in Franklin County, Washington.

IN WITNESS WHEREOF, this Agreement has been signed and attested by the proper officers of the contracting parties this 15th day of August, 2014.

PORT OF PASCO
LESSOR

By: [Signature]
Randy Hayden, Executive Director

FRANKLIN COUNTY
LESSEE

By: Approved by Robert E. Koch
Robert E. Koch, Chairman

And: [Signature]
Brad Peck, Chairman Pro-Tem

And: [Signature]
Rick Miller, Member

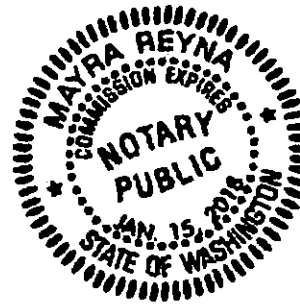
2014 303

Approved as to form:
[Signature]
PROSECUTING ATTORNEY'S OFFICE

State of Washington)
: ss.
County of Franklin)

On this 5th day of August, 2014, before me, the undersigned notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Randy Hayden to me known to be the Executive Director, respectively, of THE PORT OF PASCO that executed the within and foregoing Instrument, and acknowledged that said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that they are authorized to execute said Instrument. Given under my hand and official seal the day and year last above written.

Mayra Reyna
Notary Public in and for the
State of Washington
Residing at Pasco
My Commission Expires Jan 15 2018



CORPORATION NOTARY ACKNOWLEDGEMENT

State of _____)
: ss.
County of _____)

On this ____ day of _____, 2014, before me, the undersigned notary public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ to me known to be the _____, respectively, of _____ that executed the within and foregoing instrument, and acknowledged that said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that they are authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the
State of _____
Residing at _____
My Commission Expires _____

INDIVIDUAL NOTARY ACKNOWLEDGEMENT

State of Washington)
: ss.
County of Franklin)

On this 16 day of July, 2014, before me, the undersigned notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Brad Peck and Rick Miller to me known to be the individuals described in and who executed the within for foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Mary C. Withers
Notary Public in and for the
State of Washington
Residing at Eltopia
My Commission Expires 10-29-16



PORT OF PASCO
PRO FORMA LEASE

Exhibit A
Franklin County - Public Works Department

