

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**
Washington Department of Enterprise Services
Real Estate Services
P.O. Box 41468
Olympia, WA 98504-1468

REVIEWED BY
SKAGIT COUNTY TREASURER
DEPUTY Bridget Ibarra
DATE 10/15/2020

**AMENDED & RESTATED PROPERTY MANAGEMENT LEASE GNW 20-6659
P39356 NE NE 18-35-5**

This Amended & Restated Property Management Lease ("Lease") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services" or "Lessor"), as Lessor, and the Washington Military Department, a Washington State governmental agency ("Military Department" or "Lessee"), as Lessee, and is dated and effective as of September 29, 2020.

RECITALS

- A. Effective July 1, 1994, pursuant to a Property Management Lease, the Washington Department of General Administration, a Washington state governmental agency, acting as Lessor, leased certain real property consisting of approximately seven acres located in Skagit County, Washington to the Washington Military Department, a Washington state governmental agency, acting as Lessee. The leased property is Skagit County Parcel No. P39356, commonly known as the Washington Military Department Lease Parcel ("Military Lease Parcel").
- B. The Property Management Lease is recorded in Skagit County, Washington as instrument number 9501190013 (Book 407, pages 0314 – 0321). The Property Management Lease is fifty years commencing July 1, 1994 and ending June 30, 2044; *Provided*, however, that, with the consent of the Lessor, the Property Management Lease could be renegotiated for an additional fifty years.
- C. Following execution of the Lease, the Military Department constructed its Sedro Woolley Field Maintenance Shop on the Property. The Military Department uses this maintenance facility for heavy equipment owned and operated by the National Guard.
- D. Effective October 1, 2011, the Washington State Legislature created Enterprise Services. See LAWS OF 2011 1st Sp. S., ch. 43 (ESSB 5931) (codified at RCW chap. 43.19). Accordingly, the prior Washington Department of General Services' functions were transferred to Enterprise Services. Such transfer included the responsibility to care for and manage the Property subject to this lease and, by operation of law, Enterprise Services succeeded the Washington Department of General Services as lessor regarding the Lease.
- E. Beginning in 2016, as a result of a public process, including Legislative authorization (see LAWS OF 2016 1st Sp. Sess., ch. 35, § 6006), Enterprise Services entered into an agreement with the Port of Skagit, a public port district, to transfer approximately 225 acres of

property located in Sedro Woolley and adjacent to the Military Lease Parcel, known as the North Cascades Gateway Center. See Agreement to Transfer Real Property Between the Port of Skagit and Washington State Department of Enterprise Services dated December 30, 2016. This property formerly has been known as the Northern State Hospital property and the Northern State Multi-Service Center. Presently, the property is referred to as Sedro-Woolley Innovation for Tomorrow Center ("SWIFT Center").

- F. In 2020, Enterprise Services and the Port of Skagit evaluated the opportunity to transfer the Military Lease Parcel, subject to the Lease, from the State to the Port of Skagit.
- G. The Military Department has requested that the Lease be extended for a period of twenty (20) years. Enterprise Services is agreeable to the extension and has consulted with the Port of Skagit and the Port of Skagit does not object to acquiring the Military Lease Parcel subject to a longer lease.
- H. Enterprise Services and the Military Department desire to amend and restate the Lease and desire that this Amended and Restated Lease shall supersede and replace the prior Property Management Lease.

AGREEMENT

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

LEASED PROPERTY

1. Skagit County Parcel No. P39356, commonly known as the Washington Military Department Lease Parcel ("Military Lease Parcel") and depicted on the map attached as Exhibit A ("Property"). That portion of the former Washington State Department of General Administration Campus Site as shown on that survey filed in Volume 10 of Surveys at Pages 148 and 149 in the northeast quarter of the northeast quarter of Section 18, Township 35 North, Range 5 East, W.M., situated in Skagit County, Washington, described as follows (and as shown in Exhibit A, attached hereto and incorporated herein by this reference):

Commencing at the southeast corner of the northeast quarter of the northeast quarter of said Section 18; thence S 88°18'58"W along the south line thereof, a distance of 296.00 feet to the south line of said Campus Site; thence continuing S 88°18'58" W along the south line of said Campus Site, a distance of 300.68 feet to the point of beginning of this description; thence continuing S 88°18'58"W along the south line of said Campus Site, a distance of 145.00 feet; thence North, a distance of 559.40 feet; thence N 30°12'04"E, a distance of 80.53 feet; thence North, a distance of 90.40 feet; thence N 31°57'37"W, a distance of 123.76 feet; thence North, a distance of 220.38 feet; thence S 72°25'14"E, a distance of 495.12 feet; thence S 25°26'28"W, a distance of 155.97 feet; thence S 60°38'32"W, a distance of 91.79 feet; thence S 24° 13'40"W, a distance of 109.66 feet; thence South, a distance of 210.00 feet; thence S 35°23'03"E, a distance of 248.51 feet; thence S 52°49'58"W, a distance of 318.70 feet to the point of beginning of this description.

TOGETHER WITH an easement for ingress, egress and utilities over, under, and through a strip of land 60 feet lying west of the above described parcel, east of the east line of the Fruitdale Road, and lying adjacent to, contiguous with, and

north of, the south line of the northeast quarter of the northeast quarter of Section 18, Township 35 North, Range 5 East, W.M.

TERM

2. TO HAVE AND TO HOLD the Property with appurtenances for the term July 1, 1994 to June 30, 2064.

RENTAL RATE

3. The Lessee shall pay rent to the Lessor for the Property at the following rate: \$1.00 per year, plus Leasehold Excise tax, if applicable. Payment shall be made at the beginning of each year upon submission of properly executed vouchers.

EXPENSES

4. During the term of this Lease, Lessee shall pay any and all costs associated with the leased Property and the maintenance facility constructed thereon, including but not limited to all real estate taxes, if applicable, all property assessments, water, sewer, storm water, fire, garbage collection, and all maintenance and repair, together with all utilities.

CONDITION OF PREMISES

5. Lessee shall, at its own expense, at all times keep the Property and all improvements thereon in safe, sanitary, neat and presentable condition and in a good state of repair committing no waste of any kind. Window glass and sidewalks shall be kept clean and interior and exterior surfaces regularly cleaned and/or painted by the Lessee. In the event the Lessee fails to so maintain the property and improvements thereon, the Lessor may make repairs and perform maintenance necessary for compliance with such standards, the cost incurred thereby to be paid by the Lessee. For the purposes of so maintaining the Property, the Lessor reserves the right at reasonable times to enter and inspect the Property.

ASSIGNMENT/SUBLEASE

6. Lessee shall not assign, nor sublet the Property without first obtaining Lessor's written consent.

RENEWAL

7. The Lease may, with the consent of Lessor, be extended for an additional 20 years beyond the current expiration date on terms agreed to by Lessor and Lessee. Negotiation for an extension to the lease must be completed prior to 365 days before the end of the lease term.

ACCEPTANCE OF PROPERTY

8. Lessee has examined the leased Property, the adjoining property, and the property of which this is a part of and accepts them in their present condition "as is." There are no warranties expressed or implied as to conditions apparent or unknown except as otherwise stated in this Lease.

DISPOSITION OF IMPROVEMENTS

9. Structures, installations or improvements of any kind now existing or hereafter placed on the leased Property by Lessee shall be removed by Lessee within 365 days of the expiration of the term of this Lease or sooner termination thereof. Subject to agreement by Lessor, Lessee may leave any and all structures, installations or improvements, in which event title for any improvements so left shall vest in Lessor and Lessee shall transfer said title in prompt and timely manner.

NO GUARANTEES

10. It is understood that no guarantees, expressed or implied, representations, promises or statements have been made by Lessor unless endorsed in writing. And it is further understood and agreed that this Lease shall not be valid and binding upon the State of Washington, unless the Lease has been approved by the Director of the Department of Enterprise Services of the State of Washington and approved as to form by the Office of the Attorney General.

HAZARDOUS SUBSTANCES

11. Lessee shall not keep on or about the Property, for use, disposal, treatment, generation, storage or sale any substances which are hazardous, toxic, harmful or dangerous, and/or which are subject to regulation as hazardous or toxic, dangerous, or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, (collectively referred to herein as "hazardous substances"), except lubricants, solvents, cleaning supplies, battery electrolyte, and fuels routinely used in a vehicle maintenance motor pool operation. Lessee warrants that oil water separators and other storage areas used in the storage and disposal of any and all lubricants, solvents, cleaning supplies, and fuels will be installed in accordance with all federal, state, and local law, regulations, statute, or ordinance. Lessee shall be fully liable to Lessor, and shall indemnify, defend and save harmless Lessor and its officials and employees, with respect to any and all damages, costs, fees (including attorneys' fees and costs), civil and criminal penalties, or clean-up costs assessed against or imposed as a result of Lessee's use, disposal, generation, storage, or sale of any hazardous substances or that of Lessee's employees, agents, or invitees. Breach of this provision shall entitle Lessor to terminate this Lease.

REIMBURSEMENT FOR DAMAGE TO PROPERTY

12. Lessee hereby agrees to reimburse Lessor for damages caused by its employees, contractors, licensees, invitees, clients and agents. This paragraph shall not be construed as making Lessee responsible for the repair of normal wear and tear.

HOLD HARMLESS

13. Lessee, its successors or assigns, will protect, save and hold harmless Lessor, its authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of Lessee, its assigns, agents, contractors, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Lease. Lessee further agrees to defend Lessor, its agents, or employees, in any litigation, including payment of any costs or attorneys' fees, for any claims or actions commenced thereon arising out of or in connection with acts or activities authorized by this Lease. This obligation shall not include such claims, costs,

damages or expenses which may be caused by the sole negligence of Lessor or its authorized agents or employees; Provided that if the claims or damages are caused by or result from the concurrent negligence of (a) Lessor, its agents or employees, and (b) Lessee, its agents or employees, and involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of Lessee or Lessee's agents or employees.

USE OF PROPERTY

14. No use other than a maintenance facility for the National Guard and associated activities shall be permitted without the prior written approval of Lessor. Furthermore, in using this Property, it is expressly agreed that Lessee shall comply with all applicable federal, state, and local laws, ordinances, regulations, and environmental requirements. Lessee hereby agrees to hold Lessor harmless from claims or suits resulting from Lessee's failure to comply with such requirements.

CAPTIONS

15. The captions and paragraph headings herein are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any paragraph.

NOTICES

16. Wherever in this Lease written notices are to be given or made, they will be sent by certified mail to the address listed below unless a different address shall be designated in writing and delivered to the other party.

LESSEE:

Military Department
Construction and Facilities
Management Office
Camp Murray - Building 36
Tacoma, WA 98430-5006
ATTENTION: Adam Iwaszuk

LESSOR:

Department of Enterprise Services
Real Estate Services
P.O. Box 41468
Olympia, WA 98504-1468
ATTENTION: Leasing Manager

ALTERATIONS

17. No alterations may be made to the Property without first coordinating with Lessor. Lessee shall, if required by state law, pay prevailing rate of wage to all workers, laborers or mechanics employed to perform such work as well as comply with the rules and regulations of the Department of Labor and Industries. Lessee agrees in performing the above work to comply with all applicable local, state, and federal regulations including but not limited to, obtaining appropriate permits and inspections.

ADDITIONAL LEASE PROVISIONS

18. It is understood and agreed that Lessee accepts the Property in its present condition and accepts all risk of injury to persons or damage to property resulting from, or arising out of, the condition of the Property. All facilities constructed on the Property will comply with the American's with Disabilities Act (ADA). Lessee agrees to hold Lessor harmless from any

liability or claims due to noncompliance with the ADA. Compliance and any construction will be the sole responsibility of Lessee.

19. An electronic signature or electronic record of this Lease or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Lease or such other ancillary agreement for all purposes.

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

LESSEE:

STATE OF WASHINGTON
MILITARY DEPARTMENT

By: 

Major General Bret D. Daugherty

Its: Director

Dated: October 13, 2020

LESSOR:

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: 

Chris Liu

Its: Director

Dated: October 15, 2020

APPROVED AS TO FORM:

By: _____

Assistant Attorney General

Dated: October __, 2020

APPROVED AS TO FORM:

By: _____

David B. Merchant
Assistant Attorney General

Dated: October __, 2020

19. An electronic signature or electronic record of this Lease or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Lease or such other ancillary agreement for all purposes.

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

LESSEE:

STATE OF WASHINGTON
MILITARY DEPARTMENT

By: _____

Major General Bret D. Daugherty

Its: Director

Dated: October __, 2020

LESSOR:

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: _____

Chris Liu

Its: Director

Dated: October __, 2020

APPROVED AS TO FORM:

By: _____

David B. Merchant
David B. Merchant
Assistant Attorney General

Dated: October 14, 2020

APPROVED AS TO FORM:

By: _____

David B. Merchant
David B. Merchant
Assistant Attorney General

Dated: October 14, 2020

ACKNOWLEDGMENTS

STATE OF WASHINGTON

County of Snohomish }

On this 15th day of October, 2020 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Chris Liu**, the **Director of the Washington State Department of Enterprise Services** that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the State of Washington, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument on behalf of the State of Washington.

Witness my hand and official seal hereto affixed the say and year first above written.

Eleanor RomeroPrinted Name: Eleanor Romero

Notary Public in and for the State of Washington

Residing at Snohomish CountyMy Commission Expires: 6/23/2021

STATE OF WASHINGTON

County of Pierce }

On this 13th day of October, 2020 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Major General Bret D. Daugherty**, **Director, of the Washington Military Department**, that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the **Washington Military Department**, for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute the said instrument on behalf of the District.

Witness my hand and official seal hereto affixed the say and year first above written.

Catherine M. SennPrinted Name: Catherine M. Senn

Notary Public in and for the State of Washington

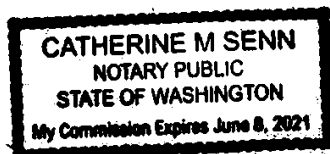
Residing at TacomaMy Commission Expires: 8 June 2021

EXHIBIT A

[Insert Map]

